

# 155(6)a

Pursuant to section 155(6) of the Companies Act 1985

Company number

\* Fitness First Holdings Limited (the "Assisting Company")

Fitness First aa.lpd

The assistance is to be given to: (note 2) DMWSL 462 Limited (Registered Number 5452198)  
58 Fleets Lane, Poole, Dorset BH15 3BT

Please do not  
write in this  
margin

Please complete  
legibly, preferably  
in black type, or  
bold block  
lettering

The assistance will take the form of:

See Appendix C attached

The person who [has acquired] ~~will acquire~~ the shares is:

† delete as  
appropriate

DMWSL 462 Limited (Registered Number 5452198)

The principal terms on which the assistance will be given are:

See Appendix D attached

The amount of cash to be transferred to the person assisted is £ See Appendix E attached

The value of any asset to be transferred to the person assisted is £ NIL

The date on which the assistance is to be given is See Appendix F attached

Please do not  
write in this  
margin

Please complete  
legibly, preferably  
in black type, or  
bold block lettering

\* delete either (a) or  
(b) as appropriate

☒ We have formed the opinion, as regards the company's initial situation immediately following the date on which the assistance is proposed to be given, that there will be no ground on which it could then be found to be unable to pay its debts. (note 3)

(a) ☒ We have formed the opinion that the company will be able to pay its debts as they fall due during the year immediately following that date]\* (note 3)

(b) ~~It is intended to commence the winding up of the company within 12 months of that date, and ☒ we have formed the opinion that the company will be able to pay its debts in full within 12 months of the commencement of the winding up.]~~\* (note 3)

And ☒ we make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at

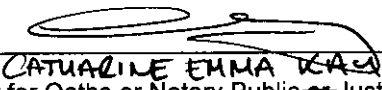
POOLE IN THE COUNTY OF  
DORSET

Declarants to sign below



on 

Day	Month	Year
24	11	2005

before me   
A Commissioner for Oaths or Notary Public or Justice of the Peace or a Solicitor having the powers conferred on a Commissioner for Oaths.

## NOTES

- 1 For the meaning of "a person incurring a liability" and "reducing or discharging a liability" see section 152(3) of the Companies Act 1985.
- 2 Insert full name(s) and address(es) of the person(s) to whom assistance is to be given; if a recipient is a company the registered office address should be shown.
- 3 Contingent and prospective liabilities of the company are to be taken into account - see section 156(3) of the Companies Act 1985.
- 4 The auditors report required by section 156(4) of the Companies Act 1985 must be annexed to this form.
- 5 The address for companies registered in England and Wales or Wales is:-

The Registrar of Companies  
Companies House  
Crown Way  
Cardiff  
CF14 3UZ

or, for companies registered in Scotland:-

The Registrar of Companies  
37 Castle Terrace  
Edinburgh  
EH1 2EB

FITNESS FIRST HOLDINGS LIMITED  
(COMPANY NO: 4699401)

APPENDICES TO FORM 155(6) a

APPENDIX A

Directors' names and addresses are:

1. Limor Feingold, 23 Elms Avenue, Poole, Dorset BH14 8EE
2. Colin Douglas Waggett, ~~11 Burnaby Crescent, Chiswick, London W4 3LH~~

22 EDGAL RD, WIMBORNE, HAMPSHIRE SO23 9TW can

JP An

JP  
can  
An

**APPENDIX B**

The number of shares which have been acquired is:

749,725	A Ordinary Shares
90,275	B Ordinary Shares
17,430,220	B Preference Shares
160,000	C Ordinary Shares
1,440,000	C Preference Shares

(the "Shares")

A handwritten signature in black ink, appearing to be 'A. R. Caw' or similar, with a stylized 'An' written below it.

## APPENDIX C

The entering into of the following (or of the documents relating thereto) to which the Assisting Company is to be a party, as the same may be amended, varied, supplemented or substituted from time to time:

- (i) a guarantee and indemnity (the "**Senior Guarantee and Indemnity**") to be given under an accession letter (the "**Accession Letter**") by the Assisting Company to a secured senior term loan and revolving facilities agreement dated 4 November 2005 (the "**Senior Facilities Agreement**") between DMWSL 462 Limited (the "**Purchaser**") as Original Borrower, the Original Guarantors, Mizuho Corporate Bank, Ltd. as Mandated Lead Arranger, Mizuho Corporate Bank, Ltd. as Agent, Mizuho Bank, Ltd. as Security Agent, Mizuho Corporate Bank, Ltd. as Issuing Bank, Mizuho Corporate Bank, Ltd. as VLN Bank and the Original Lenders (each as defined therein) pursuant to which each of the Guarantors will:
  - (i) guarantee the punctual performance by each other Obligor of all that Obligors obligations under the Senior Finance Documents, which guarantee will extend to a guarantee by the Assisting Company of monies borrowed by the Purchaser for the purpose of acquiring the Shares; and
  - (ii) indemnify each Senior Finance Party immediately on demand against any cost, loss or liability suffered by that Senior Finance Party if any obligation guaranteed by it becomes unenforceable, invalid or illegal.

The Senior Term Facilities are made available to the relevant Borrowers for the purpose of:

- (a) payment to the Vendor of the purchase price for the Target Shares under the Acquisition Agreement;
- (b) payment of the Acquisition Costs;
- (c) refinancing any Financial Indebtedness of the Target and its Subsidiaries to third parties; and
- (d) payment to the holders of the D shares of the purchase price for such shares.

Each capitalised term used in this paragraph is as defined in the Senior Facilities Agreement;

- (ii) a guarantee and indemnity (the "**Mezzanine Guarantee and Indemnity**") to be given under an accession letter by the Assisting Company to a mezzanine facilities agreement dated 4 November 2005 (the "**Mezzanine Facilities Agreement**") between the Purchaser as Borrower, the Original Guarantors, Mizuho Corporate Bank, Ltd. as the Mezzanine Agent, Mizuho Corporate Bank, Ltd. as Mezzanine Arranger, the Security Agent and the Lenders (each as defined therein) pursuant to which each of the Mezzanine Guarantors will
  - (i) guarantee the punctual performance by each other Obligor of all that Obligors obligations under the Mezzanine Finance Documents, which guarantee will extend to a guarantee by the

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Assisting Company of monies borrowed by the Purchaser for the purpose of acquiring the Shares; and

- (ii) indemnify each Mezzanine Finance Party immediately on demand against any cost, loss or liability suffered by that Mezzanine Finance Party if any obligation guaranteed by it becomes unenforceable, invalid or illegal.

The Mezzanine Facilities are made available to the Borrower for the purposes of:

- (a) payment to the Vendor of the purchase price for the Target Shares under the Acquisition Agreement;
- (b) payment of the Acquisition Costs; and
- (c) refinancing any Financial Indebtedness of the Target and its Subsidiaries to third parties.

Each capitalised term used in this paragraph is as defined in the Mezzanine Facilities Agreement;

- (ii) a deed of accession and supplemental charge to the debenture (the "**Security Agreement**") creating fixed and floating charges over the property, assets and undertaking of the Assisting Company in security for the Secured Sums in favour of Mizuho Corporate Bank, Ltd. (as Security Agent for the Beneficiaries) (as defined therein) to secure the liabilities;
- (iii) an inter company loan agreement to be entered into between, *inter alios*, the Purchaser as borrower (the "**ICLA Borrower**") and the Assisting Company as lender (the "**Inter Company Loan Agreement**") pursuant to which the Assisting Company will make available to the ICLA Borrower a revolving credit facility to be used by the ICLA Borrower, *inter alia*, in meeting their payment obligations under the Senior Finance Documents and the Mezzanine Finance Documents, to meet the costs and expenses associated with the Acquisition and for other general corporate purposes of the Group; and
- (iv) priority and subordination arrangements to be given by the Assisting Company pursuant to the Accession Letter entered into between, amongst others, the Finance Parties, the Obligors, the Senior Creditors, the Mezzanine Creditors, the Hedge Counterparties, the Intercompany Debtors and the Intercompany Creditors (each as defined therein), pursuant to an intercreditor agreement (the "**Intercreditor Agreement**").

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## APPENDIX D

The principal terms on which the assistance will be given are:

1. SECURITY AGREEMENT

By executing the Deed of Accession and Supplemental Charge to the Security Agreement:

- (1) The Assisting Company, amongst others, (as primary obligor and not merely as surety) covenants with the Security Agent that it will pay or discharge the Secured Sums at the times and in the manner provided in the relevant Finance Documents, provided that the security created by the Security Agreement shall not extend to or include any liability or sum which would otherwise cause any such covenant or security to be unlawful or prohibited by any applicable law.
- (2) The Assisting Company, with full title guarantee, as security for the payment or discharge of all Secured Sums, assigns to the Security Agent:
  - (a) all of its rights, title and interest from time to time in respect of any sums payable to it pursuant to the Insurance Policies;
  - (b) all its rights, title and interest from time to time in respect of the Hedging Agreements; and
  - (c) all its rights, title and interest from time to time in respect of any Structural Intra-Group Loans.
- (3) The Assisting Company, with full title guarantee, as security for the payment or discharge of all Secured Sums, charges to the Security Agent:
  - (a) by way of legal mortgage, all Land in England and Wales now vested in it and registered at the Land Registry or which will be subject to first registration at the Land Registry upon the execution and delivery of the Security Agreement, in each case as described in Schedule 2 of the Security Agreement (*Registered Land to be Mortgaged*);
  - (b) by way of legal mortgage, all other Land in England and Wales now vested in it and not registered at the Land Registry;
  - (c) by way of fixed charge:
    - (i) all other Land which is now, or in the future becomes, its property;
    - (ii) all interests and rights in or relating to Land or the proceeds of sale of Land now or in the future belonging to it;
    - (iii) all plant and machinery now or in the future attached to any Land which, or an interest in which, is charged by it under (a) or (b) above;

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- (iv) all rental and other income and all debts and claims now or in the future due or owing to it under or in connection with any lease, agreement or licence relating to Land;
- (v) all Specified Investments which are now, or in the future become, its property;
- (vi) all Derivative Rights now or in the future accruing in respect of its Specified Investments;
- (vii) all insurance or assurance contracts or policies now or in the future held by or otherwise benefiting it which relate to Fixed Security Assets or which are now or in the future deposited by it with the Security Agent, together with all its rights and interests in such contracts and policies (including the benefit of all claims arising and all money payable under them) apart from any claims which are otherwise subject to a fixed charge or assignment (at law or in equity) in the Security Agreement;
- (viii) all its goodwill and uncalled capital for the time being;
- (ix) all Specified Intellectual Property belonging to it;
- (x) all other Intellectual Property presently belonging to it, including any Intellectual Property to which it is not absolutely entitled or to which it is entitled together with others;
- (xi) all Intellectual Property that may be acquired by or belong to it in the future, including any such Intellectual Property to which it is not absolutely entitled or to which it is entitled together with others;
- (xii) the benefit of all agreements and licences now or in the future entered into or enjoyed by it relating to the use or exploitation of any Intellectual Property in any part of the world;
- (xiii) all its rights now or in the future in relation to trade secrets, confidential information and knowhow in any part of the world;
- (xiv) all its rights and causes of action in respect of infringement(s) (past, present or future) of the rights referred to in subparagraphs (c)(x) to (xiv) inclusive;
- (xv) all trade debts now or in the future owing to it;
- (xvi) all debts owing to it as described in Schedule 9 of the Security Agreement (*Details of Debts Owing to a Chargor by another member of the Group which are subject to a fixed charge*);
- (xvii) all other debts now or in the future owing to it, excluding those arising on fluctuating accounts with other members of the Group;

- (xviii) the benefit of all instruments, guarantees, charges, pledges and other security and all other rights and remedies available to it in respect of any Fixed Security Asset except to the extent that such items are for the time being effectively assigned under Clause 3.1 of the Security Agreement (*Assignments*);
  - (xix) all its interests and rights (if any) in or to any money at any time standing to the credit of any Collection Account;
  - (xx) any beneficial interest, claim or entitlement it has to any pension fund now or in the future;
  - (xxi) all rights, money or property accruing or payable to it now or in the future under or by virtue of a Fixed Security Asset except to the extent that such rights, money or property are for the time being effectively assigned or charged by fixed charge under the foregoing provisions of the Security Agreement; and
  - (xxii) the benefit of all licences, consents and authorisations held in connection with its business or the use of any Asset and the right to recover and receive all compensation which may be payable in respect of them.
- (4) The Assisting Company, with full title guarantee, charges to the Security Agent as security for the payment or discharge of all Secured Sums, by way of floating charge:
- (a) all its Assets, except to the extent that such Assets are for the time being effectively assigned by way of security by virtue of Clause 3.1 of the Security Agreement (*Assignments*) or charged by any fixed charge contained in Clause 3.2 of the Security Agreement (*Fixed security*), including any Assets comprised within a charge which is reconverted under Clause 4.5 of the Security Agreement (*Reconversion*); and
  - (b) without exception, all its Assets in so far as they are for the time being situated in Scotland,
- but in each case so that the Assisting Company shall not create any Security over any such Asset (whether having priority over, or ranking *pari passu* with or subject to, this floating charge) or take any other step referred to in Clause 7 of the Security Agreement (*Negative pledge and other restrictions*) with respect to any such Asset, and the Assisting Company shall not, without the consent of the Security Agent, sell, transfer, part with or dispose of any such Asset except by way of sale in the ordinary course of its business.
- (5) (a) Any fixed Security created by the Assisting Company and subsisting in favour of the Security Agent shall (save as the Security Agent may otherwise declare at or after the time of its creation) have priority over the floating charge created by Clause 3.3 of the Security Agreement (*Creation of floating charge*).

- (b) Any Security created in the future by the Assisting Company (except in favour of the Security Agent) shall be expressed to be subject to the Security Agreement and shall rank in order of priority behind the charges created by the Security Agreement.
- (6) The floating charge created by the Assisting Company in Clause 3.3 of the Security Agreement (*Creation of floating charge*) may, subject to Clause 4.5 of the Security Agreement (*Moratorium Assets*), be crystallised into a fixed charge by notice in writing given at any time by the Security Agent to the Assisting Company (or to the Purchaser on its behalf) if:
- (a) a Declared Default has occurred;
  - (b) the Security Agent in good faith considers that a Default under Clause 28.6 (*Insolvency*) or Clause 28.7 (*Insolvency Proceedings*) of the Senior Facilities Agreement or Clause 24.6 (*Insolvency*) or Clause 24.7 (*Insolvency Proceedings*) of the Mezzanine Facilities Agreement has occurred and is continuing; or
  - (c) the Security Agent in good faith considers that any of the Floating Charge Assets expressed to be charged to the Security Agent by the Security Agreement may be in jeopardy or in danger of being seized or sold pursuant to any form of legal process; or
  - (d) a circumstance envisaged by paragraph (a) of Clause 4.2 of the Security Agreement (*Automatic Crystallisation*) occurs and the Security Agent in good faith considers that such crystallisation is desirable in order to protect the priority of its security.

Crystallisation shall take effect over the Floating Charge Assets or class of Assets specified in the notice. If no Floating Charge Assets are specified, it shall take effect over all Floating Charge Assets of the Assisting Company.

- (7) If, without the Security Agent's prior written consent:
- (a) the Assisting Company resolves to take or takes any step other than in the ordinary course of business or as expressly permitted by the Finance Documents to:
    - (i) charge or otherwise encumber (other than by way of Permitted Security) any of its Floating Charge Assets;
    - (ii) create a trust over any of its Floating Charge Assets except as permitted in the Senior Facilities Agreement; or
    - (iii) dispose of any Floating Charge Asset, except by way of sale in the ordinary course of the Assisting Company business; or
  - (b) any person resolves to take or takes any step to seize or sell any Floating Charge Asset pursuant to any form of legal process; or
  - (c) a resolution is passed by the Assisting Company or documents are filed at Court by the Assisting Company for the winding up of the Assisting Company or any liquidator, receiver, administrator or other similar officer is appointed in respect of the Assisting Company,

then the floating charge created by Clause 3.3 of the Security Agreement (*Creation of floating charge*) shall, subject to Clause 4.5 of the Security Agreement (*Moratorium Assets*), be automatically and instantly crystallised (without the necessity of notice) into a fixed charge over such Floating Charge Asset or, in the case of paragraph (b) above into a fixed charge over all Floating Charge Assets of the Assisting Company.

- (8) Except as otherwise stated in any notice given under Clause 4.1 of the Security Agreement (*Crystallisation by notice*) or unless the crystallisation relates to all its Floating Charge Assets, prospective Floating Charge Assets acquired by the Assisting Company after crystallisation has occurred under Clause 4.1 (*Crystallisation by notice*) or 4.2 (*Automatic crystallisation*) of the Security Agreement shall become subject to the floating charge created by Clause 3.3 of the Security Agreement (*Creation of floating charge*), so that the crystallisation shall be effective only as to the specific Floating Charge Assets affected by the crystallisation.

Any charge which has crystallised under Clause 4.1 (*Crystallisation by notice*) or 4.2 (*Automatic crystallisation*) of the Security Agreement may, by notice in writing given at any time by the Security Agent to the Assisting Company (or to the Parent on its behalf), be reconverted into a floating charge in relation to the Assets specified in such notice.

The floating charge created by the Assisting Company in Clause 3.3 of the Security Agreement (*Creation of floating charge*) may not be converted into a fixed charge on Assets for which a moratorium is in force if and for so long as such conversion would breach paragraph 13 in Schedule A1 of the Insolvency Act 1986.

- (9) The Security Agreement shall be a continuing security for the Beneficiaries, notwithstanding any intermediate payment or settlement of accounts or other matter whatever, and shall be in addition to and shall not prejudice or be prejudiced by any right of set-off, combination, lien or other rights exercisable by any Beneficiary as banker against the Assisting Company or any security, guarantee, indemnity and/or negotiable instrument now or in the future held by any Beneficiary.
- (10) (a) Subject to the terms of paragraph (d) below, the Assisting Company shall (and the Purchaser shall procure that the Assisting Company will) promptly do all such acts and execute all such documents (including assignments, transfers, mortgages, charges, notices (except notification to debtors of the Security Agreement over Receivables which may only be given after the occurrence of a Declared Default), forms and instructions) as the Security Agent may reasonably specify and in such form as the Security Agent may reasonably require (in favour of the Security Agent or its nominee(s)) in order to:
- (i) perfect, protect or in relation to Receivables enhance the Security created or intended to be created by of the Security Agreement (which may include the execution of a mortgage, charge, assignment, transfer, notice, instruction or other Security over all or any of the Assets which are, or are intended to be, the subject of the Security constituted by of the Security Agreement) or for the exercise of any rights, powers and remedies of any Beneficiary provided by of the Security Agreement or by law;

- (ii) confer on the Security Agent or confer on the Beneficiaries, Security over any Assets of the Assisting Company located in any jurisdiction outside England and Wales which is (to the extent permitted by local law) equivalent or similar to the Security intended to be conferred by or pursuant to of the Security Agreement; and/or
  - (b) facilitate the realisation of the Assets subject to the Security conferred or intended to be conferred by of the Security Agreement or the exercise of any rights vested in the Security Agent, any Receiver, administrator or nominee, including executing any transfer, conveyance, charge, assignment or assurance of all or any of the Assets which are the subject of the Security constituted by of the Security Agreement, making any registration and giving any notice, order or instructions.
  - (c) Subject to the terms of paragraph (d) below the Assisting Company shall (and the Purchaser shall procure that the Assisting Company shall) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Beneficiaries by or pursuant to of the Security Agreement. Without prejudice to the generality of Clause 8 of the Security Agreement, at the reasonable request of the Security Agent the Assisting Company will promptly execute a legal mortgage, charge or assignment over any of the Assets subject to or intended to be subject to any fixed security created by of the Security Agreement in favour of the Security Agent in such form as the Security Agent may reasonably require.
  - (d) Other than to give effect to the requirements of Clause 4.1 of the Security Agreement (*Crystallisation by Notice*), prior to the occurrence of a Declared Default, the Assisting Company shall not be required to perform any further assurance or perfection obligation under Security Agreements if such performance would have a material adverse effect on the ability of the Assisting Company to conduct its operations or business in the ordinary course as otherwise permitted by the Finance Documents.
  - (e) Without prejudice to the Assisting Company's obligations under any Finance Document, the Assisting Company irrevocably authorises the Security Agent to effect such registrations, renewals, payments and notifications or carry out such acts or things at the expense of such Assisting Company as shall, in the reasonable opinion of the Security Agent, be necessary or prudent to protect the Security Agent's interests in relation to the Specified Intellectual Property Rights or to protect or maintain the Specified Intellectual Property Rights or any of them. The Assisting Company shall give the Security Agent all such reasonable assistance as it may request.
- (11) Any provision of the Security Agreement which is or becomes illegal, invalid or unenforceable shall be ineffective only to the extent of such illegality, invalidity and unenforceability, without invalidating the remaining provisions of the Security Agreement.

- (12) After the occurrence of an Event of Default, a Beneficiary may (but is not obliged to) retain any money standing to the credit of the Assisting Company with such Beneficiary in any currency upon any account or otherwise (whether or not in such Assisting Company's name) as cover for any Secured Sums and/or at any time or times without notice to such Assisting Company's combine or consolidate all or any of such money with all or such part of the Secured Sums due or owing by it as such Beneficiary may select and such Beneficiary may purchase with any such money any other currency required to effect such combination or consolidation.

## 2. SENIOR GUARANTEE AND INDEMNITY

By executing the Accession Letter to the Senior Facilities Agreement the Assisting Company, amongst other things:

- (i) irrevocably and unconditionally jointly and severally with each other Senior Guarantor:
  - (a) guarantees to each Senior Finance Party punctual performance by each Senior Obligor of all that Senior Obligor's obligations under the Senior Finance Documents;
  - (b) undertakes with each Senior Finance Party that whenever a Senior Obligor does not pay any amount when due under or in connection with any Senior Finance Document, that Senior Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
  - (c) indemnifies each Senior Finance Party immediately on demand against any cost, loss or liability suffered by that Senior Finance Party if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which that Senior Finance Party would otherwise have been entitled to recover.

The guarantee under the Senior Guarantee and Indemnity is a continuing guarantee and will extend to the ultimate balance of sums payable by any Senior Obligor under the Senior Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

The guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party in respect of any Obligor's obligations under the Finance Documents.

- (ii) gives various representations and warranties, undertakings and indemnities to the Finance Parties to enable the Finance Parties to make the facilities under the Senior Facilities Agreement available and agree to pay certain costs, fees and expenses to the Finance Parties.

## 3. MEZZANINE GUARANTEE AND INDEMNITY

By executing the Accession Letter to the Mezzanine Facilities Agreement, the Assisting Company amongst other things:

- (i) the Assisting Company irrevocably and unconditionally jointly and severally with each other Mezzanine Guarantor:

- (a) guarantees to each Mezzanine Finance Party punctual performance by each Mezzanine Obligor of all that Mezzanine Obligor's obligations under the Mezzanine Finance Documents;
- (b) undertakes with each Mezzanine Finance Party that whenever a Mezzanine Obligor does not pay any amount when due under or in connection with any Mezzanine Finance Document, that Mezzanine Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) indemnifies each Mezzanine Finance Party immediately on demand against any cost, loss or liability suffered by that Mezzanine Finance Party if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which that Mezzanine Finance Party would otherwise have been entitled to recover.

The guarantee under the Mezzanine Guarantee and Indemnity is a continuing guarantee and will extend to the ultimate balance of sums payable by any Mezzanine Obligor under the Mezzanine Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

The guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party in respect of any Obligor's obligations under the Finance Documents.

- (ii) gives various representations and warranties, undertakings and indemnities to the Finance Parties to enable the Finance Parties to make the Facility available and agree to pay certain costs, fees and expenses to the Finance Parties.

#### 4. INTER COMPANY LOAN AGREEMENT

Under the terms of the Inter Company Loan Agreement the Assisting Company will provide loan funds in sufficient amounts to the ICLA Borrowers to be used by the ICLA Borrowers, *inter alia*, in meeting their payment obligations under the Senior Finance Documents and the Mezzanine Finance Documents, to meet the costs and expenses associated with the Acquisition and for other general corporate purposes of the Group. Outstandings under the Inter Company Loan Agreement will be repayable on the Company's first demand and will bear interests at the rate referred to therein.

#### 5. INTERCREDITOR AGREEMENT

By executing the Accession Deed to the Intercreditor Agreement, the Assisting Company (amongst other things):

- (i) will covenant to pay the amounts owing under the Secured Documents and agree that any sums owed to it by way of intra-group loan by any other member of its group will be subordinated to sums owed by such members of the group to the Finance Parties and will indemnify the Lenders and the Security Agent for certain costs, claims, expenses and liabilities under the Intercreditor Agreement;
- (ii) acknowledges (amongst other things) the arrangements made between the Beneficiaries and Holdco which regulate the ability of the Company to make certain payments to those parties and the priorities between the parties thereto;

- (iii) gives various representations and warranties, undertakings, covenants and indemnities, and agree to pay certain costs, fees and expenses to the Finance Parties; and
- (iv) jointly and severally and irrevocably and unconditionally guarantees to each Hedge Counterparty, and indemnify each Hedge Counterparty in respect of, payment in full of the Hedging Debt owed to it by any other Obligor on the same terms as set out in the guarantee contained in the Senior Facilities Agreement.

## 6. DEFINITIONS

"**Account Bank**" means Mizuho Corporate Bank, Ltd. acting through its branch at River Plate House, 7-11 Finsbury Circus, London, EC2M 7DH or such other bank as the Security Agent may from time to time specify.

"**Acquisition**" means the acquisition by the Company of the Target Shares on the terms of the Acquisition Documents.

"**Acquisition Agreement**" means the sale and purchase agreement dated 22 September 2005 relating to the sale and purchase of the Target Shares and made between the Company and the Vendors.

"**Acquisition Documents**" means the Acquisition Agreement, the Disclosure Letter, the Warranty Deed, the Deutsche Undertaking (each as defined in the Senior Facilities Agreement) and any other document designated as "Acquisition Document" by the Agent and the Company.

"**Act**" means the Companies Act 1985.

"**Ancillaries Lender**" means each Approved Ancillaries Lender which becomes a party to the Senior Facilities Agreement as an Ancillaries Lender in accordance with Clause 9.3 of the Senior Facilities Agreement.

"**Approved Ancillaries Lender**" means The Royal Bank of Scotland plc and The Governor and Company of the Bank of Scotland and any other proposed Ancillaries Lender which is approved by the Majority Lenders and the Arranger.

"**Arranger**" means Mizuho Corporate Bank, Ltd.

"**Assets**" means in relation to the Assisting Company, all its undertaking, property, assets, revenues and rights of every description, or any part of them.

"**Beneficiary**" means each Senior Finance Party, each Mezzanine Finance Party and each Hedge Counterparty.

"**Borrower**" means an Original Borrower and an Additional Borrower (as defined in the Senior Facilities Agreement).

"**Chargor**" means an Original Chargor or an Additional (as defined in the Senior Facilities Agreement).



**"Collection Account"** means in relation to the Assisting Company, its account with the Account Bank into which it is required to pay its Receivables pursuant to Clause 6.1 the Security Agreement (*Collection Account*).

**"Declared Default"** means the Agent and/or the Mezzanine Agent (as the case may be) first exercising its respective rights under paragraphs (b) of Clause 28.16 (*Acceleration*) of the Senior Facilities Agreement and/or under paragraph (b) of Clause 24.16 (*Acceleration*) of the Mezzanine Facility Agreement.

**"Default"** means a Default under and as defined in the Facilities Agreement and/or a Default under and as defined in the Mezzanine Facility Agreement.

**"Derivative Rights"** means all dividends, interest or distributions and all other rights and benefits of an income nature accruing at any time in respect of any Investments.

**"Event of Default"** means an Event of Default under and as defined in the Senior Facilities Agreement and/or an Event of Default under and as defined in the Mezzanine Facility Agreement.

**"Finance Document"** means each Senior Finance Document, each Mezzanine Finance Document and each Hedging Document.

**"Fixed Security Asset"** means an Asset for the time being comprised within an assignment created by Clause 3.1 of the Security Agreement (*Assignments*) or within a mortgage or fixed charge created by Clause 3.2 of the Security Agreement (*Fixed security*).

**"Floating Charge Asset"** means an Asset for the time being comprised within the floating charge created by Clause 3.3 of the Security Agreement (*Creation of Floating Charge*) but, in relation to Assets situated in Scotland and charged by clause 3.3(b) only in so far as concerns the floating charge over that Asset.

**"Group"** means the Purchaser and its Subsidiaries for the time being.

**"Guarantor"** means an Original Guarantor or an Additional Guarantor (as defined in the Senior Facilities Agreement).

**"Hedge Counterparty"** means has the meaning given to that term in the Intercreditor Agreement.

**"Hedging Agreements"** has the meaning given to that term in the Intercreditor Agreement.

**"Hedging Document"** has the meaning given to that term in the Intercreditor Agreement.

**"Insurance Policy"** means any contract or policy of insurance of the Assisting Company (including all cover notes) of whatever nature which are from time to time taken out by or on behalf of the Assisting Company or (to the extent of its interest) in which the Assisting Company has an interest at any time.

**"Intellectual Property"** means patents (including supplementary protection certificates), utility models, registered and unregistered trade marks (including service marks), rights in passing off, copyright, database rights, registered and unregistered rights in designs (including in relation to semiconductor products) anywhere in the world and, in each case, any extensions and renewals of, and any applications for, such rights.

**"Intellectual Property Rights"** in relation to the Assisting Company, means all and any of its Intellectual Property and all other intellectual property rights, causes of action, interests and assets charged by it pursuant to paragraphs (c), (ix) to (xiv) inclusive of Clause 3.2 of the Security Agreement (*Fixed security*).

**"Investments"** means all shares, stock, debentures, debenture stock, bonds and other investments (as listed in Schedule 2, Part II of the Financial Services and Markets Act 2000), whether certificated or uncertificated and whether in registered or bearer form, including all depository interests representing any of them and including all rights and benefits of a capital nature accruing at any time in respect of any Investments by way of redemption, repayment, substitution, exchange, bonus or preference, option, rights or otherwise.

**"Issuing Bank"** means Mizuho Corporate Bank, Ltd.

**"Land"** means freehold and leasehold, and any other estate in, land and (outside England and Wales) immovable property and in each case all buildings and structures upon and all things affixed to Land (including trade and tenant's fixtures).

**"Lenders"** means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party (as defined in the Senior Facilities Agreement) in accordance with Clause 29 of the Senior Facilities Agreement which in each case has not ceased to be a Party (as defined in the Senior Facilities Agreement) in accordance with the terms of the Senior Facilities Agreement.

**"Majority Lenders"** has the meaning given to that term in the Senior Facilities Agreement.

**"Mezzanine Finance Documents"** means the Mezzanine Facilities Agreement, any accession letter under the Mezzanine Facilities Agreement, the Intercreditor Agreement, the Mandate Letter, the Syndication Letter (each as defined in the Mezzanine Facilities Agreement), any fee letters setting out any of the fees referred to in Clause 13 (*Fees*) of the Mezzanine Facilities Agreement, any utilisation request or request relating to the selection of an interest period for a utilisation made under the Mezzanine Facilities Agreement and any other document which is designated a "Mezzanine Finance Document" or "Finance Document" by the Purchaser, the mezzanine agent under the Mezzanine Facilities Agreement and the Agent.

**"Mezzanine Finance Party"** means the Mezzanine Agent, the Lenders (as defined in the Mezzanine Facilities Agreement), the Security Agent and the Arranger (as defined in the Mezzanine Facilities Agreement).

**"Obligor"** means the Purchaser, a Borrower, a Guarantor or a Chargor.

**"Original Lender"** means the financial institutions listed in Part 2 and Part 3 of Schedule 1 of the Senior Facilities Agreement as Lenders.

**"Party"** means a party to the Security Agreement.

**"Purchaser"** means DMWSL 462 Limited a limited liability company incorporated in England and Wales under the Act with registered number 5452198.

**"Receivables"** in relation to the Assisting Company, means all sums of money receivable by it at any time consisting of or payable under or derived from any Asset described in Clause 3.2 of the Security Agreement (*Fixed security*).

**"Receiver"** means a receiver and manager appointed under Clause 16 of the Security Agreement (*Appointment of a Receiver or an Administrator*) including (where the context requires or permits) any substituted receiver and manager of the Security Agreement.

**"Secured Sums"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of the Assisting Company to all or any of the Beneficiaries under each or any of the Finance Documents, in each case together with:

- (a) all costs, charges and expenses incurred by any Beneficiary in connection with the protection, preservation or enforcement of its rights under any Finance Document; and
- (b) all moneys, obligations and liabilities due, owing or incurred in respect of any variations or increases in the amount or composition of the facilities provided under any Finance Document or the obligations and liabilities imposed under such documents.

**"Security"** means mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**"Security Agent"** means Mizuho Corporate Bank, Ltd. acting as security agent and trustee for the Beneficiaries including any successor appointed by the Beneficiaries pursuant to the Finance Documents.

**"Secured Parties"** means each Finance Party from time to time party to the Senior Facilities Agreement, any Receiver or Delegate (as defined in the Senior Facilities Agreement) and each agent and lender time to time party to the Mezzanine Facilities Agreement.

**"Senior Finance Document"** means the Senior Facilities Agreement, the Mandate Letter, the Syndicate Letter, any Fee Letter, any Accession Letter, any Transaction Security Documents, the Intercreditor Agreement, any Selection Notice, any Ancillaries Document, any Letter of Credit, any Compliance Certificate, any Hedging Agreement, any Utilisation Request (each as defined in the Senior Facilities Agreement) and any other document designated as such by the Agent and the Company.

**"Senior Finance Party"** means the Agent, the Security Agent, the Arranger, a Lender, the Issuing Bank, the VLN Bank, a Hedge Counterparty or any Ancillaries Lender.

**"Specified Intellectual Property"** means the Intellectual Property listed in Schedule 5 of the Security Agreement (**Specified Intellectual Property**).

**"Specified Investments"** means, in relation to the Assisting Company, all Investments which at any time:

- (a) represent a holding in a Subsidiary (as defined in the Senior Facilities Agreement) of the Assisting Company or an undertaking which would be its subsidiary undertaking if in section 258(2)(a) of the Act "30 per cent or more" were substituted for "a majority";
- (b) are held in the name of the Security Agent or its nominee or to its order; or
- (c) the Assisting Company has deposited certificates for with the Security Agent or which, if uncertificated, are held in an escrow or other account in favour of the Security Agent or its nominee.

**"Structural Intra-Group Loans"** means the loans made by one member of the Group to another member of the Group specified in the Structure Memorandum.

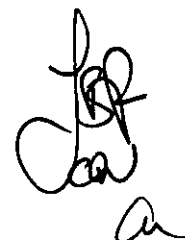
**"Structure Memorandum"** means the structure paper entitled "Project Rocket, Memorandum on Structure" and dated 2 November 2005 describing the Group and the Acquisition and prepared by PriceWaterhouse Coopers LLP in the agreed form and addressed to, and/or capable of being relied upon by the Arranger and the other Secured Parties, together with the Australian Structure Memorandum and the German Structure Memorandum.

**"Target"** means Fitness First Holdings Limited, a limited liability company incorporated in England and Wales with registered number 4099401.

**"Target Shares"** means all of the shares of Target.

**"Vendor"** means each of the persons or partnerships listed in column 1 of each part of Schedule 2 of the Acquisition Agreement.

**"VLN Bank"** means Mizuho Corporate Bank, Ltd. in its capacity as provider of the VLN Guarantee.



**APPENDIX E**

Cash to be transferred at the time of giving of the financial assistance is nil. However, the Assisting Company has entered into a commitment under the terms of the Inter Company Loan Agreement to make loan facilities available to the ICLA Borrowers in certain circumstances up to a maximum principal amount of £1,900,000,000.

Handwritten signature and initials, possibly "JP" and "An", in the bottom right corner.

**APPENDIX F**

On a date to be not later than 8 weeks from the date of this statutory declaration.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a cursive or semi-cursive script.

## **INDEPENDENT AUDITORS' REPORT TO THE DIRECTORS OF FITNESS FIRST HOLDINGS LIMITED ("THE COMPANY") PURSUANT TO SECTION 156(4) OF THE COMPANIES ACT 1985**

We have examined the attached statutory declaration of the directors dated 24 November 2005 in connection with the proposal that the Company should give financial assistance for the reduction or discharge of a liability incurred for the purpose of the acquisition of the Company's A, B and C ordinary shares and B and C preference shares.

This report is made solely to the directors of the Company for the purpose of section 156(4) of the Companies Act 1985. Our work has been undertaken so that we might state to the directors of the Company those matters that we are required to state to them in an auditors' report under that section and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Company and the Company's directors, for our work, for this report, or for the opinions that we have formed.

### **Basis of opinion**

We have enquired into the state of the Company's affairs in order to review the bases for the statutory declaration.

### **Opinion**

We are not aware of anything to indicate that the opinion expressed by the directors in their declaration as to any of the matters mentioned in section 156(2) of the Companies Act is unreasonable in all the circumstances.

*Deloitte & Touche LLP*

Deloitte & Touche LLP  
Chartered Accountants and Registered Auditors

24 November 2005

