KEY PROVISIONS OF THE MASTER SETTLEMENT AGREEMENT

Background

The MSA brought about the kind of meaningful change that governments and the public health community had long sought in the tobacco business. From marketing to youth smoking prevention, from industry lobbying to communications about the health consequences of smoking, the agreements impose restrictions on the Participating Manufacturers. The MSA comes complete with strict enforcement provisions, and the National Association of Attorneys General (NAAG) helps coordinate the implementation and enforcement of the agreements on behalf of the State Attorneys General.

The MSA created fundamental changes in how tobacco products are advertised, marketed and sold in the United States. The agreement includes a variety of restrictions on the sale and marketing of cigarettes, including prohibiting any Participating Manufacturer from taking any action, directly or indirectly, targeting youth in the advertising, marketing or promotion of tobacco products.

The Master Settlement Agreement requires Participating Manufacturers to make ongoing payments to the states in perpetuity. As of May 2007, the Original Participating Manufacturers and the Subsequent Participating Manufacturers paid approximately $45 billion. In addition, the OPMs made initial up-front payments to the MSA states totaling over $10 billion and an endowment to the American Legacy Foundation (in addition to OPM payments of over $1 billion to underwrite a national campaign by ALF that includes advertising and education programs.) The OPMs also have paid approximately $16.4 billion to the four previously settled states of Florida, Minnesota, Mississippi, and Texas from 1998-2007.

Among other things, the MSA also prohibits Participating Manufacturers from misrepresenting the health consequences of smoking or from agreeing with one another to withhold or limit the distribution of smoking and health information or research. The MSA also mandates that vast numbers of internal industry documents be made easily available to the public and imposes restrictions on Participating Manufacturers from lobbying on certain youth-related matters.

Some of the substantive provisions of the MSA are complex and broad in scope. The following summary highlights some of the important provisions of the agreement. The summary is not intended to cover everything and is not intended to alter, interpret or supersede any of the terms of the agreement. The full text of the agreement is available on the National Association of Attorneys General website, located at **www.naag.org.**

Fundamental Purposes of the MSA

- Resolve litigation brought by the States for health-care reimbursement through, among other things, annual payments to the States in perpetuity by the Participating Manufacturers, described above;
- Impose restrictions on tobacco marketing and advertising methods that had been criticized as contributing to youth smoking (many of which could not otherwise have been imposed under the First Amendment); and
- Reduce youth smoking and promote public health.

Marketing Restrictions

The MSA created fundamental changes in how tobacco products are advertised, marketed and sold in the United States. It prohibits Participating Manufacturers from taking any action, directly or indirectly, to target youth within any Settling State in the advertising, promotion or marketing of tobacco products. The agreement bars the use of cartoons in advertising, promotion, packaging or labeling of tobacco products, and it bars most forms of outdoor advertising, including billboards and stadium signs. It bans transit advertisements such as those on taxis and at bus stops. It also prohibits advertising in the form of the distribution of apparel or merchandise such as caps, shirts and backpacks bearing tobacco brand names and logos.

The mandated "don'ts and dos" of the agreement are accompanied by a range of specific limitations, including the following:

- **Cartoons** - It prohibits the use of cartoon characters in the advertising, promotion, packaging or labeling of cigarettes or smokeless tobacco products.
- **Branded merchandise** - It bans distribution to the public of merchandise bearing the brand names or logos of cigarettes or smokeless tobacco products, including such items as caps, shirts and backpacks.
- **Outdoor and other advertising restrictions** - It prohibits most forms of outdoor cigarette or smokeless tobacco product advertising by the Participating Manufacturers, including billboards, signs and placards in arenas, stadiums, shopping malls and video game arcades.
- **Transit advertising** - It prohibits cigarette or smokeless tobacco product transit ads, such as those on buses and taxis and at bus stops and taxi stands.
- **Retailer signage** - It prevents the Participating Manufacturers from placing exterior signs larger than 14 square feet at retail locations where cigarettes or smokeless tobacco products are sold, as well as outward-facing signs larger than 14 square feet in windows at such retail establishments.
- **Product placement** - It bars the Participating Manufacturers from paying for product placements in movies, television shows, or other performances or video games (except media that are not intended to be distributed to the public or are intended to be viewed in adult-only facilities or instructional media for adult smokers regarding non-conventional cigarettes).
- **Restrictions and prohibitions on sponsorships** - It limits each of the Participating Manufacturers to a single brand-name sponsorship in any 12-month period. In addition, (with one limited exception set forth in MSA Sec. III (c)(2)(B)(ii) and not applicable to PM USA) the Participating Manufacturers are prohibited from brand-name sponsorships of concerts, events in which the intended audience is comprised of a significant percentage of youth, and events in which any paid participants or contestants are minors. An event held in an adult-only facility is not considered a brand-name sponsorship.
- **Athletic events** - It prohibits cigarette or smokeless tobacco brand-name sponsorship of athletic events in any football, baseball, basketball, soccer or hockey league.
- **Sampling** - It prohibits the distribution of free samples of cigarettes or smokeless tobacco products, except in adult-only facilities. "Free samples" do not include products used for consumer tests or provided to adults in connection with the purchase, exchange or redemption for proof of purchase of tobacco products.
- **Promotional items** - It requires the Participating Manufacturers to obtain sufficient proof of age before providing non-branded promotional items in exchange for the purchase of cigarettes or smokeless tobacco products or proofs of purchase.

If any of these advertising and marketing provisions are violated, the state Attorneys General can take legal action against the violating company. Resources for this enforcement activity, some $50 million, were also provided by the Original Participating Manufacturers pursuant to the terms of the agreement.

Youth Smoking Prevention Provisions

One of the most important goals of the MSA is to prevent youth smoking in the United States. The agreement incorporates many restrictions that address long-standing government and public health concerns with respect to youth access to, and youth use of, tobacco products.

The MSA forbids the Participating Manufacturers from:

- Targeting youth in the advertising, marketing and promotion of tobacco products;
- Actions primarily aimed at initiating, maintaining or increasing youth smoking.

And it requires the Participating Manufacturers to:

- Develop and reaffirm corporate principles that explain their commitment to reduce youth smoking and comply with the agreement;
- Appoint an executive level manager to formulate and oversee a proactive youth smoking prevention program;
- Encourage employees to recommend additional methods of reducing youth smoking.

Model Escrow Statutes

Each of the 46 MSA states enacted a version of the MSA's Model Escrow Statute, contained in Exhibit T of the MSA. Under this statute, cigarette manufacturers not participating in the MSA (NPMs) must pay into an escrow account a per pack deposit approximately equal to the per pack payment of a Subsequent Participating Manufacturer. This amount is less than the total MSA-related payments (including payments made under separate settlements with the previously settled states) that the Original Participating Manufacturers - now PM USA, R.J. Reynolds and Lorillard - have to make. The escrow funds were established to ensure that funds are available to satisfy state claims, such as for health care costs, in the event a state obtains a judgment at some point against an NPM, which has not settled with the state and thus has not been released from such claims. Under the Escrow Statute, funds that have remained in the escrow account for 25 years are released back to the NPM, and the NPM receives the interest as it is earned by its escrow deposits.

Implementation and Enforcement

The MSA allows public access to tobacco company documents (**www.tobaccodocuments.org**) and required the OPMs to provide the Attorneys General with a $50 million enforcement fund for enforcing and implementing the MSA and Escrow Statutes and addressing potential violations of state tobacco laws.

The MSA also disbanded certain tobacco-related orginizations, such as the Tobacco Institute, and prohibits Participating Manufacturers from opposing specified state or local measures intended to reduce youth access to and consumption of tobacco products. Participating Manufacturers also are prohibited from materially misrepresenting the health consequences of using tobacco products.

For more information please visit
www.pmusa.com