
FINAL NOTICE

To: **Hoodless Brennan and Partners Plc**

Of: **40 Marsh Wall
Docklands
London E14 9TP**

Date: **17 December 2003**

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

THE PENALTY

For the reasons listed below, and having taken into account your written representations dated 7 February 2003, your oral representations made on 5 March 2003 to the Regulatory Decisions Committee, and the directions and findings made by the Financial Services and Markets Tribunal (“the Tribunal”) in its decision dated 3 October 2003 under Reference FIN/2003/0002, the FSA imposes a financial penalty of £150,000 on HBP in respect of breaches of the rules of the Securities and Futures Authority (“the SFA”) and the FSA’s rules.

REASONS FOR THE ACTION

Introduction

1. The FSA has decided to impose a penalty on HBP as a result of the conduct of HBP in 2000 in relation to a placing of shares in PrimeEnt Plc (“the PrimeEnt placing”) and its dealings with regulators thereafter. In particular, it appears to the FSA that:
 - 1.1 HBP was responsible for an announcement being issued to the market on 30 March 2000, which was false and misleading. The announcement stated that HBP had placed £2.5 million of shares in PrimeEnt Plc (“PrimeEnt”) when that was not in fact the case;

- 1.2 HBP subsequently failed to take adequate steps to correct the false and misleading announcement for which it was responsible. Although HBP discussed the position with the Nominated Adviser, HBP did not inform the SFA or the market of the position which had arisen;
 - 1.3 HBP, through its then CEO Mr Sean Blackwell ("Blackwell"), made an improper attempt, albeit half-hearted and ineffectual, to support the price of PrimeEnt's shares in the interim by asking a third party to arrange for a significant amount of stock to be bought in the market through a market maker other than HBP;
 - 1.4 HBP failed at the time to keep proper records, failed to supervise Corporate Broking staff and failed to follow proper compliance procedures;
 - 1.5 although HBP was generally open and co-operative, HBP took insufficient care to provide full and accurate information to regulators following the PrimeEnt placing.
2. In relation to the PrimeEnt placing HBP failed:
 - 2.1 to act with due skill, care and diligence (in breach of SFA Principle 2);
 - 2.2 to organise and control its internal affairs in a responsible manner (in breach of SFA Principle 9);
 - 2.3 to the extent set out at paragraph 1.5, subsequently to deal with regulators in an open and co-operative way (in breach of SFA Principle 10 and FSA Principle 11).
 3. Furthermore, through the conduct of its then CEO Blackwell, HBP's conduct during the placing and subsequently was a failure to observe high standards of integrity and fair dealing, of market conduct and of openness and cooperativeness with regulators (in breach of SFA and FSA Principles 1 and 3 and of SFA Principle 10 and FSA Principle 11).
 4. In deciding to take the action described above the FSA has in mind the FSA's regulatory objectives set out in section 2(2) of the Financial Services and Markets Act 2000 ("the Act").

Relevant Statutory Provisions

5. The FSA is authorised by Section 206(1) of the Act to impose a financial penalty of such amount as it considers appropriate if the Authority considers that an authorised person has contravened a requirement imposed on him by or under the Act.
6. The Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Civil Remedies, Discipline, Criminal Offences etc) (No.2) Order 2001 provides, at Article 8, that the FSA may exercise the power conferred by section 206 if it considers that before commencement (that is, the coming into force of the Act) the

authorised person committed an act of misconduct within the meaning of rule 7.23A(3) of the SFA Rules.

7. SFA Rule 7.23A(3) provides that an act of misconduct includes a breach of the rules of the SFA. The rules of the SFA include the Statements of Principle made by the Securities and Investment Board under section 47A of the Financial Services Act 1986 on 15 March 1990, referred to herein as the SFA Principles.
8. The FSA considers that HBP committed acts of misconduct prior to commencement and that in particular HBP breached the SFA Principles referred to in paragraphs 2 and 3 above. The FSA further considers that HBP contravened requirements imposed on it by or under the Act since commencement and that in particular HBP breached the FSA Principles referred to in paragraphs 2 and 3 above.
9. The procedure to be followed in relation to the imposition of a financial penalty is set out at sections 207 to 208 of the Act.

Relevant Guidance

10. In deciding to take the action described above, the FSA has had regard to guidance published in SFA Briefing Update 12 dated March 1996 (“Update 12”), SFA Board Notice 497 dated 21 October 1998 (“the Notice”) and the FSA Handbook, in particular Enforcement Manual Chapter 13 (“ENF 13”).
11. Update 12 sets out that the SFA’s objectives in setting penalties are to express condemnation of the wrongdoing and to be fair to the firm. ENF 13 states that the FSA’s main purpose in levying a financial penalty is to promote high standards of regulatory conduct. These are both achieved by penalising and deterring firms who are in breach of regulatory requirements from committing further breaches.
12. In deciding the level of penalty, the FSA has had regard to the Notice and in particular its section titled “Revised Penalty Policy”. The Notice constitutes relevant guidance for the period March 2000 to November 2001. During this period HBP breached SFA Principles 1, 2, 3, 9 and 10.
13. The Notice lists the main factors to be taken into account in arriving at a penalty. In determining the penalty the FSA has taken into account that:
 - 13.1 HBP's breaches primarily resulted from failures by a number of individuals of whom some held senior positions within HBP;
 - 13.2 no previous compliance action has been taken against HBP;
 - 13.3 the acts of misconduct indicated a lack of proper compliance procedures and systems of supervision in the Corporate Broking department of HBP at the relevant time;
 - 13.4 the actions of HBP’s then CEO Blackwell, in relation to the attempted share support operation and his subsequent denial of such activity, were deliberate and breached SFA Principles 1, 3 and 10;

- 13.5 there were a number of breaches;
- 13.6 HBP did not notify the FSA of the issues arising in relation to the PrimeEnt placing at the time. Although not through any improper motive, HBP also failed to volunteer any information concerning the PrimeEnt placing during a subsequent routine supervision visit.
14. The FSA has considered previous penalties imposed by SFA tribunals or agreed in settlement in order to establish a suitable penalty.
15. In determining the level of penalty, the FSA has also had regard to ENF 13 which lists the main factors that the FSA will take into account in arriving at a penalty and constitutes relevant guidance for the period after 1 December 2001. During this period HBP breached FSA Principle 11, that is in relation to its failure to take sufficient care to provide full and accurate information to the regulators and, further, in its then CEO Blackwell's concealment of the attempted share support operation, breached Principle 1, that is in relation to integrity. In this regard the FSA has taken into account that:
 - 15.1 the relevant breaches in respect of the way in which HBP dealt with the FSA over certain aspects of the PrimeEnt investigation continued from 1 December 2001 until July 2002;
 - 15.2 the breaches did not impact adversely on the financial markets or cause loss to consumers;
 - 15.3 the breaches in relation to Blackwell's attempted share support operation, including subsequent untruthful explanations provided to the FSA, were deliberate;
 - 15.4 the FSA has not previously taken any action against HBP.
16. As also required by ENF 13, the FSA has taken the size, financial resources and other circumstances of HBP into account.
17. In determining the type of penalty to be imposed, namely in considering whether a financial penalty is appropriate to deal with the FSA's concerns (particularly given that certain of HBP's failures were such as would normally call into question the fitness and propriety, and therefore the continued authorisation, of an authorised person), the FSA has had particular regard to the following matters:
 - 17.1 Messrs Hoodless, Blackwell and Chandler (see 20 below) voluntarily stood down as directors of HBP, and HBP voluntarily terminated the arrangements by which they performed any functions with HBP of a managerial or supervisory nature;
 - 17.2 HBP has strengthened its internal controls;
 - 17.3 during the investigation, HBP volunteered information and gave investigators unrestricted access to relevant materials;

- 17.4 HBP's new management has expressed clearly and unequivocally its contrition over its conduct in relation to the PrimeEnt placing and the subsequent FSA investigation.
18. In determining the level of penalty to be imposed the FSA has had particular regard to the following matters:
- 18.1 the seriousness of the conduct. The FSA regards HBP's conduct in relation to the PrimeEnt placing and the fact that it took insufficient care to provide accurate information to regulators as serious matters;
- 18.2 the size and financial resources of HBP. The FSA recognises that the fine of £150,000 is a significant financial penalty for HBP;
- 18.3 the decision and findings made by the Financial Services and Markets Tribunal on 3 October 2003 under References made by Messrs Blackwell and Hoodless pursuant to s.63(5) of the Act in relation to their Decision Notices dated 20 December 2002, and proceeding in the Tribunal as a consolidated Reference under FIN/2003/0002.

Facts and Matters Relied On

Background

19. At the material time, that is between March 2000 and September 2000, the relevant departments of HBP were as follows:
- 19.1 the Corporate Broking department, responsible for corporate finance business. The remit of the Corporate Broking department included acting as Nominated Broker for AIM-listed companies and raising capital for such companies which included placing shares with institutional investors. The Corporate Broking department charged a fee for its activities;
- 19.2 the Retail Broking department, responsible for trading shares with and on behalf of the firm's private clients. It was usual for the Retail Broking department to participate in placings arranged by the Corporate Broking department and then to sell those shares to private clients for a profit;
- 19.3 the Compliance department.
20. The relevant employees of HBP were as follows:
- 20.1 Geoffrey Hoodless ("Hoodless"). At the material time Hoodless was the firm's Senior Executive Officer. Hoodless had overall responsibility for the PrimeEnt placing referred to in detail below;
- 20.2 Sean Blackwell. At the material time Blackwell was Chief Executive Officer and Head of the Corporate Broking department;

- 20.3 Don Nelson (“Nelson”). At the material time Nelson was an executive within the Corporate Broking department. He had day to day responsibility for the PrimeEnt placing;
- 20.4 Timothy Chandler (“Chandler”). At the material time Chandler was a Director of HBP and Head of the Retail Broking department.
21. HBP had been appointed as Nominated Broker to PrimeEnt, a company listed on the Alternative Investment Market (“AIM”) operated by the London Stock Exchange (“LSE”) in 1999. Brown Shipley & Co Ltd (“BSL”) had been appointed as Nominated Adviser to PrimeEnt.
22. In March 2000 HBP agreed to undertake the PrimeEnt placing, whereby HBP would place 50 million shares in PrimeEnt at a placing price of 5p each, raising capital for PrimeEnt of £2.5 million.

The announcement

23. BSL proposed to issue an announcement to the market regarding PrimeEnt and including reference to the PrimeEnt placing on 30 March 2000.
24. On 28 March 2000 BSL and HBP discussed the proposed announcement. At this time HBP had not secured any written commitments to participate in the placing from prospective placees. Notwithstanding this:
- 24.1 HBP confirmed to BSL that it was acceptable for the announcement to refer to the placing having been completed;
- 24.2 HBP advised that the announcement should make it clear that the placing was complete in that HBP had placed the stock with its clients, as it wished to avoid giving the market the impression that there was an overhang of £2.5 million worth of PrimeEnt shares.
25. On 29 March 2000 BSL faxed a copy of the proposed announcement to HBP and advised HBP that the announcement would be released on 30 March 2000. HBP did not comment on the text. BSL treated the announcement as having been approved by HBP for issue on 30 March 2000.
26. On 30 March 2000 BSL released the announcement to the market. The announcement (which was identical to the draft faxed to HBP) stated, inter alia, that:
- In addition, Hoodless Brennan & Partners Plc has, subject to allotment and admission, placed on behalf of PrimeEnt 50,000,000 new ordinary shares of 1p each in the Company at 5p per share. The gross proceeds of the placing is £2,500,000, which shall be used, inter alia, for the working capital purposes of the PrimeEnt group (“the Group”).*
27. The announcement was false and misleading. As at 30 March 2000, HBP had proposed itself to subscribe for shares to the value of £550,000 (£500,000 to Retail Broking and £50,000 to Market Making). However, HBP had received only non-

binding oral indications of interest amounting to approximately £1 million from sources external to the firm. HBP had not secured any written commitments to participate in the placing from prospective placees.

28. HBP had relied on Nelson in relation to the conduct of the PrimeEnt placing. HBP had not exercised adequate supervision or control over Nelson in relation to the PrimeEnt placing. HBP had not verified the status of the PrimeEnt placing prior to approving the issue of the announcement.

Steps taken to complete the placing

29. As at 30 March 2000 the Directors of HBP were unaware that the announcement was false and misleading as Nelson had not informed them of the problems with the PrimeEnt placing.
30. On 3 April 2000 the placing shares were transferred to HBP's CREST Nominee Account.
31. On 5 April 2000 the placing shares were admitted to trading on AIM.
32. On 7 April 2000 Nelson asked Chandler to take up a further £500,000 PrimeEnt shares on behalf of the Retail Broking department. This request gave Chandler cause for concern. This tranche of shares amounted to 20% of the total placing. However, the placing had been announced as complete on 30 March 2000. Chandler declined to do so, since it would disrupt arrangements already made (that is, a full schedule of sales to be made of various stocks) and telephoned Blackwell to inform him of Nelson's approach.
33. On 7 April 2000, after Nelson's approach to him, Chandler raised his concerns with Blackwell, who subsequently followed them up with Hoodless. Chandler took no further steps to apprise himself of the true situation.
34. On 11 April 2000 a meeting of the Directors of HBP took place. Hoodless had reviewed the announcement of 30 March 2000 prior to the meeting and knew that the announcement was false and misleading. By the time of the meeting, HBP was still holding 20.5 million unplaced shares in its CREST nominee account: 41% of the placing. In addition, HBP still had on its principal books the £500,000 it had placed with its Retail Broking department, which meant that HBP was actually holding a total of 63% of the placing.
35. On 11 April 2000 (or very shortly thereafter) the Directors of HBP, having verified that HBP had sufficient regulatory capital, agreed a course of action as follows:
 - 35.1 no steps would be taken to correct the false and misleading announcement of 30 March 2000;
 - 35.2 HBP's Corporate Broking department would seek to continue to place the stock;
 - 35.3 HBP's Retail Broking department would continue to actively sell the stock.

36. HBP took the view that it was acting in a manner consistent with the interests of both PrimeEnt and HBP's retail customers (i.e. those who prior to the placing had been advised by HBP to invest in PrimeEnt). Despite advising the Nominated Adviser that there was a problem, HBP did not handle the situation in the way that it should have. HBP allowed this situation to continue without consulting compliance, seeking legal advice and without alerting the SFA or the LSE AIM team.
37. As agreed on 11 April 2000 (or very shortly thereafter), the Corporate Broking department continued to place the stock.
38. The placing was not, in fact, completed until 22 May 2000 and no steps were taken during that time to correct the false and misleading announcement.

Attempt to support the share price

39. To the extent set out in paragraph 34 above, as at 12 April 2000 HBP was holding £1,575,000 worth of the placing shares on its own books: 63% of the placing. HBP had decided to continue to place the stock and to sell stock to private customers and a fall in the PrimeEnt share price at this time may have resulted in a substantial loss for HBP given its long position in the stock. It may also have impeded HBP's efforts to place and retail the stock.
40. On 12 April 2000 Blackwell asked a business acquaintance to buy £50,000 worth of PrimeEnt shares through a market maker other than HBP. Blackwell did so in an improper, albeit ineffectual and half-hearted, attempt to support the share price of PrimeEnt.

Internal Controls

41. HBP failed to maintain adequate records. In particular, HBP failed to record basic information in relation to the PrimeEnt placing and HBP failed to execute a placing agreement.
42. HBP failed to have in place adequate arrangements to ensure that Corporate Broking staff were properly supervised. In particular, the staff with day-to-day responsibility for the PrimeEnt placing were not properly supervised.
43. HBP failed to have in place well-defined compliance procedures in the Corporate Broking Department. Compliance was not advised of the issues surrounding the PrimeEnt placing. HBP failed to make the disclosures required by the Companies Act 1985 in relation to its principal position in PrimeEnt.
44. HBP failed to organise and control its internal affairs in a responsible manner.

Subsequent dealings with regulators

45. HBP took insufficient care to ensure that regulators were provided with complete, accurate and truthful information.

46. HBP did not notify the FSA (or the SFA) of the issues arising in relation to the PrimeEnt placing at the time.
47. In July and August 2000, the FSA conducted a routine supervision visit to HBP. Although not through any improper motive or lack of integrity, HBP did not volunteer any information concerning the PrimeEnt placing during the visit. It was only after the FSA supervision team challenged the PrimeEnt file that HBP provided any information. During the visit and in subsequent correspondence, HBP did not take sufficient care to ensure that the FSA supervision team was given accurate information. For example:
 - 47.1 immediately prior to the visit, and at the request of Nelson who wanted to get a signed placing agreement on the file, Hoodless had signed a draft placing agreement dated March 2000. Although not a conscious attempt to mislead by Hoodless, it had the effect of inaccurately representing to the FSA that all the documentation relating to the placing was in order. In fact, no placing agreement had been executed as at March 2000;
 - 47.2 HBP represented that BSL had not given it advance notice of the announcement of 30 March 2000. In fact, this was inaccurate;
 - 47.3 HBP represented that the placing shares had been transferred to HBP's Nominee Account in error. In fact, it was at the specific instruction of HBP that all the placing shares were transferred to HBP's account.
48. During the investigation, although HBP believed that it was being open and cooperative, it did not take sufficient care to ensure the accuracy and completeness of the information that was provided to the FSA. As a result, HBP provided incorrect and misleading representations to the FSA during the investigation. The FSA only obtained an accurate picture following a full investigation. For example:
 - 48.1 HBP represented that it was not aware that BSL proposed to issue an announcement on 30 March 2000. In fact:
 - 48.1.1 on 28 March 2000 Hoodless specifically confirmed to BSL that it was acceptable for the announcement to refer to the placing having been completed;
 - 48.1.2 on 29 March 2000 at 2.56 pm BSL faxed a copy of the proposed announcement to HBP and advised HBP that the announcement would be released on 30 March 2000;
 - 48.2 HBP represented that, at a meeting on 11 April, there was no agreement to retail unplaced PrimeEnt stock. Although this might have been literally correct, it did not amount to a full and accurate account since HBP did not volunteer that:
 - 48.2.1 on 12 April 2000 Hoodless advised BSL that it was proposed to retail unplaced stock to private customers;

- 48.2.2 between 14 April and 20 April 2000 HBP actively sold stock to private customers in order to complete the placing;
- 48.3 HBP represented that it completed the placing on 12 April 2000. In fact:
 - 48.3.1 HBP continued to secure written placing commitments between 14 April and 22 May 2000. A number of these placees were only contacted on or after 20 April 2000;
 - 48.3.2 on 19 April 2000 Blackwell advised a business acquaintance that HBP was holding a considerable amount of PrimeEnt stock and asked him to buy £500,000 worth of shares;
 - 48.3.3 the placing was not completed until 22 May 2000;
- 49. Furthermore, HBP, through Blackwell, untruthfully represented that it did not on 12 April attempt to support the share price in PrimeEnt. In fact:
 - 49.1.1 Blackwell specifically asked his business acquaintance to arrange that £50,000 PrimeEnt shares be purchased on the market through a market maker other than HBP;
 - 49.1.2 Blackwell specifically explained that this would assist him as he had about £1.5 million PrimeEnt shares and he needed a slightly better share price;
 - 49.1.3 Blackwell's business acquaintance has confirmed to the FSA that he understood that he was being asked to support the share price;

Conclusion

- 50. The FSA has considered the facts and guidance above and considers the breaches by HBP to be of a serious nature.
- 51. The FSA has reached this conclusion primarily as a result of the following facts:
 - 51.1 the breaches included a lack of integrity by HBP acting through its then CEO Blackwell in respect of the attempted share support operation and the dishonest way in which the situation was represented to the FSA;
 - 51.2 the breaches included a failure by HBP to deal with the FSA in a way that ensured that full and accurate information was provided;
 - 51.3 there were a number of breaches arising out of HBP's conduct;
 - 51.4 the breaches indicated a lack of compliance procedures within the Corporate Broking Department of the firm.

52. The FSA has concluded that a financial penalty is appropriate in this case. The FSA believes that a substantial fine is appropriate in order to penalise HBP for its breaches and also to deter other firms from similar action.
53. In all the circumstances the FSA imposes a financial penalty of £150,000. Had it not been for the steps taken by HBP as set out above and to strengthen internal controls, and the cooperation shown by the new management of HBP since July 2002, a substantially higher penalty would have been imposed.
54. The FSA has also had regard to the findings of the Financial Services and Markets Tribunal in its decision dated 3 October 2003 under Reference FIN/2003/0002.

IMPORTANT NOTICES

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

Manner of payment

The amount of £150,000 must be paid to the FSA in full.

Time for payment

The penalty must be paid to the FSA no later than 5 January 2004.

If the penalty is not paid

If all or any part of the penalty is outstanding on 5 January 2004, 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 Notice relates. Under these 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 a 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 HBP 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.

FSA contacts

For more information concerning this matter generally, you should contact Ken O'Donnell (direct line: 020 7676 1374/fax: 020 7676 1375) of the Enforcement Division of the FSA.

Martyn Hopper
Head of Market Integrity
Enforcement Division