Financial Services Authority

FINAL NOTICE

To: Paul Andrew Tebbutt

Of: c/o Lawrence Graham LLP
Solicitors
190 Strand
London WC2R 1JN

Date: 10 April 2006

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.

THE PENALTY

The FSA gave you a Decision Notice on 10 April 2006 which notified you that pursuant to Section 66 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty of £35,000 on you in respect of misconduct whilst an Approved Person, namely the failure to comply with Statements of Principle 2 and 4.

You confirmed on 7 April 2006 that you will not be referring the matter to the Financial Services and Markets Tribunal.

Accordingly, for the reasons set out below and having agreed with you the facts and matters relied on, the FSA imposes a financial penalty on you in the amount of £35,000.

REASONS FOR THE ACTION

Introduction

1. The action arises out of conduct on 30 September 2004 when you provided misleading information to the FSA during its consideration of an application for change of control under the Act.

2. You knew that the FSA required a declaration of a firm intent to provide directors' guarantees in the total amount of £3 million, which was to be supported by unencumbered assets of the directors concerned to that amount, and that you had to deal with openness and candour with the FSA. You provided the FSA with a letter of intent which confirmed the intention of seven directors including yourself, each of whom signed the letter, to provide a directors' guarantee for £3 million supported by unencumbered assets to that amount.

3. Before providing the letter of intent you had failed to secure sufficiently firm commitments to provide personal guarantees collectively amounting to £3 million backed by unencumbered assets and to record the amounts each signatory had collectively declared an intention to commit. The £3 million guarantee was never provided. The FSA considers that you also delayed from at least 4 October to 13 October 2004 advising the FSA that the full guarantee, supported by unencumbered assets, would not be provided after you had learned that this was the case.

4. As an Approved Person under the Act, you were aware that the FSA, when supervising firms, must be able to rely on the accuracy of information provided by Approved Persons in the exercise of their controlled functions. As a corollary, Approved Persons must deal with their regulator in an open and cooperative way.

5. The FSA considers that your conduct on and after 30 September 2004 demonstrates a serious failure to comply with the requirements placed on you as an Approved Person by or under the Act, and in particular the requirement that you act with due candour, skill, care and diligence and deal with the FSA in an open and cooperative way disclosing appropriately any information which the FSA would reasonably expect to receive so that it can make judgments with accurate information.

6. In reaching its decision, the FSA has also taken account of your previous compliance history, the fact that, following your misconduct, you have been open and cooperative in your dealings with FSA Supervision as an Approved Person and that you accept having committed significant breaches of the Statements of Principle for Approved Persons. Were it not for these considerations a more severe sanction would have been imposed.

Relevant Statutory Provisions

7. The FSA's regulatory objectives are set out at section 2 of the Act.

8. Section 66 of the Act provides that the FSA may impose a financial penalty or public statement of misconduct on an Approved Person where it considers that he is guilty of misconduct; misconduct is defined in the Act as including a failure to comply with a Statement of Principle.

Relevant Guidance

9. In deciding to take this action, the FSA has had regard to guidance published in the FSA Handbook and, in particular, to the following Statements of Principle for Approved Persons ("APER"):

- Statement of Principle 2**:** *An approved person must act with due skill, care and*

diligence in carrying out his controlled function (APER 2.1.2[P]).

- Statement of Principle 4**:** *An approved person must deal with the FSA and with other regulators in an open and cooperative way and must disclose appropriately any information of which the FSA would reasonably expect notice* (APER 2.1.2[P]).

Facts And Matters Relied On

Background

10. You have been the Chief Executive of Millfield Group plc ("MG") since March 2001 and are also Chief Executive of its subsidiary, Millfield Partnership Limited ("MPL"), which is authorised under the Act to carry on regulated activity. Operating through a number of subsidiaries, MG is a network of independent financial advisers in the United Kingdom.

11. You are an Approved Person with respect to controlled functions CF1 Director, CF3 Chief Executive, and CF8 Apportionment and Oversight for MPL.

12. In summer 2004 MG agreed to merge with Inter-Alliance Group plc ("IAG"). IAG's business also consisted of retail financial services and included a network of independent financial advisers. On 6 July 2004 the FSA received an application by MG under the Act for approval of change of control in respect of IAG (it having been agreed that MG would acquire control of IAG and its subsidiaries). The Act provides for the FSA to approve or refuse an application within three months (i.e. it had until 5 October 2004).

13. When considering whether to grant approval the FSA must consider the fitness and propriety of the acquirer and whether the interests of consumers would be threatened. An important consideration was the financial strength of the groups which were both loss making. It was in these circumstances that the FSA had to consider the interests of consumers of both groups if change of control were to be granted.

14. On 21 September 2004, at a late stage in the FSA's consideration of the application, it became apparent to the FSA that the proposed merged group's working capital forecasts might, in the near future, fail to satisfy the FSA's financial resources rules on the sufficiency of working capital by up to £3 million. This was because an overdraft facility available to MG was guaranteed by MPL, the authorised firm, which the FSA considers created a contingent liability which had to be taken into account in the calculation of available working capital.

15. On 28 September 2004, the FSA suggested that you provide the FSA with a directors' guarantee of £3 million supported by assets owned by the directors.

16. Subsequently, given the time pressures, the FSA agreed to accept from the directors a letter of intent to enter into a directors' guarantee for £3 million, such guarantee to be supported at the time of its being entered into by the provision of evidence of unencumbered assets to this value. This would allow the directors time to seek legal advice concerning the proposed guarantee. The FSA's decision on change of control, in respect of which the adequacy of working capital was an important consideration,

would not therefore be delayed.

17. On 30 September 2004 the FSA granted approval of Change of Control in reliance upon the signed letter of intent.

The letter of intent and shortfall

18. You accept having had final responsibility for providing the FSA with the letter of intent on behalf of yourself and your fellow directors and for ensuring that there were intentions to commit at the necessary level of unencumbered assets (£3 million). The letter stated inter alia as follows:

> "*We, the undersigned intended guarantors, confirm our intent to execute a guarantee in the form of the attached draft and to provide a statement of each of our unencumbered assets for consideration by the FSA as soon as possible. Our intent is based upon the grant by the FSA of its consent to the change of control application and in the knowledge that such consent is given as a consequence of the intention as set out in this letter.*
>
> *Each intended guarantor confirms that he has sufficient unencumbered assets to meet that percentage of the loan which he guarantees*"

19. During the course of 30 September 2004 several copies of the letter of intent were signed by yourself and six other directors of the merging business at your request and sent to the FSA. You accept that you failed to take adequate steps to ensure that there were firm intentions to commit at the necessary level of unencumbered assets. Moreover, you accept that you failed adequately to record, and obtain evidence of, potential contributors' commitments and were subsequently unable to substantiate their extent when necessary. No guarantee was ever provided in the sum of £3 million. Approval for change of control was granted by the FSA late in the afternoon of 30 September 2004 following receipt of the signed letter of intent by facsimile, upon which the FSA placed reliance. The FSA placed reliance also upon your dealing with it in an open and candid way.

20. There is evidence available to suggest that by at least 4 October 2004 you became aware that the full £3 million guarantee could not be met. You failed to advise the FSA of the possibility of such a shortfall, being information about which the FSA would reasonably expect notice. It was not until 13 October 2004 that you notified the FSA by letter that the directors would commit only £860,000 of unencumbered assets to support the proposed guarantee. You failed to inform the FSA of the correct situation between at least 4 October to 13 October 2004, when you should have contacted them to explain the facts correctly.

Mitigating factors

21. The FSA acknowledges that since these events you have cooperated with the FSA's Retail Firms Division in respect of their ongoing supervision, and have been frank and candid with them, and that you have accepted your wrongdoing as set out in this notice, for which the FSA acknowledges you are entitled to credit.

22. The FSA acknowledges that since these events you have been open and cooperative in your dealings with FSA Supervision as an Approved Person for MPL. You have

also cooperated with the FSA's investigation and have agreed to the contents of this notice.

Compliance history

23. You have not been subject to any previous regulatory action.

Analysis of public statement of misconduct

24. The FSA has considered the following matters:

- the decision whether to grant change of control was a significant regulatory decision with important potential consequences for consumers and it was therefore essential that the FSA could rely on you to provide accurate, reliable information and to promptly advise if this did not remain the case;

- you have provided misleading information to the FSA by procuring a letter of intent on behalf of yourself and your fellow directors to enter into a directors' guarantee which purported to show a collective firm intention to commit £3 million supported by unencumbered assets when insufficient verifiable commitments had been obtained. You have failed to exercise due candour, skill, care and diligence when providing the letter of intent and satisfying yourself that there was the necessary level of collective commitment from contributors in respect of unencumbered assets;

- you have failed adequately to record intentions to commit received from the signatories;

- you have delayed between at least 4 and 13 October 2004 advising the FSA about the shortfall in the collective commitment of £3 million in unencumbered assets, being information about which the FSA would reasonably expect notice.

25. The FSA has therefore concluded that your conduct demonstrates:

- a serious failure to carry out your controlled functions with due candour, skill, care and diligence; and

- a resulting serious failure to disclose information of which the FSA would reasonably expect notice.

26. The FSA considers that, in order to achieve its regulatory objectives, it should impose a financial penalty of £35,000. The FSA notes that you have been given full credit for your conduct following the referral of this matter and for your compliance history. The decision not to impose a more severe sanction reflects these matters.

DECISION MAKER

27. The decision which gave rise to the obligation to give this Final Notice was made by the Executive Settlement Decision Makers on behalf of the FSA.

IMPORTANT

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

Manner of and time for Payment

29. The financial penalty must be paid in full by you to the FSA by no later than 8 May 2006, 28 days from the date of this Final Notice.

If the financial penalty is not paid

30. If all or any of the financial penalty is outstanding on 9 May 2006, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

31. 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.

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

FSA contacts

33. For more information concerning this matter generally, you should contact Peter Willsher at the FSA (direct line: 020 7066 1230 /fax: 020 7066 1231).

William Amos
Head of Department
FSA Enforcement Division