
FINAL NOTICE

To: **Robin Mark Hutchings**

Of: **c/o Andrew Benson
Byrne and Partners
77 St John Street
London
EC1M 4NN**

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 Robin Mark Hutchings ("Mr Hutchings"), a Decision Notice dated 13 December 2004 which notified you that the FSA had decided to impose a financial penalty on you in the amount of £18,000 ("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").

Having agreed with you the facts and matters relied upon and set out below, and you having agreed not to refer the matter to the Financial Services and Markets Tribunal, the FSA imposes a penalty on you in the amount of £18,000, for the reasons set out below.

REASONS FOR ACTION

Introduction

1. The FSA has decided to impose this penalty as a result of Mr Hutchings' behaviour in relation to the following purchases of ordinary shares in I Feel Good (Holdings) plc ("IFG") (together defined as "the relevant trades"):
 - 28 April 2003, purchase of 80,000 shares at 6.25p;
 - 29 April 2003, purchase of 80,000 shares at 6.25p; and
 - 30 April 2003, purchase of 166,666 shares at 6p.

At the time of the relevant trades Mr Hutchings was in possession of relevant information which was not generally available that a bid approach from Dennis Publishing Limited ("Dennis") had been accepted by IFG and that the final offer price for IFG shares was 8p per share.

On 2 May 2003, Dennis announced that IFG had agreed to recommend to its shareholders a cash offer of 8p per share from Dennis.

Mr Hutchings made a profit of £4,924 when he sold these shares for 7.63p each on 6 May 2003.

2. On the basis of the facts and matters described below, it appears to the FSA that:
 - (a) Mr Hutchings engaged in market abuse; and
 - (b) in all the circumstances it is appropriate to impose a penalty on Mr. Hutchings in the amount stated.

Relevant statutory provisions

3. 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.
4. 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.*"
5. 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."
6. At the time of the relevant trades, 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.
7. 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

8. 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.
9. In respect of the proposed action, the FSA has had particular regard to MAR 1.2 of the Code, which sets out guidance on the regular user, and MAR 1.4 of the Code, which sets out guidance on misuse of information. 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."
10. Examples of relevant circumstances are set out in MAR 1.2.3 and 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."
11. MAR 1.4.4 states that behaviour will be market abuse, in that it will be a misuse of information, where a person deals in any qualifying investment where all four of the following circumstances are present:
 - (1) *the dealing is based on information. The person must be in possession of information and the information must have a material influence on the decision to engage in the dealing...The information must be one of the reasons for the dealing..., but need not be the only reason;*
 - (2) *the information must be information which is not generally available;*
 - (3) *the information must be likely to be regarded by a regular user as relevant when deciding the terms on which transactions in the investments of the kind in question should be effected;*
 - (4) *the information must relate to matters which the regular user would reasonably expect to be disclosed to users of the particular prescribed market... This includes both matters which give rise to such an expectation of disclosure or are likely to do so either at the time in question, or in the future."*
12. 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."*
13. 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."*
14. 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 require disclosure of information on broadly the same basis as the Listing Rules. Another example of disclosable information includes information which is required to be disseminated under the City Code on Takeover and Mergers.
15. 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

16. 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.
17. On 15 April 2003 at 10:37 am, 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.
18. On 2 May 2003, 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").

Mr Hutchings

19. Mr Hutchings has 7 years' experience in the financial services industry. At the time of the relevant trades, Mr Hutchings was an Approved Person¹ who worked as an equity research analyst principally in the technology sector at Evolution Beeson Gregory ("EBG"). 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. EBG were never IFG's brokers or corporate advisers. The firm did however, through Mr Hutchings, try to pitch for the brokerage on 8 January 2003, but the prospect of this seemed weak within a few days and disappeared during April 2003. EBG also expressed an interest in becoming corporate advisers to IFG following the 15 April announcement; it appears that EBG subsequently quoted unsuccessfully for this work.

Events leading to the 2 May announcement

20. 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 offer of 8p per share in cash. At this meeting, the offer was provisionally agreed subject to two days' due diligence by Dennis.
21. 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' advisers indicated to IFG's advisers that they were aiming to make an offer announcement on Friday 2 May 2003.
22. On 1 May 2003, the relevant offer documentation was signed following IFG Board approval of the recommended cash offer by Dennis. The following day, Dennis released the 2 May announcement.

Mr Hutchings' source of information

23. Mr Hutchings had contact with an individual who was close to discussions about the takeover and therefore a reliable source of relevant information ("the contact").
24. Mr Hutchings had purchased his first parcel of IFG shares on 11 April.
25. During April 2003, Mr Hutchings and his contact were in more frequent communication than usual with each other by telephone, text messages and emails.
26. During the evening of 14 April 2003, Mr Hutchings and his contact exchanged 11 text messages. The FSA does not have the content of those text messages, but at interview Mr Hutchings has admitted that it was very likely that he was informed that IFG were releasing an announcement the following day regarding some corporate activity.

¹ Approved person: a person in relation to whom the FSA has given its approval under section 59 of the Financial Services and Markets Act 2000 (Approval for particular arrangements) for the performance of a controlled function.

27. Mr Hutchings was on annual leave from EBG from 22 to 26 April 2003.

Mr Hutchings' knowledge of relevant information

28. On 28, 29 and 30 April 2003, Mr Hutchings purchased IFG shares whilst possessing relevant information in relation to IFG. In particular, he had been made aware of the likelihood of success of the bid approach by Dennis to IFG and specifically of the price of the bid.
29. On 28 April 2003, Mr Hutchings learned that the Dennis bid had been accepted at 8p. Mr Hutchings has admitted that he knew this information was “inside information” and that it was in his possession at the time of the relevant trades.
30. At 9:41 am on 28 April 2003, Mr Hutchings placed an order with his broker to purchase 80,000 IFG shares.
31. At 8:23 am on 29 April 2003, Mr Hutchings placed a further order with his broker to purchase 80,000 IFG shares.
32. At 1:44 pm on 30 April 2003, Mr Hutchings placed a further order with his broker to purchase 166,666 IFG shares.
33. On 2 May 2003 the announcement confirming the recommended cash offer for IFG was made.

Market abuse: misuse of information

34. Mr Hutchings' behaviour in relation to the relevant trades amounted to market abuse for the purposes of section 118 of the Act.
35. 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, which are qualifying investments traded on AIM which is a prescribed market for the purposes of the Act,
 - (b) was based on information which was not generally available to those using the market but which, if available to a regular user of the market, would or would have been likely to be regarded by him as relevant when deciding the terms on which transactions in investments in the kind in question should be effected; and
 - (c) was likely to be regarded by a regular user of AIM as a failure on the part of Mr Hutchings to observe the standards of behaviour reasonably expected of a person in his position in relation to the market.

Behaviour based on information

36. Mr Hutchings was in possession of information concerning the fact, price and likely success of the Dennis bid approach for IFG. This information had a material influence on Mr Hutchings' decision to deal in IFG shares on 28, 29 and 30 April 2003 as shown by the following:
 - (a) Mr Hutchings received an email at about 9:30 am on 28 April 2003 stating that the

Dennis bid had been accepted. Mr Hutchings responded by asking *"Is there no other bid? When is the announcement due?"* In an email received at about 9.35am that day, Mr Hutchings learned that there were *"no other bids about – 8p looks like the final offer. Without going into all the detail, it is James' best option by a long way"*.

- (b) Mr Hutchings dealt very shortly after receiving all this information, which makes it highly likely that this information did have a material influence on Mr Hutchings' decision to deal.
- (c) Mr Hutchings has admitted that the information was in his possession and that he had read it at the time of the relevant trades.
- (d) Mr Hutchings has also admitted that he had *"very possibly some personal [i.e. financial] interest in relation to when the announcement was due"* and accepted that such information would be unpublished price sensitive information or inside information.
- (e) He has acknowledged that he did not inform or consult the compliance department of his firm before making the trades.
- (f) Mr Hutchings exacerbated his situation by asking when the announcement was due. It is highly likely that he knew such information was disclosable/announceable to the market at large.
- (g) Mr Hutchings has admitted that he staggered the relevant trades over three days so as to deflect unwanted regulatory attention because he believed that if he bought IFG shares in large amounts it *"could generate a problem for[him]"*.
- (h) By 30 April 2003, Mr Hutchings had purchased in total £25,000 IFG shares (£5,000 on 11 April and £20,000 in relation to the relevant trades). This amount was in excess of his normal expenditure on a single stock. In order to purchase IFG shares on 30 April 2003, Mr Hutchings liquidated some of the shares that he held in other companies. This was because he had no more cash available to make the final purchase.
- (i) Mr Hutchings has stated that he would have purchased IFG shares on 28 April 2003 even if he had not received relevant information in relation to IFG because he was extremely confident that the bid approach would be successful. Mr Hutchings has stated that his confidence was based upon a review of press speculation of 16 April 2003 that he undertook on 28 April 2003 on his return from leave and the fact that he believed that James Brown was supporting Dennis' bid approach. There was press speculation in the "Telegraph" newspaper on 16 April 2003 which stated that James Brown was *"tipped as bidder"* for IFG and that *"market speculation centred on a management buy-out"*. There was also speculation in the "Guardian" newspaper on 16 April 2003 which stated that possible suitors for the company included Dennis. However, the FSA is of the view that this information alone would not have led Mr Hutchings to be extremely confident of the bid being successful. It is noted that information was available to Mr Hutchings on 16 April 2003. If Mr Hutchings was going to deal in IFG shares in any event, he would not have pressed for further information but would have gone ahead and dealt at the earliest opportunity. This factor, combined with the proximity between his receipt of the information and the placing of an order for IFG shares, makes it more likely than not that this information had a material influence on Mr Hutchings' decision to deal.

- (j) Mr Hutchings has admitted that he was financially insecure at the time of his trades in IFG shares and therefore needed money. The FSA believes that he dealt because he was certain that he would make money, having regard to the information that was in his possession at the time. This is supported by the fact that he sold his shares soon after the announcement.

Information Not Generally Available

37. The information that the offer was from Dennis, and was at 8p per share and had been provisionally accepted by IFG was not generally available at the time of the trades.
- 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. It 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 it was in fact Dennis behind the bid approach.
 - The information about the value of the offer was not generally available. There was no speculation in the market as to the price that Dennis had offered IFG for each IFG share. Furthermore, neither IFG nor Dennis had as at 28 April 2003 announced the fact that Dennis offer of 8p per IFG share had been provisionally accepted by IFG.
 - This information continued not to be generally available throughout the 28, 29 and 30 April 2003. Additionally, the date that an announcement was going to be made confirming the recommended cash offer was not generally available information.

Relevance of information

38. The fact that the Dennis final offer was 8p per share and had been accepted by IFG was relevant information. It was specific and 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.

Disclosable information

39. 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 information which a regular user would reasonably expect to be disclosed to other users of the market. The information that Mr Hutchings possessed regarding the recommended offer from Dennis for IFG was required to be disclosed under the City Code on Takeovers and Mergers and/or the AIM rules.

Failure to observe standards of behaviour

40. The FSA considers that a reasonable person who regularly deals on AIM would regard Mr Hutchings' behaviour in respect of the relevant trades as a failure to observe the standard of behaviour reasonably to be expected of any investor and certainly that of an Approved Person employed as an analyst with a firm regulated by FSA. As a person at the heart of the stock

market, Mr Hutchings must accept responsibility for his good conduct in the market. Mr Hutchings was well aware of the sensitivity of the information available to him and the impropriety of exploiting that information to his own advantage before it had been made available to investors in accordance with IFG's obligations under the City Code on Takeover and Mergers and/or the AIM rules.

41. 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, simultaneous access to information that is required to be disclosed.

Financial Penalty

42. In enforcing the market abuse regime the FSA's priority is to protect prescribed markets from any damage to or loss of confidence in 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).
43. 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 proposed 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.
44. 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) Mr Hutchings made a total profit of £4,924 in respect of the relevant trades when he sold his shares on 6 May 2003 at 7.63p each. The FSA would normally seek to impose a penalty that at a minimum deprived Mr Hutchings of the benefits that he gained from his abusive behaviour;
 - (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 misuse of information by an Approved Person, in particular by an analyst who obtains relevant information in the course of his employment or otherwise, must undermine investor confidence very seriously. The FSA therefore considers it essential that the penalty imposed should be such as to not only deprive Mr Hutchings of the benefits gained (that is the profit made) by his behaviour but also to act as a powerful incentive to others to refrain from such abuse;
 - (c) the seriousness of this case is aggravated by the fact that Mr Hutchings was at the time an Approved Person and employed as an analyst. Mr Hutchings was acutely aware of

the inappropriateness of dealing on the basis of unpublished, relevant information. Mr Hutchings was also aware that the information he had obtained came from a reliable source who was close to the deal;

- (d) Mr Hutchings initially provided inconsistent explanations of these events in his interviews with the FSA and failed to mention the emails referred to above;
- (e) Mr Hutchings' behaviour was deliberate. He foresaw the consequences of his actions and was concerned before his dealing on 28 April 2003 about the appropriateness of his dealing while in possession of relevant information but nevertheless chose to deal;
- (f) Mr Hutchings pressed for further inside information for his personal benefit on 28 April 2003;
- (g) Mr Hutchings deliberately staggered his purchase on 28, 29 and 30 April 2003 in an attempt to avoid his share purchases being detected;
- (h) Mr Hutchings has no previous disciplinary history;
- (i) Mr Hutchings is no longer working as an Approved Person in the financial services industry. The FSA recognises that the issue of a penalty for market abuse will affect Mr Hutchings' future in the markets;
- (j) Mr Hutchings has recently co-operated with the FSA's investigation and by agreeing to hold early settlement discussions has enabled the FSA to work expeditiously towards its regulatory objectives;
- (k) there are no additional mitigating circumstances.

CONCLUSION

45. 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 penalty imposed is appropriate.

IMPORTANT

This Final Notice is given to Mr Hutchings in accordance with Section 390 of the Act.

Penalty

The penalty of £18,000 must be paid to the FSA in full.

Time for Payment

Mr Hutchings must pay to the FSA the full amount of the penalty specified above by no later than 4 January 2005.

If the Penalty is 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 Hutchings 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, please contact Georgina Philippou at the FSA (direct line: 020 7066 1286 fax: 020 7066 1287)

Tracey McDermott
Head of Department
FSA Enforcement Division