
FINAL NOTICE

To: **Millfield Partnership Limited (in administration)**

Of: **Knollys House
17 Addiscombe Road
Croydon
Surrey
CR0 6SR**

Dated: **1 August 2006**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives Millfield Partnership Limited (“MPL”), final notice about a decision to cancel the permission granted to MPL to carry on regulated activities

1. ACTION

- 1.1 The FSA gave MPL a Decision Notice dated 4 July 2006 (“the Decision Notice”) which notified MPL that, for the reasons given below, having regard to the written representations that MPL made on 9 June 2006 and on 28 June 2006, and pursuant to section 45 of the Financial Services and Markets Act 2000 (“the Act”), the FSA had decided to cancel the permission granted to MPL, pursuant to Part IV of the Act (“MPL’s Part IV permission”).
- 1.2 MPL notified the FSA on 27 July 2006 that it would not exercise its right to refer the matter to the Financial Services and Markets Tribunal within 28 days of the date on which the Decision Notice was given to it. Accordingly, the FSA has today cancelled MPL’s Part IV permission.

2. REASONS FOR ACTION

Summary

- 2.1 The FSA was not satisfied, on the basis of the facts and matters described below, that MPL was meeting the threshold conditions set out in Schedule 6 to the Act (the “threshold conditions”) in that it was failing to demonstrate that its resources were adequate in relation to the regulated activities it carried on and to ensure that its affairs would be conducted in compliance with proper standards.

Relevant statutory provisions

- 2.2 The FSA’s regulatory objectives established in section 2(2) of the Act include the protection of consumers and maintaining confidence in the financial system.
- 2.3 The FSA is authorised by section 45 of the Act to cancel a Part IV permission where it appears that an authorised person is failing, or is likely to fail, to satisfy the threshold conditions.

Relevant guidance

- 2.4 In exercising its power to cancel a Part IV permission, the FSA must have regard to guidance published in the FSA Handbook. The main considerations in relation to the action specified above are set out below.

ENF 5.5 – The FSA’s policy for exercising its power to cancel Part IV permission

- 2.5 ENF 5.5.2 provides examples of the circumstances in which the FSA will consider cancelling a Part IV permission including where it appears to the FSA that the authorised person is failing, or is likely to fail, to satisfy the threshold conditions in relation to one or more, or all, of the regulated activities for which the authorised person has a Part IV permission.

Guidance concerning Threshold Condition 4: Adequate resources (paragraph 4, Schedule 6 to the Act) - COND 2.4

- 2.6 COND 2.4.1(1) reproduces the relevant statutory provision that the resources of the person concerned must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.
- 2.7 COND 2.4.2(2), in giving guidance on the interpretation of “adequate resources”, says the term “adequate” means sufficient in terms of quantity, quality and availability, and “resources” as including all financial resources, capital, provisions against liabilities, holdings of or access to cash, and other liquid assets.
- 2.8 COND 2.4.4(3) requires the FSA only to take into account relevant matters which are material in relation to the regulated activities for which the authorised person has permission.

Facts and matters relied on

- 2.9 MPL has been authorised by the FSA since 1 December 2001.
- 2.10 As such, MPL was required to comply with the regulatory capital requirements set out in the part of the FSA Handbook entitled Interim Prudential Sourcebook: Investment businesses (“IPRU (INV)”). Specifically, Rule IPRU (INV) 13.1.2 R states that:
- “A firm must have and maintain at all times financial resources of the kinds and amounts specified in, and calculated in accordance with, the rules of this chapter; and be able to meet its liabilities as it falls due.”
- 2.11 FSA rule IPRU(INV) 13.12.1B R requires that:
- “A Category B firm must have at all times financial resources calculated in accordance with rules 13.12.2 to 13.12.5 which equal or exceed the amount specified in rules 13.12.1C to F as applicable.”
- 2.12 Of the further rules referred to in FSA rule IPRU(INV) 13.12.1B R above, FSA rule IPRU(INV) 13.12.1F R (2) to (4) apply to Millfield, and require that:
- “(2) A Category B3 firm which is not permitted to carry on the activity of investment management in respect of portfolios containing only life policies or to delegate such activity to an investment firm must have financial resources calculated in accordance with whichever of (3) or (4) produces the higher amount.
- (3) 4/52 of its relevant annual expenditure, calculated in accordance with 13.12.2 to 13.12.2D; or
- (4) an amount equal to £400 multiplied by the number of its advisers.”
- 2.13 FSA rule IPRU(INV)13.12.3(2) R, which also applied to Millfield, requires that:
- “A Category B firm must be able to calculate its financial resources at any time on the basis of the balance sheet the firm could draw up at that time. For this purpose:
- ...
- (b) a Category B2 or B3 firm to which 13.12 applies must adjust the assets in the balance sheet as specified in Part I of table 13.12.3(2) and include the liabilities after making the adjustments specified in Part II of table 13.12.3(2).”

On 26 August 2005, Millfield was granted a modification of the requirement in Table 13.12.3(2)(13) which permitted it to include a reasonable value for the sums due from advisers and any appointed representatives which arose in relation to indemnity commission clawback.

2.14 MPL had been in deficit against this requirement since 31 October 2005. MPL reported a deficit as at 28 February 2006 of £4.5 million. Its projections showed that, unless it was able to reschedule loans and inject new capital, the deficit would continue to increase and peak at £7.0 million in February 2007. It provided the FSA with no evidence of a viable proposal to address the source and rectify the deficit. It therefore failed to satisfy the FSA that it would rectify the deficit.

Representations

2.15 Written representations made on behalf of MPL on 9 June 2006 explained the steps which MPL was taking to try to rectify the capital deficit. The FSA noted that the placing referred to in those representations had not been successful, and that (as explained in the written representations made on behalf of MPL on 28 June 2006) MPL had pursued an alternative course of action. The representations made on 28 June 2006, in effect, requested that the FSA take no action for a short period of time to allow a sale of MPL's business. The FSA was not satisfied that the proposed sale of itself was sufficient reason not to give the Decision Notice, and was satisfied that the grounds for the action proposed in the Warning Notice dated 3 May 2005 remained.

Conclusions

2.16 The facts and matters described above led the FSA, notwithstanding the representations made, having regard to its regulatory objectives which include the protection of consumers, to the following conclusions:

- that MPL was failing materially to meet its regulatory capital requirements as set out in IPRU(INV) 13;
- these failings were material in relation to the regulated activities for which it had permission and MPL was therefore failing to satisfy Threshold Condition 4 (Adequate resources); and
- the risk of adverse effect on consumers arising from MPL's failings, which are material breaches of requirements imposed upon MPL by the FSA's rules, caused the FSA to have very serious concerns about MPL such that the exercise of the FSA's own-initiative power to cancel MPL's Permission was an appropriate response to those concerns.

2.17 An announcement was made on 4 July 2006 that Michael Jervis and Dan Schwarzmann of PricewaterhouseCoopers had been appointed as Administrators of a number of Millfield Group plc's subsidiaries. One such subsidiary was MPL.

3. IMPORTANT

3.1 This Final Notice is given to MPL in accordance with section 390(1) of the Act.

Publicity

- 3.2 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the FSA must publish such information about the matter to which this Final Notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.
- 3.3 The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA Contact

- 3.4 For more information concerning this matter generally, you should contact Chris Walmsley at the FSA (direct line: 020 7066 5894 /fax: 020 7066 5895).

Jonathan Phelan
Head of Department
Enforcement Division