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## FINAL NOTICE

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To: MLP Private Finance Plc  
Of: 100 Fenchurch Street  
London  
EC3M 5JD  
Date: 21 February 2003

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about a requirement to pay a financial penalty.**

### 1. PENALTY

- 1.1 The FSA gave MLP Private Finance Plc (“MLP”) a Decision Notice on 17 January 2003 which notified MLP that pursuant to section 206 of the Financial Services and Markets Act 2000 (“the Act”), the FSA had decided to impose a financial penalty against MLP in the amount of £100,000.
- 1.2 MLP have not referred the matter to the Financial Services and Markets Tribunal (the “Tribunal”) within 28 days of the date on which the Decision Notice was given to MLP. MLP has also confirmed in a letter dated 17 February 2003 that that it will not be making a reference to the Tribunal.
- 1.3 Accordingly, for the reasons set out below and having taken into account the written representations of MLP dated 11 December 2002, the FSA imposes a financial penalty on MLP in the amount of £100,000 (the “Penalty”).

### 2. REASON FOR THE PENALTY

- 2.1 For the reasons set out below, the FSA has decided to impose a financial penalty of £100,000 on MLP in respect of breaches of Rules 1.8.8(5), 2.6.4(2), 7.1.2, 7.15 and 7.2.1(1)(a) of the Personal Investment Authority (“the PIA Rules”), Rules F29.8.5(1), F28.3(1), F29.5.1(1) and F29.17 of the Adopted

FIMBRA Rules (“the FIMBRA Rules”) and Principle 9 of the Statements of Principle of the Securities and Investments Board (“the SIB Principles”).

### **3. RELEVANT STATUTORY PROVISIONS**

3.1 Section 206 FSMA provides:

“If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate”.

3.2 The Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Civil Remedies, Discipline, Criminal Offences etc) (No2) Order 2001 provides, at Article 8(2), that the power conferred by Section 206 of the Act can be exercised by the FSA in respect of failures by a firm to comply with any of the provisions specified in Rules 1.3.1(6) of the PIA Rules as if the firm had contravened a requirement imposed by the Act.

3.3 PIA Rule 1.3.1(6) provided that a PIA Member which failed to comply with PIA Rule 1.3.1(2) or any of the SIB Principles was liable to disciplinary action.

3.4 PIA Rule 1.3.1(2) provided that a PIA member had to obey the PIA Rules, which included the FIMBRA Rules and the SIB Principles.

3.5 The SIB Principles were universal statements of the standards expected of all regulated firms that were issued by the Securities and Investments Board and applied to members of the Personal Investment Authority (“the PIA”).

3.6 PIA Rule 1.8.8(5) provided:

“Where the Member has appointed or intends to appoint an individual to perform the functions of a registrable individual, the Member must ensure that the individual does not begin to perform the functions of his new appointment until the Member has received notice from PIA that he has been entered in the Register of Individuals”.

3.7 PIA Rule 2.6.4 (2) provided:

“A member must ensure that each new entrant...before completing Stage 1 training (a) provides no financial advice to any customer of the Member or of any appointed representative of the Member, (b) engages in no investment business with any such customer unless accompanied and supervised by a supervisor, (c) if applicable, undergoes appropriate external examination in accordance with the Schedule of Approved Qualifications at the end of this Chapter, and (d) receives a formal assessment of his knowledge and of his skill in applying that knowledge”.

3.8 PIA Rule 7.2.1(1)(a) provided:

*“A Member must monitor adequately... the conduct of its investment staff and other employees, and of its appointed representatives and their relevant employees, with a view to ensuring compliance with the procedures which it has established in accordance with Rule 7.1.2 and its own compliance with the Principles and Rules”.*

3.9 PIA Rule 7.1.2(1) provided:

“A Member must establish procedures, including procedures for complying with the training and competence requirements in accordance with Rule 2.6, with a view to ensuring that its investment staff and other employees and its appointed representatives and their employees carry out their functions in such a way that the Member complies at all times with the Rules and Principles”.

3.10 PIA Rule 7.1.5 provided :

“A Member must establish and maintain a system of internal control appropriate to the size and type of its business”.

3.11 FIMBRA Rule F29.8.5(1) provided:

*“The information you provide under Rule F29.8.1(1) must include an explanation of the reasons why you believe the transaction to be suitable having regard to his financial and other circumstances”.*

3.12 FIMBRA Rule F29.8.1(1) provided:

*“You must provide the client with information about the product in accordance with Rule F29.8.2 to give him an adequate basis upon which to decide whether or not to accept your recommendation”.*

3.13 FIMBRA Rule F28.3(1) provided:

“You must ensure that anything you say or write to another person in the course of your business, and any document you give or send him, is clear, fair and not misleading”.

3.14 FIMBRA Rule F29.5.1(1) provided:

“You may recommend a specific investment or investment agreement to a client only if you have good grounds for believing it to be suitable for him in the light of the information he has given you and of any relevant facts about him of which you are, or ought to be, aware”.

3.15 FIMBRA Rule 29.17 provided:

“Once you have agreed to arrange a client transaction, you must do so as soon as practicable”

3.16 Principle 9 of the SIB Principles (“SIB Principle 9”) provided:

“A firm should organise and control its internal affairs in a responsible manner, keeping proper records, and where the firm employs staff or is responsible for the conduct of investment business by others, should have adequate arrangements to ensure they are suitable, adequately trained and properly supervised and that it has well-defined compliance procedures”.

#### **4. REASONS FOR THE ACTION**

##### **Summary**

4.1 In the period February to June 2001, during the initial phase of MLP’s business in the UK, MLP acted in a number of respects in breach of the PIA Rules, including the FIMBRA Rules, and SIB Principles arising from weaknesses in the training, monitoring and supervision of its investment staff and in its selling practices. These weaknesses lead to unqualified and unsupervised staff making unsuitable recommendations to customers. In so acting MLP demonstrated serious failings which the FSA considers were such as to demand a financial penalty.

4.2 Although affecting very few customers, these failings are made more serious by the following particular factors:

- They indicated a formulaic approach to customer recommendations resulting from a failure by MLP, which is a subsidiary of a large German parent company that provides financial advice, banking and insurance services and has considerable resources available to it, properly to assess and research the UK financial services market and, as a result, a failure to take appropriate steps to comply with regulatory standards in the UK;
- They were identified by PIA’s staff and not by MLP whose compliance staff had, as a result of the breach of MLP’s own procedures, been unaware of investment business being written by MLP’s advisers; and
- MLP’s ambitious plans for growth, the vulnerability of its target market and the inexperience of its advisers made it imperative that its procedures, systems and controls were of the highest quality to ensure that appropriate considered recommendations were made in compliance with UK

regulatory standards. MLP failed to implement and monitor adherence to such procedures effectively. Without the regulator's intervention, MLP's sales practices could have led to a considerable number of customers being recommended products that were not suitable for their needs and circumstances.

4.3 On the other hand, the FSA recognises that the impact, actual and potential, of MLP's failings has been mitigated to the extent that:

- The problems were identified at a very early stage, albeit by PIA, and accordingly affected very few customers.
- Once the failings were identified, MLP, at PIA's request, temporarily ceased conducting investment business, retrained its salesforce and reviewed all business written.
- Subsequently MLP has significantly increased the resource available to monitor its investment staff and restructured its business to improve controls.
- MLP has also appointed third party compliance consultants to assist it with conducting business in compliance with the FSA's Rules and Principles.

Nevertheless, while recognising the steps taken by MLP to remedy the problems and its commitment to resolve the issues arising, the FSA notes that the full co-operation given by MLP was initially largely in response to the regulator's actions and instigation. However, more recently, MLP has proactively extended the remit of the third party compliance consultants and further increased its compliance resource.

## **5. BACKGROUND**

### *The Regulated Firm*

- 5.1 MLP is a wholly owned subsidiary of Marschollek Lautenschlager and Partners AG ("MLP AG") which is listed on the Frankfurt Deutsche Boerse.
- 5.2 MLP applied for PIA membership on 12 September 2000, was admitted to membership on 14 February 2001 and was subsequently "grandfathered" into membership of FSA on 1 December 2001.
- 5.3 MLP has a distinctive business strategy, based on that of its parent. MLP aims to provide financial consultation services for professional client groups. MLP advertises its services and attempts to attract clients by holding promotional events at universities across the country.
- 5.4 MLP hopes to acquire such clients shortly after their graduation and aims to obtain the client's life long loyalty. By this process, MLP hopes to develop a bank of wealthy customers in years to come.

- 5.5 During the relevant period, between 14 February 2001 and 12 June 2001, MLP organised itself internally into three “branches” each focusing on a different professional group. Professional groups were targeted on professions such as lawyers, doctors or accountants. Advisers were allocated to one of these three branches. Each branch had a manager who brought to it the experience of the parent firm’s business model and had been transferred from MLP-AG’s headquarters in Germany.
- 5.6 The branch managers did not, however, have experience of the UK financial market and were not, during the relevant period, authorised by PIA to conduct investment business. The branch managers were not, therefore, competent to advise or to supervise the sales of trainee advisers.
- 5.7 Prior to authorisation by PIA on 14 February 2001, MLP recruited 19 trainee advisers. The majority of these trainee advisers were recent graduates with little or no experience of financial services.

Discovery of current issues

- 5.8 The case concerns serious failings by MLP during its initial phase of operation in the UK, in the training, monitoring and supervision of its investment staff. These failings led to unqualified and unsupervised staff making unsuitable recommendations to clients.
- 5.9 These failings took place in the period from February 2001 (immediately after MLP was authorised by PIA) to June 2001 when MLP agreed to cease conducting investment business pending the implementation of a range of remedial measures including the re-training of its staff.
- 5.10 On 12 April 2001, PIA’s Supervision Department made a monitoring visit to MLP.
- 5.11 During the visit, MLP compliance staff advised PIA staff that MLP had not yet written any investment business and that all of MLP’s advisers were currently undergoing the first stage of their MLP training.
- 5.12 Checks conducted by PIA staff subsequently identified that business had in fact been placed with product providers prior to the Supervision visit.
- 5.13 As a consequence of these findings PIA Enforcement staff visited MLP between 5 and 7 June 2001. During the Enforcement visit, PIA staff examined client files and interviewed MLP compliance staff and other staff members, including investment staff and staff responsible for MLP’s Training and Competence system.
- 5.14 At the time of the Supervision visit and the subsequent Enforcement visit, MLP was still in the process of setting up their operations and therefore the amount of business that had been written was small.

The discovery of business written by staff not authorised to give investment advice

- 5.15 During the Supervision visit, MLP's Compliance Officer informed Supervision staff that none of MLP's staff were providing investment advice to clients. MLP had only recently been admitted to PIA membership, and its investment staff had either not been approved by PIA, or had not been classified as competent to provide investment advice without supervision.
- 5.16 Checks conducted by PIA staff with product providers after the Supervision visit established that MLP had in fact written a number of items of business of regulated business prior to the Supervision visit.
- 5.17 After the Enforcement visit, Enforcement staff required MLP to conduct a full review of all investment business written by MLP.
- 5.18 MLP's review discovered that a total of 77 items of business had been recommended during the period from 14 February 2001 to 12 June 2001. 19 of the 77 sales related to non-regulated non-investment business (for example, Permanent Health Insurance or Cash ISA's) and the remaining 58 sales related to regulated investment business. 61 of the 77 transactions related to products sold by the advisers to themselves on an execution only basis. The remaining 16 transactions were regulated transactions sold to customers who were not the advisers themselves.
- 5.19 The reviews by MLP therefore revealed that a total of 58 items of regulated business had been written by staff who had not been authorised and registered or who had not been classified as competent, of which 16 had been sold to customers who were not the advisers themselves.

*The recommendation of products that were unsuitable to clients*

- 5.20 During the Enforcement visit ten client files were available for review. All ten files were assessed by Enforcement staff. Six recommendations related to one off transactions, for example to purchase an ISA, made to clients who were either related to or social friends of the adviser. The other four files related to unconnected clients where the full advice process had been followed albeit by unqualified staff. These four files were reviewed to assess whether the recommendation given met the client's personal and financial needs.
- 5.21 In all four cases identical recommendations involving the sale of pre-mortgage endowments and 35-year endowments as retirement planning vehicles were made. These apparently formulaic recommendations were unsuitable.
- 5.22 MLP's sales process was geared to identifying four needs for all its clients. These needs were long and short-term savings, pension provision and income protection.
- 5.23 In order to meet the needs of long term savings (usually for a future house purchase) and pension provision advisers had been trained to sell endowments. In all four of the cases reviewed by Enforcement, endowments had been recommended in situations where alternative products were available that would have met the clients need for long term savings and pension provision

more appropriately. Further, the affordability of the recommendations was not demonstrated. The recommendations also provided the clients with life cover. This was despite the fact that no need for life cover was recorded in the fact find. By recommending products containing an element of life cover, the clients were purchasing a product feature which they did not require the payment for which would have the effect of diluting their investment return.

- 5.24 MLP has accepted that the reason for this is that it attempted to recommend the German saving methodology (which involves starting to save as soon as possible and for as long as possible using long term endowments as a savings vehicle) to its British consumers. This approach was, however, not suitable to the UK market due to the alternative products available in the UK.
- 5.25 The initial training provided to MLP's advisers was based on the history of MLP's parent company, and therefore included reference to the German savings and investment market. MLP's Training and Competency Officer and Compliance Officer did not attend these training courses and were therefore not in a position to be able to control and monitor the way in which this training was interpreted by MLP's trainee advisers. The result of this was that the advice offered by advisers did not take into account the unique characteristics of the UK market and led to unsuitable recommendations.
- 5.26 By imposing the German savings methodology MLP failed to consider the tax position of the UK and its impact on the UK savings and investment market. It was this lack of regard that resulted in the recommendations of products that were not suitable to investors.
- 5.27 Of particular concern to the FSA is the fact that given MLP's expansion plans, had it not been for the timely intervention of the regulator it is likely that MLP would have proceeded to make many more recommendations to clients which were not suitable.
- 5.28 MLP has now confirmed to the FSA that its advisers have undergone re-training to ensure that they are properly aware of the UK savings and investment market.



*The failure to issue Reason Why Letters and the issuing of Reason Why Letters that were misleading.*

- 5.29 Although they cannot make an unsuitable sale suitable, Reason Why Letters offer consumers a degree of protection as they allow consumers to review advice given to them before the product that has been recommended goes on risk. If the Reason Why Letter is not issued, or contains misleading statements, the ability of a customer to examine critically the advice proffered to him is severely compromised.
- 5.30 Enforcement's review of ten client files identified that in six cases Reason Why Letters had not been sent to clients and in the further four cases where they had been sent the Reason Why Letters contained misleading statements.

*The failure to forward client cheques to Product Providers in a timely manner.*

- 5.31 The review of client files identified two instances where cheques from clients, which should have been forwarded to product providers for the payment of premiums, had been allowed to remain on MLP's client files for over a month.
- 5.32 This left clients at risk of not benefiting from any investment growth that the fund made in the time the cheque lay on the file. As a result, compensation of £85 had to be paid to one client.

*The failure to monitor its staff and put in place effective controls*

- 5.33 The problems described above arose from MLP's failure to monitor its investment staff and failure to have put in place effective controls to assist this monitoring.
- 5.34 The nature of MLP's business strategy of focussing upon recent graduates and final year university students as clients combined with the lack of experience of its advisers meant that it was particularly important that MLP had particularly high training, monitoring and supervision standards and that those standards were enforced rigorously.
- 5.35 MLP's procedures did not operate to ensure compliance with its own procedures and PIA rules. For example, recommendations made by advisers should have been submitted to MLP's Compliance or Training and Competency Officers for approval before being submitted to product providers as the advisers themselves were not competent to provide investment advice unsupervised. In the cases reviewed during the Enforcement visit this control was circumvented by investment staff who passed the business they had written to product providers via branch managers. As described above, the branch managers had been transferred to MLP from the German parent company but were not themselves competent to supervise the sale of investment business in the UK. This breakdown in controls led to a failure by MLP to monitor its investment staff effectively and resulted in recommendations being made to clients that were unsuitable.

- 5.36 MLP has subsequently introduced new procedures under the direct control of the Compliance Officer in order to check the quality of advice given by investment staff. All clients affected by the breaches of MLP's procedures were visited by the Compliance Officer and appropriate remedial action taken.
- 5.37 Further, MLP has employed compliance consultants to check advice provided and assist MLP in implementing adequate controls and procedures.

## **6. RELEVANT STATUTORY PROVISIONS - SUMMARY**

- 6.1 This penalty is to be imposed pursuant to Section 206 of the Act in respect of breaches by MLP of the PIA Rules and FIMBRA Rules detailed below and SIB Principle 9.
- 6.2 PIA Rule 1.8.8(5) required firms to ensure that individuals did not conduct investment business until they received notification of the individual's acceptance onto the PIA Register of Individuals. MLP did not do so.
- 6.3 PIA Rule 2.6.4(2)(b) required firms to ensure that they made a formal assessment of individuals skills and competencies of investment staff before classifying them as competent to conduct investment business. MLP did not do so.
- 6.4 PIA Rule 7.2.1(a) required firms to monitor its investment staff to ensure their compliance with PIA Rules. MLP did not do so.
- 6.5 PIA Rule 7.1.2 required firms to establish procedures, including procedures relating to training and competence, with a view to ensuring compliance with PIA's Rules and Principles. MLP did not do so.
- 6.6 PIA Rule 7.1.5 required firms to establish a system or internal controls appropriate to their business. MLP did not do so.
- 6.7 FIMBRA Rule F29.17 required firms to have good grounds for believing a recommendation made to a client to be suitable. MLP did not do so.
- 6.8 FIMBRA Rule F29.8(5) required firms to ensure that investors were provided a written explanation of the reasons for a recommendation. MLP did not do so.
- 6.9 FIMBRA Rule F29.5.1 required firms to ensure that written explanations provided to clients were not misleading. MLP did not do so.
- 6.10 FIMBRA Rule F29.17 required firms to execute client's instructions in a timely manner. MLP did not do so.
- 6.11 SIB Principle 9 required firms to organise and control its internal affairs in a responsible manner and ensure that its staff were adequately trained and supervised. MLP did not do so.

## 7. RELEVANT GUIDANCE ON SANCTION

7.1 The FSA's policy on the imposition of financial penalties is set out in Chapter 13 of the Enforcement Manual that forms part of the FSA Handbook ("ENF"). The principal purpose of the imposition of a financial penalty is to promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions and demonstrating generally to firms the benefits of compliant behaviour.

7.2 Article 8 (4) of the Pre-N2 Misconduct Order provides that, where the FSA proposes to impose a financial penalty it must have regard to:

*"any statement made by the self-regulating organisation ...which was in force when the conduct in question took place with respect to the policy on the taking of disciplinary action and the imposition of, and amount of penalties (whether issued as guidance, contained in the rules of the organisation or otherwise)"*.

7.3 Relevant PIA Guidance is contained in Annex D of "PIA's Approach to Discipline – Statement of Policy" that was issued in December 1995. In all material respects this required consideration of the same factors as identified in Chapter 13 of the Enforcement Manual. It has been taken into account by the FSA in determining the appropriate sanction in this case.

7.4 PIA's Statement of Policy makes it clear however that that the criteria for determining the level of sanction are not to be applied rigidly, as stated in paragraph 2 of Annex D:

*"Each case is different and needs to be treated on its own merits. It is not possible to apply a mechanistic approach to the determination of the circumstances in which disciplinary action should be taken or of the sanctions to be applied. The criteria...should not be treated as exhaustive. Nor should it be assumed that regard would necessarily be had to a particular criterion in any given circumstances."*

7.5 Similarly, it is stated in Chapter 13 of the FSA Enforcement Manual at clause 13.3.4 that the criteria listed in the manual are not exhaustive and all relevant circumstances of the case will be taken into consideration.

7.6 In determining whether a financial penalty is appropriate and its level the FSA considers all the relevant circumstances of the case. The FSA considers the following factors (which are expressed both in terms of FSA and equivalent PIA Guidance) to be particularly relevant in this case.

*ENF 13: The seriousness of the misconduct or contravention.*

*PIA Guidance: The seriousness of the breaches*

- 7.7 The level of financial penalty must be proportionate to the nature and seriousness of the contravention. The breaches identified in this case were potentially very serious.
- 7.8 Due to the timely intervention of PIA the risks to consumers were minimised. Without this, particularly given MLP's expansion plans, many financially inexperienced young graduates, many of whom would have accrued large debts during their university studies, could have received unsuitable advice tying them into inappropriate long-term contracts.
- 7.9 In October 2002 the third party compliance consultants appointed by MLP reported on the quality of advice given and the systems and controls within MLP. The findings of the report corroborated the conclusion of the FSA that, without the regulator's intervention, MLP's sales practices could have led to a considerable number of customers being recommended products that were not suitable for their needs and circumstances. The report concluded, well over a year after PIA's visit, that there were still a number of compliance issues arising. In particular, notwithstanding the remedial work undertaken, MLP's advisers had continued to make recommendations for long term endowments that did not appear to be properly substantiated and there were weaknesses in the product selection process as well as inadequate record keeping and poor reason why letters. The report further concluded that the level of compliance resource (including supervisors) was inadequate to meet the requirements of MLP's business and should be increased. The report made a number of recommendations to MLP which MLP have confirmed they are taking action to adopt. All regulated business written since March 2002 will be reviewed by the independent third party compliance consultants and any remedial action arising from the review will be implemented by MLP and monitored by the third party compliance consultants.

ENF 13: The extent to which the contravention is deliberate or misconduct was deliberate or reckless

PIA Guidance: Whether the member intentionally or recklessly failed to meet PIA's requirements.

- 7.10 There is no indication that MLP deliberately contravened PIA Rules. Indeed MLP's procedures, as designed, should have met PIA's requirements. It does, however, appear that, during MLP's initial phase of operation in the UK, its advisers were unaware of these procedures and requirements and that, in practice, the designated procedures were not followed.
- 7.11 Furthermore, there were particular risks inherent in the business strategy adopted by MLP that should have meant that special attention was given to compliance, supervision and training issues. As described above, MLP's business model involves recruiting new graduates from university with very little or no previous financial services experience to act as advisers. These new advisers are trained to focus upon final year university graduates as potential clients. The model therefore involves inexperienced advisers providing investment advice to clients who are also generally young and inexperienced

with financial matters. This situation, if left unsupervised and unmonitored, would give rise to a high risk of unsuitable sales and compliance failures. Given this situation, it was particularly important for MLP to provide the advisers with adequate training, effective monitoring and appropriate levels of supervision. MLP did not do so during its initial phase of operation in the UK.

- 7.12 Accordingly, whether or not MLP's breaches can be characterised as reckless non-compliance, the FSA believes that the weaknesses in and lack of adherence by MLP's branch managers and advisers to MLP's systems and controls in view of its business model have contributed materially to the seriousness of the breaches and should be regarded as aggravating factors.

ENF 13: The size, financial resources and other circumstances of MLP

PIA Guidance: The extent to which the Member's governing body or senior management was culpable. The Member's ability to pay.

- 7.13 MLP is part of a large German parent group. Whilst MLP itself is currently relatively small in terms of staff and levels of business, it has signalled its intent to expand its UK operations rapidly.

- 7.14 MLP-AG is not the subject of this case nor is it regulated by the FSA. Nevertheless, given its controlling interest in MLP, its position is relevant to MLP's breaches. MLP-AG is a well-established company in Germany with significant resources at its disposal. MLP-AG provided funding and experienced employees to assist in the establishment of MLP in the UK. Without this assistance MLP could not have established itself in the manner it did in such a short period of time. While MLP itself was a relatively small and new operation, it did, therefore, have available to it considerable backing from a significant parent. Against that background, the failure by MLP to make adequate resources available to ensure adequate compliance procedures, monitoring and training is particularly significant. MLP's senior management appear to have failed to take an appropriate interest in ensuring that MLP was established in the UK with compliance and selling procedures suitable for the UK market or to ensure adequate resources were available to enable this.

MLP's senior management in the UK has been changed and reinforced since the events occurred.

ENF 13: The amount of profit accrued or loss avoided

PIA Guidance: The extent to which, as a result of the breaches, the Member gained a benefit or avoided suffering a loss.

- 7.15 There is no evidence that MLP set out to accrue additional profits as a result of its compliance failings.
- 7.16 MLP has been trading for a relatively short period and has incurred high start up costs. Very little business was written prior to the remedial work

undertaken in 2001. Any profit that MLP and its advisers gained from the non-compliant behaviour would have been small.

ENF 13: Conduct following the contravention

PIA Guidance: The Firm's response once the breaches were identified

- 7.17 MLP did not itself initially identify the breaches. However once the breaches were discovered MLP actively sought to improve its systems to ensure future compliance. It has undertaken a review of all business written and agreed voluntarily to PIA's request to suspend selling while it retrained its investment staff.
- 7.18 Since the breaches were discovered, MLP have appointed five new T&C managers as Supervisors to impose a closer control over their sales force.
- 7.19 A further four individuals have been appointed. It is intended that they will become authorised early in 2003 and will also act as Supervisors. The Compliance department now consists of four full time compliance personnel.
- 7.20 As noted, MLP has increased compliance and training and competence resource significantly. Further it has appointed independent third party compliance consultants. This should assist MLP in ensuring it conducts its future business in a compliant manner.

ENF 13: Disciplinary record and compliance history

PIA Guidance: The Firm's regulatory history

- 7.21 MLP has not been the subject of previous disciplinary action by PIA or FSA.

ENF 13: Previous action by the FSA in relation to similar failings

- 7.22 FSA (as opposed to PIA) has not previously imposed penalties on firms for similar failings.

ENF 13: Action taken by other regulatory authorities in relation to similar findings

PIA Guidance: The way in which PIA has dealt with similar cases in the past

- 7.23 PIA (MLP's previous regulator) has, in the past, taken action against a number of member firms for compliance and selling practice failings. This action has included the imposition of financial penalties. In setting the level of penalty, the FSA has taken into account penalties levied by PIA.

**8. MANNER OF PAYMENT**

- 8.1 The Penalty must be paid to the FSA in full.

**9. TIME FOR PAYMENT**

9.1 The Penalty must be paid to the FSA no later than 10 March 2003, being not less than 14 days beginning with the date on which this notice is given to you.

**10. IF THE PENALTY IS NOT PAID**

10.1 If any of the Penalty is outstanding on 11 March 2003, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

**11. IMPORTANT**

11.1 This Final Notice is given to you in accordance with section 390 of the Act.

*Publicity*

11.2 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this 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.

11.3 The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Julia Dunn  
Group Leader  
FSA Enforcement Division