
FINAL NOTICE

To: **Jason Smith**

Of: **c/o Clyde & Co
51 Eastcheap
London
EC3M 1JP**

Date: **13 December 2004**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you a Final Notice about a requirement to pay a financial penalty:

ACTION

The FSA gave you, Mr Jason Smith ("Mr Smith") a Decision Notice dated 3 November 2004 which notified you that the FSA had decided to impose a financial penalty on you in the amount of £15,000 ("the penalty") pursuant to section 123 (Power to impose penalties in cases of market abuse) of the Financial Services and Markets Act 2000 ("the Act").

On your behalf your solicitor confirmed on 2 December 2004 that you do not intend to refer the matter to the Financial Services and Markets Tribunal. Accordingly, for the reasons set out below the FSA imposes a financial penalty on you in the amount of £15,000.

REASONS FOR ACTION

Introduction

1. The FSA has decided to impose this penalty as a result of Mr Smith's behaviour in relation to the disclosures he made on 14 and 28 April 2003 of relevant information relating to I Feel Good (Holdings) PLC ("IFG").
2. Mr Smith, a Chartered Accountant, was the Finance Director and Company Secretary of IFG between early 2000 and July 2003.

3. On 14 April 2003, Mr Smith informed Robin Mark Hutchings ("Mr Hutchings") that IFG were going to release an announcement the following morning relating to a bid approach for IFG.
4. On 15 April 2003, IFG announced that it had received an approach that may or may not lead to an offer for the company.
5. On 28 April 2003, Mr Smith informed Mr Hutchings that a final offer for IFG had been received from Dennis Publishing Limited ("Dennis") at 8p per share and that IFG had accepted this offer.
6. On 2 May 2003, Dennis made an announcement which stated that IFG had recommended the acceptance of a cash offer of 8p per share from Dennis for IFG.
7. On the basis of the facts and matters described below, it appears to the FSA that:
 - (a) Mr Smith engaged in market abuse by disclosing to someone outside the company information which was likely to be regarded by a regular market user as relevant in determining the terms on which transactions in qualifying investments should be effected, and
 - (b) in all the circumstances it is appropriate to impose a penalty on Mr Smith in the amount stated.

Relevant statutory provisions

8. Under section 123(1) of the Act the FSA may impose a financial penalty of such amount as it considers appropriate if the FSA is satisfied that a person has engaged in market abuse.
9. Section 118(1) of the Act defines "market abuse" as "*behaviour...*
 - (a) *which occurs in relation to qualifying investments traded on a market to which this section applies;*
 - (b) *which satisfies any one or more of the conditions set out in subsection (2); and*
 - (c) *which is likely to be regarded by a regular user of that market who is aware of the behaviour as a failure on the part of the person or persons concerned to observe the standard of behaviour reasonably expected of a person in his or their position in relation to the market.*"
10. Of the three conditions set out in section 118(2) the one relevant to this case is that:

"the behaviour is based on information which is not generally available to those using the market but which, if available to a regular user of the market, would or would be likely to be regarded by him as relevant when deciding the terms on which transactions in investments of the kind in question should be effected."
11. At the relevant time, IFG shares were traded on the Alternative Investment Market ("AIM"). Shares traded on AIM are qualifying investments traded on a prescribed market and behaviour occurring in relation to IFG shares will fall within the market abuse regime.
12. The term "*regular user*", in relation to a particular market, means "*a reasonable person who regularly deals on that market in investments of the kind in question*" (Section 118(10) of the Act).

Relevant guidance

13. Pursuant to section 119 of the Act the FSA has issued the Code of Market Conduct (“the Code”), which contains guidance as to whether or not behaviour amounts to market abuse. Under section 122 of the Act, the Code may be relied on so far as it indicates whether or not particular behaviour should be taken to amount to market abuse.

14. In respect of the action, the FSA has had regard to MAR 1.2 of the Code, which sets out guidance on the regular user. MAR 1.2.2 states:

"in determining whether behaviour amounts to market abuse, it is necessary to consider objectively whether a hypothetical reasonable person, familiar with the market in question, would regard the behaviour as acceptable in the light of all the relevant circumstances."

15. Examples of relevant circumstances are set out in MAR 1.2.3 and they include:

"the position of the person in question and the standards reasonably to be expected of that person at the time of the behaviour in the light of that person's experience, level of skill and standard of knowledge"; and

"the need for market users to conduct their affairs in a manner that does not compromise the fair and efficient operation of the market as a whole or unfairly damage the interests of investors."

16. MAR 1.4.9 sets out some criteria for determining whether a piece of information is relevant information. It says that in making such a determination, the regular user is likely to consider the extent to which:

"(1) the information is specific and precise;

(2) the information is material;

(3) the information is current;

(4) the information is reliable, including how near the person providing the information is, or appears to be, to the original source of that information and the reliability of that source;

(5) there is other material information which is already generally available to inform users of the market; and

(6) the information differs from information which is generally available and can therefore be said to be new or fresh information."

17. In the case of information relating to possible future developments which may lead to a disclosure or an announcement being made, MAR 1.4.13 states that *"the following additional factor is to be taken into account when determining whether the information is to be treated as disclosable information or as announceable information, namely whether the information provides, with reasonable certainty, grounds to conclude that the possible future developments will, in fact, occur and accordingly that a disclosure or announcement will, in fact, be made."*

18. Examples of disclosable information include "information relating to officially listed securities which is required to be disclosed under the Listing Rules" (MAR 1.4.14). Although IFG

was not subject to the Listing Rules, it was subject to the AIM rules which required disclosure of information on broadly the same basis as the Listing Rules. Another example of discloseable information includes information which is required to be disclosed under the City Code on Takeovers and Mergers.

Market abuse by disseminating relevant information

19. MAR 1.3.1 lists types of behaviour which come within the scope of the market abuse regime. It is emphasised in MAR that the examples included are illustrative and not comprehensive, but the examples include:

"making statements or representations or otherwise disseminating information which is likely to be regarded by the regular user as relevant to determining the terms on which transactions in qualifying investments should be effected".

Appropriate penalty

20. In determining the appropriate level of penalty in this case, the FSA has had regard to Chapter 14 (headed "Sanctions for market abuse") in the part of the FSA's Handbook titled Enforcement Manual ("ENF"). In particular, ENF 14.7.4 sets out some factors which may be relevant in setting the amount of a financial penalty in a market abuse case.

Facts and Matters Relied On

Background

21. IFG was established in August 1998 as a publisher specialising in titles aimed at the lifestyle, sports and leisure sectors. IFG ordinary shares first traded on AIM in May 2000.
22. On 15 April 2003 at 10:37 hrs, IFG issued an announcement on the Regulatory News Service ("RNS") pursuant to Rule 2 of the City Code on Takeover and Mergers ("the 15 April announcement"). This announcement stated that *"The Company announces that it has received an approach that may or may not lead to an offer being made for the Company"*. By the close of trading that day IFG's share price increased by about 29% from 4.25p to 5.5p.
23. On 2 May 2003, Dennis Publishing Limited ("Dennis") made an announcement on RNS which stated that *"the boards of Choice Publishers [part of the Dennis group] and IFG are pleased to announce that agreement has been reached on the terms of a recommended cash offer to be made by Ernst & Young on behalf of Choice Publishers to acquire the entire issued and to be issued share capital of IFG that Dennis Group does not already own... The cash offer will be 8 pence in cash for each IFG share"* ("the 2 May announcement").

Events leading to 15 April announcement

24. On 19 March 2003, IFG were first made aware that Dennis wanted to make a bid approach. On 20 March 2003, IFG held a Board meeting to discuss the proposed bid approach and concluded that they were opposed to the offer of 6p. On 26 March 2003, IFG and Dennis discussed valuations of between 6p and 10p.
25. On 10 April 2003, representatives from IFG, including Mr Smith, Dennis and their respective advisers met at West LB Panmure to discuss the proposed bid. At this meeting Dennis indicated

that it would be willing to increase the offer price to 7p per share.

26. On 11 April 2003, IFG received a letter from Ernst & Young on behalf of Dennis which confirmed that Laxey Partners, who had taken a 17.6% stake in IFG on 28 March 2003, were prepared to accept 7p per share for their stake in IFG.
27. On 14 April 2003, several members of the IFG Board discussed the Dennis approach with their advisers. IFG were advised to release an announcement about the approach because of an increase in the volume of shares being traded. IFG advised Dennis, Ernst and Young and the Takeover Panel that they intended to confirm to the market that a bid approach had been received by way of a regulatory announcement.
28. On 15 April 2003 at 10:37 hours, IFG released an announcement on RNS confirming that they had received an approach which may or may not lead to an offer for IFG, pursuant to Rule 2 of the City Code on Takeovers and Mergers. Rule 2 requires an announcement to be made when, following an approach to the offeree company, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price. Following the release of the announcement, IFG's share price rose from 4.25p to 5.5p, a rise of about 29%.

Events leading to the 2 May announcement

29. Following the 15 April announcement, negotiations about the proposed bid from Dennis continued. On 25 April 2003, representatives from Dennis and IFG, together with their respective advisers, met and discussed the potential for a revised conditional cash offer of 8p per share in cash. Mr Smith was present at this meeting where the offer was provisionally agreed subject to two further days' due diligence by Dennis.
30. On 30 April 2003, the Board of Dennis met to discuss the offer further. Following that meeting, a letter was sent to the IFG Board confirming the offer of 8p per share. Dennis's advisers indicated to IFG's advisers that they were aiming for an offer announcement on Friday 2 May.
31. On 1 May 2003, the relevant offer documentation was signed following IFG Board approval of the recommended cash offer by Dennis. The next day, Dennis released the 2 May announcement.

Mr Smith's contact with Mr Hutchings at EBG

32. Mr Hutchings has known Mr Smith as a friend and former colleague for approximately 7 years.
33. They maintained contact while Mr Hutchings was employed as an equity research analyst at Evolution Beeson Gregory ("EBG"). EBG were never IFG's brokers or corporate advisers. The firm did, through Mr Hutchings, try to pitch for the brokerage on 8 January 2003, but this never really got off the ground as far as EBG were concerned. Mr Hutchings and Mr Smith claim that they talked about EBG becoming corporate advisers to IFG; but EBG have no record of a formal bid from EBG for this work or any formal discussions about it, and Mr Hutchings as an equity analyst, would not have been the appropriate representative of EBG for pursuing brokerage issues. A colleague of Mr Hutchings at EBG, on Mr Hutchings' suggestion, produced two research notes on IFG, one on 2 April 2003 and one on 23 April 2003.
34. During April 2003, Mr Hutchings and Mr Smith were in more frequent contact than usual with each other by telephone, text messages and emails. They also met once, in a pub on the evening

of 10 April 2003. Mr Smith has informed the FSA that on this occasion, he chose not to mention the Dennis bid because he considered the information to be price sensitive.

35. On 11 April Mr Hutchings bought 114,942 shares in IFG. On 12 April 2003, Mr Hutchings and Mr Smith exchanged seven text messages.

Disclosures

36. During the evening of 14 April 2003, Mr Hutchings and Mr Smith exchanged 11 text messages. The FSA does not have the content of these text messages, but at interview Mr Smith admitted that he may have told Mr Hutchings in at least one of them to *“look out for an announcement tomorrow morning concerning a potential offer”*. Mr Smith has admitted that he expected the 15 April announcement to contain previously unpublished price sensitive information, and that he knew by then that Mr Hutchings had become an IFG shareholder. Mr Hutchings has also admitted that Mr Smith probably informed him that IFG were releasing an announcement the following day regarding some corporate activity.

37. The 15 April announcement was released on RNS at 10:37 hrs so Mr Hutchings would have been able to deal in the shares when the market opened and before the announcement was made. In fact, he did not at that point add to the shareholding which he had acquired on 11 April.

38. On 28 April 2003, Mr Hutchings sent Mr Smith an email enquiring *“What’s the latest news?”* Mr Smith responded by stating that the Dennis bid had been accepted. Mr Hutchings then asked Mr Smith when the announcement in relation to this was due. In a responding email Mr Smith confirmed to Mr Hutchings that *“8p looks like the final offer”*. Mr Hutchings has admitted that he knew this information was inside information and that it was in his possession when, without reference to his employer’s compliance department, he bought further parcels of shares in IFG on 28, 29 and 30 April 2003. The 2 May announcement was released after Mr Hutchings' deals.

39. Mr Hutchings sold the shares he had bought on 28, 29 and 30 April at a profit of £4,942 on 6 May 2003.

Mr Smith engaged in market abuse by disseminating information

40. It appears to the FSA that Mr Smith’s behaviour amounted to market abuse for the purposes of section 118 of the Act.

41. By reference to the three required elements under section 118(1) of the Act, his behaviour amounted to market abuse in that it:

- (a) occurred in relation to IFG shares;
- (b) was based on information about two announcements which were relevant and which were not generally available;
- (c) is likely to be regarded by a regular user as a failure on the part of Mr Smith to observe the standards of behaviour reasonably expected of a person in his position in relation to the market;

42. It appears to the FSA that on 14 April 2003 Mr Smith disseminated relevant information to Mr Hutchings on the following basis:

- (a) Mr Smith has admitted that in the 11 text messages exchanged between him and Mr Hutchings after market hours on 14 April 2003, he "*quite possibly*" let Mr Hutchings know "*that there was an announcement due the next morning*" "*concerning a potential offer*".
- (b) Mr Smith has admitted that he thought that the announcement of 15 April was going to be price sensitive to IFG.
- (c) Mr Smith asserted in interview that he thought that the 15 April announcement had been embargoed for release at 07.00 hrs thereby suggesting that Mr Hutchings would not have had an advantage on the market by virtue of his disclosure. In fact, the announcement was not embargoed for release but was submitted to the RNS at 10.36 hrs and released on RNS at 10.37 hrs. By virtue of such disclosure Mr Hutchings was therefore in a privileged position in relation to the information Mr Smith disclosed.
- (d) Mr Smith has asserted that he provided Mr Hutchings with this information in connection with either the brokerage opportunity or the separate corporate opportunity. However, Mr Hutchings has stated that the fact that EBG would not be acting as IFG's broker was communicated to Mr Smith prior to the 14 April 2003. He has also stated that he considered the brokerage opportunity to be extremely remote by 2 April 2003 and that he informed Mr Smith of this. Furthermore, EBG themselves say that the brokerage opportunity never really got off the ground as far as they were concerned.
- (e) In so far as the corporate opportunity is concerned, EBG have no record of having provided a formal quotation to IFG for this work. It appears that on 28 April 2003, West LB Panmure agreed internally to quote for the corporate work. West LB and Mr Smith negotiated fees during the following week. On, or possibly a day or two before, 7 May 2003, Mr Smith told West LB that their quotation was too high and that IFG had sought quotes from two other firms, one of them EBG, who had quoted an identical lower price for the work. As a consequence, IFG agreed to pay West LB Panmure a reduced fee for the corporate work. In interview, Mr Smith has stated that he did not receive a quotation for corporate work from EBG until after the announcement of 2 May.
- (f) In any event, Mr Hutchings did not work on the brokerage or corporate side of EBG and would not have had any material influence on whether or not EBG acted as brokers or corporate advisors for the bid approach to IFG. Mr Smith did not need to disclose to Mr Hutchings on 14 April that IFG were going to make an announcement of an approach the following morning in order to obtain a quotation from EBG for corporate work.
- (g) At the time Mr Smith made this disclosure to Mr Hutchings, he was the Finance Director and Company Secretary of IFG. Mr Smith should have been aware that in order to make a legitimate disclosure he would have needed to warn Mr Hutchings that the information he was providing him with was 'inside information' and effectively make Mr Hutchings an insider in relation to that information. Mr Smith's disclosure of 14 April was not accompanied by any such a warning. In any event, there was no need for Mr Hutchings to receive any disclosures or information regarding the potential bid.

43. It appears to the FSA that on 28 April 2003 Mr Smith disseminated relevant information to Mr Hutchings on the following basis:

- (a) Mr Smith sent Mr Hutchings an email on 28 April 2003 stating that the Dennis bid had been accepted. In an email a few minutes later Mr Smith confirmed to Mr Hutchings that *“8p looks like the final offer”*.
- (b) Mr Smith has admitted that the emails he sent to Mr Hutchings on 28 April 2003 contained information which he knew to be unpublished price sensitive information in relation to IFG.
- (c) Mr Smith did not warn Mr Hutchings that he held inside information in relation to IFG in his emails of 28 April 2003. In his capacity as Finance Director and Company Secretary of a publicly quoted company, Mr Smith would have known that any proper disclosure within the regulatory regime is required to be accompanied by such a warning.
- (d) Mr Smith has asserted that this information was provided to Mr Hutchings in connection with the brokerage opportunity. As noted above, this explanation does not appear to the FSA to be credible.
- (e) Mr Smith originally asserted that he provided the value of the final bid to Mr Hutchings to assist in obtaining a quote from EBG for the corporate work, but later admitted that it was not necessary to provide this information to Mr Hutchings in order to obtain such a quote from EBG. Accordingly, and as noted above, it appears to the FSA that this explanation is not credible.
- (f) The emails exchanged between Mr Smith and Mr Hutchings are informal in tone and do not mention the brokerage or corporate opportunities.
- (g) Mr Smith has stated that he did not expect Mr Hutchings to deal on the basis of the information he provided to him. While in fact Mr Hutchings did not deal on the basis of the information provided to him by Mr Smith on 14 April 2003, the FSA believes that Mr Smith's assertion is open to doubt. Mr Smith has admitted that he knew that Mr Hutchings had dealt in IFG shares on 11 April 2003. Mr Smith therefore knew that Mr Hutchings had a personal interest in IFG shares. The fact that Mr Hutchings had dealt in IFG shares on 11 April and that Mr Smith was aware of this, should have raised in Mr Smith's mind the real possibility that Mr Hutchings would deal again in IFG shares, despite his Approved Person status. This is particularly so when Mr Smith failed to accompany his disclosures with an appropriate warning. In any event, the disclosure of such price sensitive information outside the very small circle of people with a need to know would be improper whatever view the discloser took of the recipient's likely response to the information.
- (h) Mr Smith has stated that he did not talk to Mr Hutchings about the Dennis bid when they met socially on the evening of 10 April 2003 because he considered the information to be price sensitive. This view was correct and nothing happened between 10 April and 14 April or between then and 28 April which could have justified a less prudent approach. The only relevant change in the situation was Mr Smith's knowledge that on 11 April Mr Hutchings had become an IFG shareholder. This should have made Mr Smith more, not less, scrupulous in withholding price sensitive advance information about the company from Mr Hutchings.

Information Not Generally Available

44. The information that IFG had received a bid approach and were going to make an announcement of it on 15 April 2003 was not generally available. There had been no press speculation prior to the 15 April 2003 of a bid approach to IFG.
45. The information that the offer was from Dennis, and was at 8p per share and had been accepted by the IFG board was not generally available. The only information in the market as to the likely bidder was contained in press speculation which did not quote an official source for its speculation and the EBG research note of 23 April 2003 which stated only that it was believed that Dennis was behind the bid approach for IFG and provided no detail on the likely bid price or the likelihood of the offer being accepted by IFG. Neither Dennis nor IFG had as at 28 April 2003 confirmed to the market that Dennis was behind the bid approach. There was no speculation in the market as to the offer price. Furthermore, neither IFG nor Dennis had as at 28 April 2003 announced the fact that Dennis offer of 8p per IFG share had been accepted by IFG's Board. This information continued to be not generally available throughout the 28, 29 and 30 April 2003.

Relevant information

46. The information that Mr Smith disclosed to Mr Hutchings on 14 April 2003, i.e. that IFG had received a bid approach and that IFG were going to make an announcement about it the following morning, was specific, precise, material and current information, from a reliable, inside source, which investors in IFG would regard as relevant when deciding the terms on which to deal in IFG shares.
47. The information disclosed by Mr Smith to Mr Hutchings on 28 April 2003 confirming that Dennis was behind the bid approach for IFG, and that 8p was the final offer, was also relevant information, material, current and specific and precise information from a reliable inside source, which investors in IFG would regard as relevant when deciding the terms on which to deal in IFG shares.

Discloseable information

48. For the purposes of the Code (MAR 1.4.4E) the information that IFG had received an approach which may or may not lead to an offer for the Company related to matters a regular user would reasonably expect to be disclosed to other users of the market by virtue of the City Code on Takeovers and Mergers.
49. For the purposes of the Code (MAR 1.4.4E) the information that IFG had accepted an offer of 8p per share from Dennis which would lead to a recommended cash offer for IFG was also information which a regular user would reasonably expect to be disclosed to other users of the market by virtue of the City Code on Takeovers and Mergers.

Failure to observe standards of behaviour

50. The FSA considers that a reasonable person who regularly deals on AIM would regard Mr Smith's behaviour in respect of his disclosures of 14 and 28 April 2003 as a failure to observe the standard of behaviour reasonably to be expected of a Finance Director and Company Secretary of an AIM traded company. Being in such a position, Mr Smith was acutely aware of

the sensitivity of the information that he possessed by reason of his employment and the impropriety of selectively disclosing such information before it had been made available to investors in accordance with IFG's obligations under the City Code on Takeovers and Mergers rules.

51. The Code indicates (MAR 1.4.3E) that, where market users rely on the timely dissemination of relevant information (as in this case on AIM) those who possess relevant information ahead of its general dissemination should refrain from acting on that information. Confidence in such markets depends, in part, on market users' confidence that they can deal with each other on the basis that they have equal access to disclosable information.
52. In summary, the FSA concludes that Mr Smith, the Finance Director and Company Secretary of the publicly quoted company IFG, and a Chartered Accountant, committed market abuse by improperly disclosing relevant information in advance of its publication to his professional and social acquaintance, Mr Hutchings, who had no professional need to have the information in advance, and that he did so knowing Mr Hutchings to be a personal shareholder in the company as well as a professional equity analyst.

Financial penalty

53. In enforcing the market abuse regime the FSA's priority is to protect prescribed markets from any damage to their efficiency caused by the misuse of information in relation to the market. The effective and appropriate use of the power to impose penalties for market abuse will help to maintain confidence in the UK financial system by demonstrating that high standards of market conduct are appropriately enforced in the UK financial markets. The public enforcement of these standards also furthers the statutory objectives of public awareness, the protection of consumers and the reduction of crime (ENF 14.1.3).
54. In accordance with the FSA's published policy (ENF 14.4) in determining whether to take action in respect of market abuse, and in determining the level of the penalty, the FSA has regard to all the circumstances, including the nature and seriousness of the abuse, the person's conduct following the abuse (including their co-operation with the FSA's investigation), the nature of the market that has been abused, the likelihood of abuse of the same type being repeated and the need to deter such abuse, and the previous history of the person concerned.
55. The FSA has taken all the relevant circumstances into account in deciding that the imposition of a financial penalty in this case is appropriate and that the level of the penalty proposed is proportionate. The FSA has particular regard to the guidance set out in ENF 14.4, 14.6 and 14.7 and to the following considerations:
 - (a) At the time of his disclosures, Mr Smith was the Finance Director and Company Secretary of IFG and he was therefore in a position of trust which he abused through the improper disclosure of relevant company information. Mr Smith was well aware of his regulatory obligations and the inappropriateness of selectively disclosing relevant information;
 - (b) Investors in shares listed on AIM need to have confidence in the integrity of the processes by which shares are traded on the market. The selective disclosure of relevant information by a Finance Director and Company Secretary of an AIM traded company must undermine investor confidence very seriously. It can result in the avoidance of a significant loss or, as in this case, significant financial gain. The FSA

therefore considers it essential that the penalty imposed should act as a powerful incentive to others to refrain from such abuse;

- (c) Following Mr Smith's disclosure of relevant information to Mr Hutchings on 28 April 2003, Mr Hutchings bought shares on three occasions and made a profit of £4,924 when he sold them on 6 May 2003;
- (d) Mr Smith has provided inconsistent explanations of these events in his interviews with the FSA. In his first interview with the FSA he denied disclosing any relevant or price sensitive information to anyone outside the company, but subsequently acknowledged that he may have made such a disclosure to Mr Hutchings on 14 April and that he did make such a disclosure on 28 April;
- (e) Mr Smith's behaviour was deliberate (or at the very least reckless) in that he knew that the information was price sensitive or relevant and that Mr Hutchings was personally interested in IFG shares;
- (f) Following the takeover, Mr Smith ceased to be IFG's Company Secretary and Finance Director. Mr Smith is currently working as a financial consultant. The FSA recognises that the issue of a penalty for market abuse will affect Mr Smith's professional future;
- (g) Although Mr Smith did not, so far as the FSA is aware, personally benefit from the behaviour it is important that those in possession of price sensitive information act appropriately and in such a way as to preserve integrity of the market. Without such discipline a fair trading cannot exist and the markets cannot be clean and orderly.

56. The imposition of a penalty for market abuse is a very serious measure but the seriousness of the abuse in this case is such that the FSA considers the level of the penalty imposed is appropriate.

IMPORTANT NOTICES

This Final Notice is given to Mr Smith in accordance with section 390 of the Act.

Manner of payment

The penalty of £15,000 must be paid to the FSA in full.

Time for payment

Mr Smith must pay to the FSA the full amount of the penalty specified above in 12 equal monthly payments of £1250. The monthly payments are to commence on or before 30 December 2004 and are to conclude on or before 30 December 2005.

If the penalties are not paid

If all or any part of the penalties are outstanding after the required date of payment, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

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

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

Third party rights

The FSA gave a copy of the Decision Notice to Robin Mark Hutchings. Accordingly, the FSA must also give a copy of this notice to Robin Mark Hutchings.

FSA contacts

For more information concerning this matter generally, please contact Georgina Philippou at the FSA (direct line: 020 7066 1286 fax: 020 7066 1287).

Tracey McDermott
Head of Department
FSA Enforcement Division