Financial Services Authority

FINAL NOTICE

To: **Andrew Jon Osborne**

Date of Birth: **18 November 1969**

Date: **15 February 2012**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") gives final notice that it has taken the following action:

1. THE ACTION

1.1. The FSA served on Andrew Jon Osborne ('Mr Osborne') a Decision Notice on 12 January 2012 which notified him that it had decided to impose on him for the reasons set out below, and pursuant to section 123(1) of the Financial Services and Markets Act 2000 ("the Act"), a financial penalty of £350,000 for engaging in market abuse in breach of section 118(3) of the Act.

1.2. Mr Osborne has not referred the matter to the Upper Tribunal (Tax and Chancery Chamber).

1.3. Accordingly, for the reasons set out below, the FSA hereby imposes a financial penalty of £350,000 for engaging in market abuse.

2. REASONS FOR THE ACTION

2.1. This notice is issued to Mr Osborne as a result of his behaviour between 9 and 11 June 2009.

2.2. In June 2009, Mr Osborne was a Managing Director in the Corporate Broking group of Merrill Lynch International ("MLI"). (MLI is now part of Bank of America Merrill Lynch.) In May and June 2009, Mr Osborne led the corporate broking team at MLI in acting for Punch Taverns Plc ("Punch") as joint book runner and co-sponsor in relation to a transaction to issue new equity ("the Transaction").

2.3. Mr Osborne's role in the Transaction included responsibility for wall crossing certain shareholders in Punch based in America ("the US Shareholders"). Specific wall crossing procedures for the US Shareholders were put in place by MLI requiring the US Shareholders to agree to the terms of a written non-disclosure agreement ("NDA"). (The terms "wall crossing" and "non disclosure agreement" or "NDA" are explained at paragraphs 3.4-3.10 below.) These procedures were known to and understood by Mr Osborne.

2.4. Greenlight Capital Inc ("Greenlight") was one of the US Shareholders and owned 13.3% of Punch's shares (Greenlight had investments in Punch in the form of both shares and contracts for difference, but for convenience, this Final Notice refers to Greenlight as a "shareholder" and to Greenlight's "shares".) Greenlight refused Mr Osborne's invitation to be wall crossed in relation to Punch, but Mr Osborne proceeded to arrange a conference call on a non-wall crossed basis between Greenlight and Punch management to take place on Tuesday 9 June 2009 ("the Punch Call").[1]

2.5. During the Punch Call, Mr Osborne disclosed information concerning the Transaction to Greenlight. The inside information disclosed by Mr Osborne to Greenlight was that Punch was at an advanced stage of the process towards the issuance of a significant amount of new equity, probably within a timescale of around a week, with the principal purpose of repaying Punch's convertible bond and creating headroom with respect to certain covenants in Punch's securitisation vehicles. In providing information about the Transaction to Greenlight during the Punch Call, Mr Osborne engaged in market abuse by improperly disclosing inside information.

2.6. As a result of the Punch Call, Greenlight proceeded to sell shares in Punch. Between 9 June and 12 June 2009, it sold 11.65 million Punch shares. The Transaction was announced to the market on 15 June 2009 and the price of Punch's shares fell by 29.9%. Greenlight's sale of Punch shares prior to the announcement had resulted in loss avoidance of approximately £5.8 million.

2.7. The FSA considers this to be a serious case of market abuse by Mr Osborne for the following reasons:

(i) Mr Osborne was an experienced corporate broker in a position of considerable responsibility. He had significant wall crossing experience. He understood the market abuse provisions in the Act and understood the nature of the type of information that could be inside information;

[1] Transcript of the Punch Call on 9 June 2009 (See Annex 2).

(ii) Mr Osborne knew and understood MLI's internal policies regarding wall crossings and the protection of inside information. He knew and understood the specific wall crossing procedures in place regarding the Transaction for the US Shareholders, in particular, that details about the Transaction should not be disclosed without agreement to the terms of a written NDA;

(iii) bearing in mind the fact that Greenlight had refused to be wall crossed and that, as a result, significant legal and regulatory risk arose from a conversation proceeding between Punch management and Greenlight, Mr Osborne should have taken great care regarding the information he disclosed, and taken adequate steps to ensure that he complied with regulatory requirements. He did not do so. Further, despite the evident risk arising from the Punch Call, he did not refer the contents of the call to senior management, internal compliance or legal personnel at MLI, as a matter of potential concern;

(iv) Mr Osborne was trusted in his role as the gatekeeper of inside information. By disclosing inside information to Greenlight he compromised the integrity of the market, thereby damaging market confidence.

(v) shortly after the Punch Call, Mr Osborne was put on notice that Greenlight was selling its shares in Punch. He took no steps to raise any concerns regarding the contents of the Punch Call and the subsequent sale of shares by Greenlight with anybody, including MLI's senior management, legal or compliance personnel. It should have been obvious to Mr Osborne that Greenlight may have been selling due to the information received during the Punch Call, and at the very least he should have reconsidered the situation in light of the selling, yet he took no steps to address the risk of market abuse.

2.8. Despite being a serious case of market abuse, the improper disclosure by Mr Osborne was not deliberate or reckless. In disclosing inside information, Mr Osborne did not intend or expect Greenlight to deal on the basis of that information. Indeed, Greenlight's sale of Punch shares was potentially contrary to the interests of Punch and potentially detrimental to the Transaction. Mr Osborne did not stand to gain any personal or professional benefit through Greenlight's sale of Punch shares.

3. FACTS AND MATTERS

Mr Osborne

3.1. Mr Osborne has over 18 years of experience acting as a corporate broker for public limited companies and has held FSA approval since 2001 (in June 2009, he held FSA approval as the CF30 Customer Function). In June 2009, he was one of the four Managing Directors in the Corporate Broking group at MLI and also sat on the MLI UK executive committee which was responsible for running MLI's investment banking business in the UK. He was therefore in a senior position with considerable responsibility.

3.2. Mr Osborne undertook regular training regarding market abuse in his role at MLI. He understood the meaning of inside information and he understood that it is an offence to

improperly disclose inside information. He was familiar with MLI policies that applied when wall crossing third parties on a transaction and he had considerable experience performing wall crossings.

3.3. MLI was the long-term broker to Punch and Mr Osborne led this corporate broking account. He also led the corporate broking team at MLI in relation to the Transaction.

Wall crossing

3.4. Wall crossing is a process whereby a company can legitimately provide inside information to a third party. A company may wall cross a variety of third parties ranging from large institutional shareholders to small shareholders or completely unrelated parties.

3.5. There are a number of reasons for wall crossing third parties. A common reason is to give the third party inside information about a proposed transaction by a company that is publicly listed (for example, a merger or acquisition, or fundraising transactions, including equity issuances).

3.6. In the context of a proposed transaction, the purpose of the wall crossing is to share inside information with the third party in order to be able to discuss the third party's views on the transaction. These views would usually include an indication of the third party's interest in and/or support for the transaction.

3.7. Once a third party agrees to be wall crossed, it can be provided with inside information and it is then restricted from trading. The party is only able to trade in the company's shares again once the information it has been given is made public. In the context of a transaction, the information will be made public either when the transaction is announced to the market, or in cases where a transaction does not proceed, when an announcement is made to the market stating that a transaction was contemplated, but did not proceed. This announcement may be referred to as a cleansing statement.

3.8. Wall crossing is a well-established practice in large public companies and investment banks. It may be carried out verbally or recorded in writing. An example of a verbal process of wall crossing would be where the third party is contacted by telephone. The third party is asked if they are prepared to be wall crossed, usually for a specified period of time. If they agree, they are then told the relevant information. An example of a wall crossing procedure recorded in writing is where written terms are agreed. These terms set out the basis on which the third party agrees to receive the inside information. Such agreements may be referred to as non-disclosure agreements or NDAs.

3.9. With regard to the Transaction, it was decided that it would be desirable to wall cross Punch shareholders and potential investors in the new equity prior to the Transaction being announced to the public. In particular, the US Shareholders held a significant stake in Punch and were to be wall crossed for the purpose of gauging their support for the Transaction and understanding their level of interest in purchasing new equity in Punch.

3.10. MLI designed a bespoke procedure for wall crossing the US Shareholders in consultation with its internal lawyers and also external legal advisors. Mr Osborne was

responsible for effecting the wall crossing of the US Shareholders pursuant to this procedure. This involved the US Shareholders agreeing to the terms of a written NDA, following which details of the Transaction could be provided to them.

Events leading to the Punch Call on 9 June 2009

3.11. Punch had considered issuing equity in late 2008, but had been advised that an equity issuance would not be possible due to poor market conditions. In early 2009, market conditions improved such that equity transactions once more became a realistic possibility.

3.12. Punch issued interim results for the first quarter of 2009 on 29 April 2009 and it then conducted a post results road show at the beginning of May. During the road show, several shareholders and potential investors suggested to Punch that it should consider an equity raise.

3.13. Following the road show, on 6 May 2009, the Board of Punch gave approval for management to consider an equity issuance. The principal purpose of the proposed issuance was to repay Punch's convertible bond in the sum of approximately £220 million, and also to create headroom with respect to certain covenants in Punch's securitisation vehicles. (Punch had three wholly owned securitisations vehicles. Punch's assets (*i.e.,* the pubs) were owned by these securitisation vehicles. Income from the securitisations (*i.e.,* profits made by the pubs) would flow to Punch. Certain 'tests' or 'covenants' governed the flow of money from the securitisations to Punch. If the appropriate ratio was not maintained in respect of each test, there would be restrictions on the money that could flow to Punch. Cash raised through an equity issuance could therefore be used to ensure the relevant ratios were maintained and that there was no default such as to restrict money flowing from the securitisations to Punch.)

3.14. Preparations for the Transaction were progressed in May 2009. In early June, the Board of Punch approved certain documentation required for the Transaction and agreed that Punch management could speak to third parties about the proposed Transaction on a wall crossed basis.

3.15. It was decided that the US Shareholders would be wall crossed first. This was because it was considered desirable to understand their response to the proposed equity issuance before wall crossing others. The wall crossing procedure for the US Shareholders is outlined at paragraph 3.10 above.

3.16. Mr Osborne was tasked with making the initial approach to wall cross the US Shareholders as he was Punch's lead corporate broker at the time and had met these shareholders before. MLI internal records show that members of the deal team raised concerns that if Punch approached the US Shareholders, there was a risk that they would be put on notice of the Transaction before having agreed to be wall crossed.

3.17. MLI's legal department told Mr Osborne the procedure in place for communicating with the US Shareholders, which was to obtain their agreement to be wall crossed by telephone, then obtain their agreement to the terms of an NDA by email and only then to give them details of the Transaction. Mr Osborne understood that he was not to give

the US Shareholders specific information to suggest Punch was considering an imminent, significant equity issuance on these initial calls, prior to the NDA being agreed.

3.18. By the time that Mr Osborne started to make calls to ask the US Shareholders if they would agree to be wall crossed (on 8 June), the anticipated launch date for the Transaction was set for Friday 12 June (although in the event this was delayed by one trading day to Monday 15 June).

3.19. On Monday 8 June 2009, Mr Osborne had a telephone conversation with an analyst at Greenlight. He said that the call was a post road show follow up call and he raised the subject of a possible equity issuance by Punch and asked the analyst if Greenlight would agree to be wall crossed. The wall crossing request was referred to David Einhorn, President and sole portfolio manager of Greenlight. Mr Einhorn would not agree to Greenlight being wall crossed and this decision was relayed back to Mr Osborne by the analyst. Mr Osborne attempted to persuade Greenlight to be wall crossed, but this was not agreed and instead a call was set up for the following day between Greenlight and Punch management on an 'open' basis.

3.20. In a telephone call on the morning of 9 June, Punch management sought legal advice from their external lawyers on the Transaction regarding the call with Greenlight. Whilst they advised that the call could proceed, the only detail of the advice given, that Mr Osborne could recall, was that they should not give any definitive sense that a transaction was going ahead, and should not disclose the timing, structure or pricing of any potential transaction. Mr Osborne was party to this call between Punch management and its lawyers, but he did not take any other steps himself to deal with legal or regulatory risk in advance of the Punch Call. In particular, he did not consult with MLI's lawyers or compliance teams involved in the Transaction.

The Punch Call

3.21. Mr Osborne and Punch management participated in the Punch Call with Greenlight. The Punch Call lasted for approximately 45 minutes and involved a considerable amount of discussion between Punch management and Greenlight. Mr Osborne made several key disclosures to Greenlight during the Punch Call.

3.22. Mr Osborne's disclosures to Greenlight during the Punch Call have been assessed in the context of the Punch Call as a whole. The context includes the information provided to Greenlight both shortly before the Punch Call and during the Punch Call, in particular:

(i) MLI wanted to wall cross Greenlight in relation to Punch; and

(ii) Punch was considering a new equity issuance.

3.23. The inside information disclosed by Mr Osborne to Greenlight on the Punch Call was that Punch was at an advanced stage of the process towards the issuance of a significant amount of new equity, probably within a timescale of around a week, with the principal purpose of repaying Punch's convertible bond and creating headroom with respect to certain covenants in Punch's securitisation vehicles. The particular points of information disclosed by Mr Osborne on the Punch Call are detailed below.

3.24. First, Mr Osborne told Greenlight that the amount of any possible issuance would need to be about £350 million in order to repay the convertible and create 10% headroom in the securitisations[2]:

> Einhorn: *So would you – as you pencil that out, what do those amounts turn out to be?*
>
> Osborne: *Something like 350 sterling*
>
> Einhorn: *350 million sterling?*
>
> Osborne: *If you were – if you were roughly to sort of work on the basis that you kinda took out the – the converts and that's something that gives you, say 10 percent headroom in within both of the covenants, filed covenants.*

3.25. Accordingly, Mr Osborne disclosed that the principal purpose of the issuance would be to repay the convertible bond and create headroom in the securitisations, and that the sum of issuance being considered was of a very significant size; Punch was not considering a small equity issuance in the sum of, for instance, around £50 million. Whilst he did not state that the figure was definitive, the information he disclosed indicated that the issuance would be of considerable size compared to Punch's market capitalisation. (Punch's market capitalisation at the time of the Punch Call was approximately £400 million.)

3.26. Second, Mr Osborne disclosed to Greenlight that an NDA would be likely to last for less than a week. He offered to give Mr Einhorn a "*timeframe*" in respect of the NDA, and when questioned by Mr Einhorn on what that would be Mr Osborne stated "*Well, within less than a, kind of a week.*"[3]

3.27. Whilst an NDA does not confirm that a transaction is definitely going to take place within a certain time scale, it does disclose anticipated timing and, in these circumstances, it disclosed that the Transaction was at an advanced stage.

3.28. Third, Mr Osborne disclosed to Greenlight that Punch was consulting with all of its major shareholders, and that there was broad support for an equity issuance, thus also indicating that the Transaction was at an advanced stage and likely to proceed[4]:

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[2] Transcript of the Punch Call, page 16.
[3] Transcript of the Punch Call, page 30.

[4] Transcript of the Punch Call, pages 31 & 32.

Really it's fair to say like, consulting with all of the – the major shareholders in terms of taking, you know, taking into account their views…

…a number of people have sort of signed NDAs because we had a bit more open conv- conversations…

…I think it's fair to say that, you know, broadly, mostly all the shareholders are supportive…

3.29. Mr Osborne's reference to other NDAs further indicated that the Transaction was likely to take place within a short period of time.

3.30. In isolation, none of the above points would (in the context of the Punch Call) amount to inside information. However, taken together these points did constitute inside information particularly because they disclosed the purpose and anticipated size and timing of the Transaction.

3.31. Despite assertions made during the call by Punch management that they were considering their options and that no formal decisions had been made, this did not detract from the essential information disclosed during the call, namely that they were at an advanced stage of the process towards the issuance of a significant amount of new equity, probably within the timescale of around a week, with the principal purpose of repaying Punch's convertible bond and creating headroom with respect to certain covenants in Punch's securitisation vehicles.

Notice of sale of shares by Greenlight after the Punch Call, prior to the announcement of the Transaction

3.32. On 11 June, Mr Osborne was specifically informed by Punch management that Greenlight had sold a significant number of shares in Punch on the preceding days.

3.33. Mr Osborne took no action to address the risk that Greenlight was selling on the basis of the Punch Call and, consequentially, he failed to address the possibility that market abuse was taking place.

3.34. On Monday 15 June an RNS was released by Punch announcing the Transaction. Punch informed the market of its intention to raise approximately £375 million by means of a firm placing and open offer of new ordinary shares. It also announced its intention to make a tender offer to holders of the convertible bond to purchase any or all of the bonds at a purchase price of not less than 95% (as a percentage of nominal principal amount outstanding).

3.35. Following the announcement of the Transaction, the price of Punch's shares fell by 29.9%. Greenlight's trading had avoided losses of approximately £5.8 million.

4. FAILINGS

4.1. Relevant statutory provisions and regulatory guidance are set out in Annex 1.

4.2. Mr Osborne's behaviour fell within section 118(1)(a) of the Act, in that he disclosed information about Punch shares:

(i) shares in Punch are qualifying investments; and

(ii) shares in Punch are traded on a prescribed market, the London Stock Exchange.

4.3. Mr Osborne's behaviour amounted to market abuse by way of improper disclosure in breach of section 118(3) of the Act:

(i) Mr Osborne was an insider;

(ii) Mr Osborne disclosed inside information; and

(iii) the disclosure was not in the proper course of his employment, profession or duties.

4.4. Mr Osborne was an insider because he had inside information as a result of having access to information through the exercise of his employment as a Managing Director in corporate broking at MLI.

4.5. The information disclosed by Mr Osborne met the statutory requirements of inside information, namely:

(i) the information related to Punch and to Punch shares;

(ii) the information was precise because:

(a) it indicated an event (*i.e.*, the issue of new shares) that may reasonably have been expected to occur (see paragraphs 4.7-4.10 below); and

(b) it was specific enough to enable a conclusion to be drawn as to the possible effect of the share issuance on the price of Punch shares (see paragraphs 4.11-4.14 below);

(iii) the information was not generally available (see paragraphs 4.15-4.16 below); and

(iv) the information was likely to have a significant effect on the price of Punch shares as it was information which a reasonable investor would be likely to use as part of the basis of his investment decisions (see paragraph 4.17 below).

4.6. Mr Osborne did not make the disclosures within the proper course of his employment, profession or duties.

The information indicated an event may reasonably have been expected to occur

4.7. The information disclosed by Mr Osborne was sufficiently precise to indicate that a share issuance may reasonably be expected to occur. It was not necessary for Mr

Osborne to disclose that the Transaction was definitely going to proceed and, indeed, the Transaction was not a certainty at the time of the disclosures.

4.8. Mr Osborne told Greenlight the likely amount of the issuance and the purpose of the issuance, that an NDA would last for less than a week, that Punch was consulting with all of the major shareholders and that other shareholders had signed an NDA and shareholders were broadly supportive of Punch issuing equity. These points together indicated that an equity issuance may reasonably be expected to occur.

4.9. The information provided, that an NDA would last less than a week, is particularly relevant in that it gave a clear indication as to the expected timing of the Transaction. When a firm wall crosses investors, a transaction is usually close to launch. Firms do not wall cross investors for more than a short period of time prior to the intended launch date of a transaction and it is usually one of the latter stages in the transaction process. Thus, at the time of wall crossing third parties, there is no absolute certainty that a transaction will go ahead, however, it is the case that a transaction is likely to be at an advanced stage of preparation. Mr Osborne's disclosure that the NDA would last for less than a week, together with the other pieces of information he disclosed, provided a clear indication that the Transaction was at an advanced stage, probably within a timescale of around a week.

4.10. The information disclosed by Mr Osborne was sufficient to indicate that an equity issuance might reasonably be expected to occur, especially when viewed in the context of the Punch Call generally.

The information was specific enough to enable a conclusion to be drawn as to the possible effect of the Transaction on the price of Punch shares

4.11. With regard to the price sensitivity of the information, the information given by Mr Osborne about the size and purpose of the issuance was sufficient to allow a conclusion to be drawn as to its possible effect on the price of Punch shares.

4.12. The conclusion could be drawn that when the Transaction was announced it would have an effect on the price, and that if there were such an effect it would be to reduce the price.

4.13. Whilst in some situations equity issuances may cause the share price to go up, the most likely effect of this size of equity issuance by Punch, at this time and for the given reasons was to cause the share price to fall. The particular factors to note are:

(i) the market was not expecting the issuance so it was not factored into the share price; in particular, the interim results released by Punch 6 weeks previously had indicated that Punch was financially on track and that it was focussing on a strategy of "self help";

(ii) the anticipated size of the issue was a large amount of equity in relation to Punch's market capitalisation;

(iii) the money was to be used to pay off debt and create headroom in relation to the securitisations in order to avoid a breach of covenants, but would still leave Punch with substantial debt;

(iv) the money was not being used to make an acquisition or some other such purpose that might boost the share price; and

(v) Punch's share price had significantly recovered from its low of 32p in March 2009 and Punch was not in a position where the only possible reaction to the issuance was for the share price to increase.

4.14. In these circumstances, it was predictable that the share price would fall. The information disclosed by Mr Osborne was therefore specific enough to enable a conclusion to be drawn as to the possible effect of the issuance on the price of Punch shares.

The information was not generally available

4.15. Whilst there was some speculation in the market that Punch may have to raise capital by way of new equity in or around 2009, there was no certainty as to whether Punch would announce this type of transaction. Press releases and public statements from Punch indicated that it was pursuing a strategy of "self help" by disposing of assets and buying back debt at a discount in the market.

4.16. There was no generally available information regarding the timing, size and support for the Transaction and these factors could not have been deduced by market participants from public information. Therefore, it was not generally available information that Punch was at an advanced stage of the process towards the issuance of a significant amount of new equity, probably within a timescale of around a week, with the principal purpose of repaying Punch's convertible bond and creating headroom with respect to certain covenants in Punch's securitisation vehicles.

The information was likely to have a significant effect on price as it was information which a reasonable investor would be likely to use as part of the basis of his investment decisions

4.17. It follows from the analysis at paragraphs 4.11–4.14 above that a reasonable investor would be likely to use the information disclosed by Mr Osborne as part of the basis of his investment decisions.

5. SANCTION

5.1. DEPP 6.1.2 sets out that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

5.2. In enforcing the market abuse regime, the FSA's priority is to protect prescribed markets from any damage to their fairness and efficiency. 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 enforced in the UK financial markets. The public enforcement of these standards also furthers public awareness of the FSA's statutory objective of the protection of consumers, as well as deterring potential future market abuse.

5.3. DEPP 6.2.2 sets out a number of factors to be taken into account when the FSA decides whether to take action in respect of market abuse. They are not exhaustive, but include the nature and seriousness of the behaviour, the degree of sophistication of the users of the market in question, the size and liquidity of the market and the susceptibility of the market to market abuse. Other factors include action taken by the FSA in similar cases, the impact that any financial penalty or public statement may have on financial markets or on the interests of consumers and the disciplinary record and general compliance history of the person concerned.

5.4. DEPP 6.4 sets out a number of factors to be taken into account when the FSA decides whether to impose a financial penalty or issue a public censure. They are not exhaustive but include deterrent effect, whether a person has made a profit or loss by his misconduct, the seriousness of the behaviour and the FSA's approach in similar previous cases.

5.5. DEPP 6.5 (as it applied during the relevant period) sets out some of the factors that may be taken into account when the FSA determines the level of a financial penalty that is appropriate and proportionate to the misconduct. They are not exhaustive, but include deterrence, the nature, seriousness and impact of the misconduct, the extent to which the breach was deliberate or reckless, whether the person on whom the penalty is to be imposed is an individual, his status, position and responsibilities, financial resources and other circumstances, the amount of any benefit gained or loss avoided, the difficulty of detecting the breach, the disciplinary record and compliance history of the person and the action that the FSA has taken in relation to similar misconduct by other persons.

5.6. The FSA has taken all of the circumstances of this case into account and considered the guidance in DEPP 6 in deciding that it is appropriate in this case to take action in respect of behaviour amounting to market abuse, that the imposition of a financial penalty is appropriate and that the level of financial penalty is appropriate and proportionate.

5.7. The FSA has had particular regard to the following circumstances in relation to Mr Osborne's behaviour:

(i) Mr Osborne was an experienced corporate broker in a position of considerable responsibility. He had significant wall crossing experience. He understood the market abuse provisions in the Act and understood the nature of the type of information that could be inside information;

(ii) Mr Osborne knew and understood MLI's internal policies regarding wall crossings and the protection of inside information. He knew and understood the

specific wall crossing procedures in place regarding the Transaction for the US Shareholders, in particular, that details about the Transaction should not be disclosed without agreement to the terms of a written NDA;

(iii) bearing in mind the fact that Greenlight had refused to be wall crossed and that, as a result, significant legal and regulatory risk arose from a conversation proceeding between Punch management and Greenlight, Mr Osborne should have taken great care regarding the information he disclosed, and taken adequate steps to ensure that he complied with regulatory requirements. He did not do so. Further, despite the evident risk arising from the Punch Call, he did not refer the contents of the call to senior management, internal compliance or legal personnel at MLI, as a matter of potential concern;

(iv) Mr Osborne was trusted in his role as the gatekeeper of inside information. By disclosing inside information to Greenlight he compromised the integrity of the market, thereby damaging market confidence;

(v) shortly after the Punch Call, Mr Osborne was put on notice that Greenlight was selling its shares in Punch. He took no steps to raise the contents of the Punch Call and the subsequent sale of shares by Greenlight with MLI's senior management, legal or compliance personnel. It should have been obvious to Mr Osborne that Greenlight may have been selling due to the information received during the Punch Call, and at the very least he should have reconsidered the situation in light of the selling, yet he took no steps to address the risk of market abuse;

(vi) the improper disclosure by Mr Osborne was not deliberate or reckless;

(vii) in disclosing inside information, Mr Osborne did not intend or expect Greenlight to deal on the basis of that information. Indeed, Greenlight's sale of Punch shares was contrary to the interests of Punch and potentially detrimental to the Transaction; and

(viii) Mr Osborne did not stand to gain any personal financial benefit through Greenlight's sale of Punch shares.

5.8. It is also noted that Mr Osborne voluntarily attended an FSA interview under caution. Further, he has not previously been the subject of an adverse finding by the FSA.

5.9. In the circumstances, the FSA has decided to impose a financial penalty on Mr Osborne of £350,000.

6. REPRESENTATIONS AND FINDINGS

6.1. Below is a brief summary of the key written and oral representations made by Mr Osborne in this matter and how they have been dealt with. In making the decision which gave rise to the obligation to give this notice, the FSA has taken into account all of Mr Osborne's representations, whether or not explicitly set out below.

Greenlight's knowledge prior to the Punch Call

6.2. Mr Osborne made representations that:

(i) prior to the Punch Call, Greenlight knew that an equity issuance was an option that Punch was considering, in which other shareholders had shown an interest. Greenlight also knew that an NDA was being offered to some investors. Taking into account the information already known to Greenlight prior to the Punch call, along with the information provided to Greenlight on the call by Punch's management, on the Punch Call Mr Osborne did not add significantly to the sum total of information already known to Greenlight;

(ii) some of the information which Mr Osborne is criticised for revealing is the same information revealed by Punch management earlier on the call. It is unfair to criticise Mr Osborne for revealing information already revealed by Punch management. Mr Osborne could only 'disclose' information by revealing previously unknown information; and

(iii) overall, although Mr Osborne may have reinforced the impression that an equity issuance was imminent, his statements on the Punch Call did not go so far as to constitute inside information.

6.3. The FSA has found that:

(i) although Greenlight were made aware of some information regarding a possible equity issuance by Punch prior to the Punch Call, and on the call itself by management, Mr Osborne's statements, taken together and in the context of the call, disclosed to Greenlight for the first time the inside information that Punch was at an advanced stage of the process towards the issuance of a significant amount of new equity, probably within a timescale of around a week, with the principal purpose of repaying Punch's convertible bond and creating headroom with respect to certain covenants in Punch's securitisation vehicles;

(ii) information can be disclosed to an individual to whom that information has already been revealed. Even if the information is the same, the mere fact that another person has stated it may lend credence to its veracity. Further, it may carry more weight depending on by whom it is disclosed. In any event, in this case, notwithstanding the information of which Greenlight was already aware, Mr Osborne disclosed to them the inside information for the first time; and

(iii) as set out above, Mr Osborne's disclosures constituted inside information.

Reasonable expectation

6.4. Mr Osborne made representations that:

(i) He did not have a reasonable expectation of an equity issuance at the time of the Punch Call and, as a matter of fact, he does not believe that there was a reasonable expectation of an equity issuance at the time which he could have disclosed. As at the time of the Punch Call there was significant uncertainty as

to whether an equity issuance would proceed, and what form it would take if it did. A lot depended on shareholder feedback – negative feedback from the largest shareholders could potentially have prevented any issuance. Bearing in mind the only definitively known views at the time were largely negative, in Mr Osborne's view it was more likely than not that no issuance would take place; and

(ii) although it may have been possible for Greenlight to have formed a reasonable expectation of an equity issuance on the basis of the information conveyed to Greenlight on the Punch Call (by both Mr Osborne and Punch management), it is not fair to blame Mr Osborne alone for this. The £350m stated by Mr Osborne was just one possible scenario, and stating that there would be a one-week timetable for an NDA was a perfectly proper attempt to persuade Greenlight to be wall crossed – it is common to give a timeframe for an NDA. Further, it was stated repeatedly on the call that the discussion was high-level and conceptual. Mr Osborne did not believe that a reasonable expectation had been conveyed to Mr Einhorn.

6.5. The FSA has found that:

(i) although the equity issuance was not certain to occur, at the time of the Punch Call, taking into account among other factors the advanced stage of preparation of the transaction, it was reasonably expected to occur. Bearing in mind his knowledge of this, the FSA finds that Mr Osborne had a reasonable expectation that it would occur; and

(ii) Greenlight formed a reasonable expectation of an equity issuance specifically on the basis of Mr Osborne's comments on the call, notwithstanding Punch management's comments that the discussion was high-level and conceptual. Mr Osborne's comments taken together, and in the context of the Punch Call and the background to it, indicated that an equity issuance was reasonably expected to occur.

Specific information

6.6. Mr Osborne made representations that the information he disclosed was not 'specific' within the meaning of section 118C of FSMA. It did not include details regarding the structure, terms or pricing of any equity issuance. It was therefore not possible to draw the conclusion that the effect the equity issuance would be to cause a fall in the price of Punch shares. This was a possible outcome, but a price rise was also possible. Further a reasonable investor would not use the information as part of the basis for an investment decision, as they would require more information to do so.

6.7. The FSA has found that, taking into account Punch's circumstances and the information about it which was already generally available, the information disclosed, which included the anticipated size, purpose and timing of an equity issuance, contained sufficient detail to enable the conclusion to be drawn that the effect on the share price would be a decrease. The information was therefore 'specific'.

Section 123 of the Act

6.8. Mr Osborne made representations that:

(i) he approached the Punch Call with considerable caution. He had the benefit before the call of internal legal advice as well as advice from MLI's and Punch's respective external legal advisers – the latter immediately prior to the Punch Call. Overall the advice was to say that no decisions had been made - the participants could discuss a possible equity issuance, but not details (structure, terms and pricing) or indicate that it was definitely going ahead. Mr Osborne followed this advice. Mr Osborne cannot waive MLI's or Punch's privilege in relation to the advice. Without it the FSA cannot conclude that he acted contrary to it – there is no evidence that he acted inconsistently with the advice received. It should be assumed that, on the basis of the advice, Mr Osborne's approach to the Punch Call was proper, and that he had the best intent;

(ii) MLI senior management were aware of the Punch Call before and after it took place, and there were a number of experienced professionals on the call, none of whom raised any concerns about the information disclosed, even when Greenlight's sale of Punch shares became known; and

(iii) therefore, having obtained legal advice on the initial approach to shareholders and on the specific scope of the Punch Call, and having acted consistently with that advice, in the knowledge of MLI senior management and in the proper course of his employment, Mr Osborne took all reasonable precautions and exercised all due diligence to avoid, and believed on reasonable grounds that his behaviour did not amount to, market abuse.

6.9. The FSA has found that:

(i) Mr Osborne's comments on the Punch Call demonstrate that he was not sufficiently cautious in his approach. The FSA makes no findings about the legal advice received, in respect of which privilege has been claimed by the respective parties and to which the FSA has therefore not been able to give any weight. To the extent that the advice was that Mr Osborne should not disclose that an equity issuance was proceeding, or give details about it, in the FSA's view he did not follow the advice. Further, he did not consult with any compliance or legal advisers following the call;

(ii) as an approved person holding a senior position within MLI Mr Osborne had a duty not to disclose inside information on the call, and to consider for himself whether Greenlight's trading was cause for concern. He failed in both of these duties;

(iii) therefore the defences set out in section 123 of the Act are not available to Mr Osborne in this case.

Penalty

6.10. Mr Osborne made representations that the penalty to be imposed on him is disproportionate in the circumstances, and inconsistent with those imposed in other FSA cases. This is particularly so given that his behaviour was not deliberate or reckless, and that he did not stand to gain any personal benefit from it. His behaviour did not even demonstrate a lack of care; at worst it was an error of judgement – an honest mistake made under pressure in the course of a difficult phone call at a tough time in the market, and which no one else noticed either, as no single comment constituted inside information. At worst his behaviour falls at the least serious end of the spectrum, and it would not be fair to apply a 'means test' based on income.

6.11. The FSA has found that the penalty imposed on Mr Osborne must be sufficient to act as a deterrent to other individuals of equivalent seniority, performing controlled functions at firms which are recognised as significant market participants, whose actions are fundamental to market integrity. In circumstances such as those of this case, an error of judgement can have an extremely serious impact on the markets. Mr Osborne's actions, though inadvertent, constituted the improper disclosure of inside information to a major shareholder, widely followed in the market, of a large publicly listed company, which had significant market-wide ramifications. The FSA therefore considers that a significant penalty is warranted.

7. DECISION MAKER

7.1. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

8. IMPORTANT

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

Manner and time for payment

8.2. The financial penalty must be paid in full by Mr Osborne to the FSA by no later than 29 February 2012, being 14 days after the date of this Final Notice.

If the financial penalty is not paid

8.3. If all or any of the financial penalty is outstanding on 1 March 2012 the FSA may recover the outstanding amount as a debt owed by Mr Osborne and due to the FSA.

Publicity

8.4. Section 391(4), (6) and (7) of FSMA apply to the publication of information about the matter to which this Final Notices relates. Under those provisions, the FSA must publish such information about the matter to which the 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 you or prejudicial to the interests of the consumers.

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

FSA contact

8.6. For more information concerning this matter generally, you should contact either Helena Varney (direct line: 020 7066 1294) or Sadaf Hussain (direct line: 020 7066 5768) at the FSA.

Matthew Nunan
Acting Head of Department
FSA Enforcement and Financial Crime Division

ANNEX 1

RELEVANT STATUTORY PROVISIONS AND REGULATORY GUIDANCE

Statutory provisions

1. Market Abuse is defined at Section 118(1) of the Act as follows:

> *For the purposes of this Act, market abuse is behaviour (whether by one person alone or by two or more persons jointly or in concert) which:-*
> *(a) occurs in relation to - (i) qualifying investments admitted to trading on a prescribed market …and*
> *(b) falls within any one or more of the types of behaviour set out in subsections (2) to (8).*

2. Section 118(3) sets out the behaviour that will amount to improper disclosure:

> *…where an insider discloses inside information to another person otherwise than in the proper course of the exercise of his employment, profession or duties.*

3. Section 118B of the Act provides as follows:

> *… an insider is any person who has inside information:…*
> *(c) as a result of having access to the information through the exercise of his employment, profession or duties*.

4. Section 118C(2) sets out the requirements for information to be inside information:

> *Inside information is information of a precise nature which:*
> *(a) is not generally available;*
> *(b) relates, directly or indirectly, to one or more issuers of the qualifying investments or to one of more of the qualifying investments;*
> *(c) would, if generally available, be likely to have a significant effect on the price of the qualifying* investments.

5. Section 118C(5) states that information will be precise if it:

> *(a) indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur, and*
> *(b) is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of qualifying investments or related investments.*

6. Section 118C(8) of the Act states that:

> *Information which can be obtained by way of research or analysis conducted by, or on behalf of, users of a market is to be regarded, for the purposes of this Part, as being generally available to them.*

7. Section 118C(6) of the Act sets out when the information will have a significant effect on price:

> *Information would be likely to have a significant effect on price if and only if it is information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions*.

8. Section 123(1) of the Act states:

> *If the Authority is satisfied that a person ("A")—*
>
> *(a) is or has engaged in market abuse, or*
> *(b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by A, would amount to market abuse,*
>
> *it may impose on him a penalty of such amount as it considers appropriate.*

9. Section 123(2) of the Act states that the Authority may not impose a penalty for market abuse in certain circumstances:

> *But the Authority may not impose a penalty on a person if … there are reasonable grounds for it to be satisfied that –*
> *(a) he believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of subsection (1), or*
> *(b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of that subsection.*

The Code of Market Conduct

10. The FSA has issued the Code of Market Conduct ("MAR") pursuant to section 119 of the Act. In deciding to take the action set out in this notice, the FSA has had regard to MAR and other guidance published in the FSA Handbook.

11. MAR 1.2.3 G states that it is not a requirement of the Act that the person who engaged in the behaviour amounting to market abuse intended to commit market abuse.

12. MAR 1.2.9 G states that in order for an individual to be an insider under subsection 118B(c) of the Act, it is not necessary for the person concerned to know that the information in question is inside information

13. MAR 1.2.12 E sets out factors that are to be taken into account in determining whether or not information is generally available, each of which indicate that the information is generally available (and therefore that it is not inside information):

- *Whether the information has been disclosed to a prescribed market through a regulatory information service or otherwise in accordance with the rules of the market.*

- *Whether the information is contained in records which are open to inspection by the public.*

- *Whether the information is otherwise generally available, including through the Internet, or some other publication (including if it is only available on payment of a fee), or is derived from information which has been made public.*

- *Whether the information can be obtained by observation by members of the public without infringing rights or obligations of privacy, property or confidentiality; and*

- *The extent to which the information can be obtained by analysing or developing other information which is generally available.*

13. MAR 1.2.13 E states that in relation to the factors it sets out, information is "generally available" even if only available outside the UK. Further, information is "generally available" even if the observation or analysis is only achievable by a person with above average financial resources, expertise or competence (other than in relation to information contained in records open to inspection by the public).

14. MAR 1.4.5 E and 1.4.6 G set out factors that indicate a disclosure has been made in the proper course of employment, profession or duties:

- *whether the disclosure is permitted by the rules of a prescribed market, of the FSA or the Takeover Code; or*

- *whether the disclosure is accompanied by the imposition of confidentiality requirements upon the person to whom the disclosure is made and is:*

  (a) reasonable and is to enable a person to perform the proper functions of his employment, profession or duties; or

  (b) reasonable and is (for example, to a professional adviser) for the purposes of facilitating or seeking or giving advice about a transaction or takeover bid; or

  (c) reasonable and is for the purpose of facilitating any commercial, financial or investment transaction (including prospective underwriters or placees of securities); or

  (d) reasonable and is for the purpose of obtaining a commitment or expression of support in relation to an offer which is subject to the Takeover Code; or

  (e) in fulfilment of a legal obligation, including to employee representatives or trade unions acting on their behalf ; or

- *whether:*

  (a) the information disclosed is trading information;

  (b) the disclosure is made by a person ("A") only to the extent necessary, and solely in order, to offer to dispose of the investment to, or acquire the investment from, the person receiving the information; and

  (c) it is reasonable for A to make the disclosure to enable him to perform the proper functions of his employment, profession or duties.

Decision Procedures and Penalties Manual

15. Section 123(1) of the Act authorises the FSA to impose financial penalties in cases of market abuse. Section 124 of the Act requires the FSA to issue a statement of its policy with respect to the imposition of penalties for market abuse and the amount of such penalties. The FSA's policy in this regard is contained in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP").

16. In deciding whether to exercise its power under section 123 in the case of any particular behaviour, the FSA must have regard to this statement of policy. Therefore, in determining the penalty to be imposed on Mr Osborne, the FSA has had regard to DEPP 6 as it applied in June 2009.

****

ANNEX 2

TRANSCRIPT OF THE PUNCH CALL

Transcript of telephone call on 9 June 2009 between Punch management, Andrew Osborne (MLI), David Einhorn and Analyst (Greenlight Capital Inc)[1]

[Dial Tone - Dialling]

GREENLIGHT ANALYST: All right. How do you dial a…?

DAVID EINHORN: Oh no, no. I said I wouldn't [overspeaking] do it.

GREENLIGHT ANALYST: We might have to call Ten Holter to have him conference in. He's really smart dialling.

OPERATOR: Thank you for calling Merrill Lynch conferencing. Please enter your passcode followed by the "#" sign.

[Dialling]

OPERATOR: After the tone, please record your name.

[Beep]

DAVID EINHORN: Greenlight…Greenlight…

OPERATOR: Has joined the conference.

PUNCH CEO: Hi.

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[1] Unkown to Mr Einhorn and Greenlight Capital Inc, the call also included two bankers as silent participants.

DAVID EINHORN: Hello, good morning.

PUNCH CEO: [Reference to Greenlight Analyst].

GREENLIGHT ANALYST: Yes, good morning.

PUNCH CEO: Good morning! Well, afternoon our time, morning your time. How are you?

GREENLIGHT ANALYST: Good. David's here with me.

PUNCH CEO: Good.

DAVID EINHORN: Hello. I'm sorry I didn't get to see you.

PUNCH CEO: Hi David.

DAVID EINHORN: Hi, I'm sorry I didn't get to see you when you were in New York.

PUNCH CEO: No, no, we -- well, we've -- we've only had the chance to speak once, although we have seen [reference to Greenlight Analyst] a few times since then.

DAVID EINHORN: Oh, you're -- you're -- you're getting more than -- than I could help with anyway. So, this is good.

PUNCH CEO: Okay. That's fair enough. Well, one day we'll get you around on a pub crawl around some English pubs.

DAVID EINHORN: Oh, that sounds fun.

PUNCH CEO: It is. You're right. This -- we thought we could just take the opportunity to have a chat with you following I think

the conversation you had with our broker at Merrill Lynch just about, you know, sort of where we are in terms of our position in the market, etc. You'll have noticed today that we now have sold 11 pubs to Greene King as well so, you know, we're making good progress on our strategy. But we think that, you know, it's worth at least discussing in principle the -- you know, where that takes us, and what other options we might have.

DAVID EINHORN: Okay.

GREENLIGHT ANALYST: [whispering - inaudible].

PUNCH CEO: So, you know, what we -- what we said at the time of the prelims, and we reiterated it for the interim, is that we still expect to upstream cash from the Punch A and Punch B securitisations in this fiscal year together with the money that we're generating from selling assets from the parent company down into the group. You know, there is a fair chance that we will be able to achieve the repayment of the convertible that's due in December 2010. However, we've always said that there are very large moving parts in this and there is a, you know -- there is a potential so that that isn't achieved. And although the potential and the size of the -- of any shortfall is small, we have to keep that in -- we have to keep monitoring that situation. And moreover, as we -- you know, as we do this process, obviously we've got to keep one eye on the securitisations as well, because it's all very well up streaming cash to the parent company to meet the convertible, but it would be frankly pointless if we paid the convertible off only to breach either technically or otherwise the covenants in Punch A or - or Punch B. So it's – it's finite. The – there some specific advantages that we've taken -- some -- some specific things that we've

taken advantage of in the last year which we can't guarantee going forward, and -- and so we really sort of -- sort of, you know, think about what other things we can consider. I'm gonna give you some examples. So we've been very proactive on the buy back of debt. We bought back over 400 million pounds worth of debt. In fact, that's up almost 100 million since the last time we -- we were -- we spoke, and we continue to buy pubs and, you know, excluding the announcement today -- the announcement that we've made thus far, we've increased the number of pubs bought from 170 to over 300.

DAVID EINHORN: Sold.

PUNCH CEO: Sold, sorry, sorry. It's already sold, yeah. So, I mean, I think that's where we are. Having said that with all of the -- the moving parts, you know, we are -- we are seriously thinking about, you know, how we could actually better it. There's one other thing which is probably important is whilst we've been buying back debt at a - at a substantial discount and we continue to believe that's readily available in the marketplace, we've been able to take advantage of tax structuring to ensure that that discount is tax free. That tax structuring will have to change in October to maintain that. And whilst we're confident that we can maintain that, we're not 100 percent sure, and that would obviously make any -- any -- any buy back to debt in the short -- in due course, more expensive.

So, that's where we stand, and then we think in the circumstances therefore that, you know, it's -- it's only right that we consider what other things we could do. And, you know, given the market -- given the reaction of the market to the interim results, there are a number of

alternatives that we -- we -- we think we can consider, and we just wanted to gauge your opinion.

DAVID EINHORN: Great. I'm not sure whether you're asking what opinion you're asking about though. Is it that -- that you're asking about issuing equity or you're asking about something else?

PUNCH CEO: Well, we're just talking about in general terms, about where we are at the moment in terms of what we've achieved so far.

DAVID EINHORN: Yeah.

PUNCH CEO: And, you know, where you are in terms of your position as -- as shareholders.

DAVID EINHORN: Right.

ANDREW OSBORNE: I think it's fair to say, David, that following the road show, there's been a degree of [inaudible] in bound queries from both shareholders and non-holders [overspeaking] who believe that it would be appropriate for the company to consider issuing equity at this moment in time, which is the conversation I had with [reference to Greenlight Analyst] yesterday --.

DAVID EINHORN: All right.

ANDREW OSBORNE: -- and so, you know, we wanted to -- to follow up on that.

DAVID EINHORN: Right. You know, it seems to me that -- that much of the potential attractiveness of coming and selling equity at this point stems from probably the fact that a few months ago the equity was at 40 pence, and now it's at a £1.60 or

something like this. And so, it's up from the bottom. On the other hand, if you look back a couple of years ago, it's -- the equity is really down a lot. It trades at a very low multiple of the book value and, you know, the comp – the company -- the equity continues to trade as if it's really an option on the debt side of the capital structure. That's -- that's the way that we look at it. And we think it's a very cheap option because of the types of things that you've been -- already been able to execute on, and I think that you're going to be likely to be able to execute on, uh, going forward. I think that in -- if the equity was -- was overpriced and you had an opportunity to reduce the financial risk of the company, I think it would make some sense to considering equity at that point. But I think, if you just looked in a slightly different world and thought "Jeez", if the stock had come from where it was and it had never gone to 40 pence but instead was sitting at 1.60, then 1.60 represented a new low, down from whatever previous higher price it had used to have been at, I don't even think you would be considering selling equity at this point. And -- and so, I think the mere fact that the stock went to some lower price is not reason to -- to dilute the -- to dilute the equity in a substantial way, you know, at this time. The -- the next point would relate to, I guess, the amount, and I guess that would look -- you could look at that two ways. I suppose if it was a very small amount of equity being raised it would not be all that dilutive, and so there wouldn't be a reason to have a very big concern about it. But, on the other hand, if there was a small amount of equity that was being raised, it wouldn't really solve any of the company's intermediate or longer term risks. And if there's a large amount of equity to be raised, well, then it's massively dilutive, then it -- it will dramatically -- I -- from my perspective, worsen the risk/reward from -- from

owning the stock. So, I -- I would -- I would suggest continuing executing what you're doing right now, which seems to be doing very well. I agree with you, it seems like there's going to be a lot of debt in different parts of the capital structure that seems like it's going to be available at attractive prices, and I -- and I wouldn't allow myself to get browbeaten by convertible bondholders or, excuse me, Merrill Lynch investment bankers or whatever else, you know, that -- that is more transaction oriented. I think we create a tremendous amount of value by selling, you know, by selling pubs at reasonable multiples of EBITDA and then repurchasing debt at big discounts, and we're hoping as equity participants not to make 10 or 15 percent of a year, you know, as market equity, but we're looking for a significant revaluation of this company on the basis that at some point the world looks at it and says, "Yes, you are -- you -- you -- you have -- you are clearly solvent, and you clearly deserve some kind of a multiple," and -- and the thing that would cut that off would be issuing so many equity shares that, you know, that – that -- that the upside disappears.

PUNCH CEO: Yeah, David. That's very -- very helpful. Just in terms of -- firstly I completely agree with you in terms of the -- the option, the – the effective implied value attributed to the -- to the equity, the option versus the debt side of the capital structure. And therein lies the conundrum in a -- in a sense that -- that of course that -- that option value at 40p was pure option value. Now, there is at least some expectation that we might survive despite people's better expectations back in, say, January February.

DAVID EINHORN: Right, right.

PUNCH CEO: In terms of – in terms of [overspeaking].

DAVID EINHORN: I -- I would -- sorry. I would say as a -- I would say as a rule of thumb, if the market capitalisation of the equity is less than half of the face value of the debt, the -- the stock remains sort of in an option area.

PUNCH CEO: Well, the only - the only challenge to that is -- for the entirety of our value – of our time as a public company, that has been the case.

DAVID EINHORN: Mm hmm. I don't know if that's really true. Is that really true?

PUNCH CEO: Yeah, yeah, I mean even -- even when our share price was, you know, just over 2, 2.5 billion, you know, the mark -- the market cap value of the debt was over 4.5 billion.

DAVID EINHORN: Yeah, and that's about -- then you're right. Then -- then you had just crossed through the -- the cusp which is of course why -- the stock was at risk to go down, you know, much more than [overspeaking] as it changed.

PUNCH CEO: Well -- well -- well, I don't necessarily disagree with that either –

DAVID EINHORN: Yeah.

PUNCH CEO: -- because at that time, I was one of the few shareholders, and in fact I was challenged by somebody who said that I thought that there was, you know, considerable -- there was too much hype in the -- in the share prices at the time, but in -- in terms of just a couple of the other points you made –

DAVID EINHORN: We weren't --

PUNCH CEO: [overspeaking].

DAVID EINHORN: -- we weren't involved at that point, so I really don't – honestly, I don't really know.

PUNCH CEO: I -- I totally appreciate that and I, you know, I appreciate your -- your -- your involvement as a shareholder. In terms of the -- in terms of the -- the point about the share prices… the 40p versus the 1.60 or something, I think I -- I slightly disagree there because -- I mean, to be honest, the -- the -- the -- the key point is whether – when's the right time to de-risk the balance sheet, and to be honest, that's not a function of the share price. The -- the option value is -- is fine. The prin -- principle of -- of -- of valuing it on an option basis is perfectly fine, and I -- to be honest, you know, we have always managed the capital structure on a -- on a minimal amount of equity relative to -- to the debt. We've always looked to the debt side of the equation as the more important part of the capital structure from use of cash. On the other hand, I mean, what I don't want to do is be in a position where we take it too fine, and that -- that you trip over a -- a hurdle that creates a series of problems, which means that the option value of the equity really is that, and the op -- the equity disappears. Well, whilst in -- in share price terms, the magnitude of the problem might be significant in terms of the overall value terms relative to the debt the magnitude of the -- of -- of the difference is very small. And -- and if you can -- if you can see your way through to a path which allows the re-rating of the stock to compensate for that and also to take into account the fact that you can use the cash to buy back debt at a substantial

discount -- to continue to buy back debt at a substantial discount, any use of cash is very creative from a shareholder point of a view immediately.

DAVID EINHORN: Well, this comes – I mean, this [overspeaking].

PUNCH CEO: I know, just -- just -- just one other point on the convertible. We have not spoken to any convertible holders other than our efforts to buy back the convertible in the market. So, this is not a -- this conversation is not motivated by a conversation with convertible holders, and nor for that matter actually is it driven by investment banks. Having been a poacher turned gamekeeper, I'm as sceptical as you are, I'm unsure about their -- their motives.

DAVID EINHORN: Yeah. What I would ask you then is -- then the question comes down to, because maybe we're just looking at it from a different perspective, it comes down to a question: well what do you think the stock is worth?

PUNCH CEO: Well, I'll be honest with you. The stock is worth either very little or -- or a lot more than it is now depending on --

DAVID EINHORN: Okay.

PUNCH CEO: -- on the expectation of -- you know, of the next couple of years.

DAVID EINHORN: Yes.

PUNCH CEO: And -- and I don't mean -- I don't mean it from my personal perspective of what it's actually worth, but I'm talking about what the market reaction to that will be.

DAVID EINHORN: No, no, no. No, no, then you're making a mistake. Then you're letting the market dictate to you [overspeaking].

PUNCH CEO: I'm sorry, [inaudible].

DAVID EINHORN: Then you -- you don't let the market dict -- my advice to you is, don't let the market dictate to you. You figure out what you think it's worth, and then use the market as a opportunity to create value, which is something that I think you've been doing instinctively, if not explicitly, on -- on the debt side of the balance sheet, and -- and actually with some of the asset sales. You're letting the market tell you what the opportunity is and taking advantage of it. So, why -- why throw that aside for the purpose of -- of figuring out what to do about the equity.

PUNCH CEO: Oh, sure. But then -- then -- then -- then that's the same in terms of looking at the opportunity in terms of the equity. If there is -- if there -- because --

DAVID EINHORN: Of course.

PUNCH CEO: -- to your point -- to your point, there is, yeah looking at -- looking forward in terms of our position and now I'm talking in general terms rather than specifics --

DAVID EINHORN: Right.

PUNCH CEO: -- you know, there is a risk profile to the strategy that we're taking. That risk profile must have an effect on the -- on the value that you would ascribe to the -- to the underlying equity, yeah?

DAVID EINHORN: Right, um. Yes, of course.

PUNCH CEO: Yeah. So -- so, therefore, what I don't want to do is perhaps to have a conversation with you at some stage and say, "Look, this left field event", which is in -- in and of itself relatively minor --

DAVID EINHORN: Mm hmm.

PUNCH CEO: -- has caused a sort of domino effect on all of the activities we're doing.

DAVID EINHORN: Mm hmm.

PUNCH CEO: Or that we've done very well, for example, on -- we're meeting the conv -- the convertible, but in doing so, we've had to push the securitisations to the limits, and there has been a technical breach on the securitisations, and that in turn takes – takes the equation there. So, I'm -- you know, I'm naturally -- we have -- we have -- despite everything, we have acted, I -- I mean, whether it's instinctively or -- implicitly or explicitly, we've been -- we've been very clear in terms of our strategy of realising cash to and – and buying back debts at a discount, as we did back in -- in the autumn of last year. On the other hand, as I said in the beginning, the number of moving parts in that does put yourself in a position where there is a – there is a high risk profile to that, and there has to be a value to the question to -- to removing that risk or at least alleviating that risk.

DAVID EINHORN: Yeah.

PUNCH CEO: And that's -- that's all I'm trying to -- I'm trying to evaluate, and --

DAVID EINHORN: Sure.

PUNCH CEO: -- and also there's another key point which is the timing of that, because 11th hour, 59th minute is brilliant in terms of -- in terms of theory, but in reality the -- the process that you have to go through to have a discussion about equity or -- or quasi-equity-type transaction is much longer than that, the legal process you have to go to, document, etc., seek approvals. And therefore, you don't have the privilege of being able to sort of leave it until the last minute and then pull the trigger.

DAVID EINHORN: Yeah. Well, let me ask you this. You still -- you sort of ducked the question about what you think the value of the -- of the stock is with -- with -- without a -- without a deal.

PUNCH CEO: Um… Well...

DAVID EINHORN: It's -- it's important to have a view to make a -- to make a reasoned decision.

PUNCH CEO: I -- I think -- I think the -- the valuation is -- is fair at the moment. On the other hand, I don't think necessarily that the market fully understands the extent of, the pluses and minuses to get us to the position we are faced in 2010.

DAVID EINHORN: Yeah.

PUNCH CEO: And so, therefore -- therefore, if I was putting a risk factor on that I would discount it.

DAVID EINHORN: Mm hmm.

PUNCH CEO: But at the same time, I just -- you know, I'm not -- I'm not setting a market price for the -- for the equity. I'm just running the business. I'm actually, frankly, not looking at the equity price; I'm looking at it from the point of view of maximising the value for shareholders, long-term.

DAVID EINHORN: Right. Well, I think its fine to run the business not looking at the equity price, except when you're considering doing a transaction relating to the equity. Then -- then -- then it's -- then you can't run the business without considering the equity price. When you're doing it -- when you're transacting in the equity you have to think about the equity price.

PUNCH CEO: Well, yes -- yes and no. Because the way I look at our business and I'm -- I'm -- I'm being simplistic, I know that it's far more detailed than this, but it is that we have a fixed asset value of port – of the portfolio at a number, and at the last valuation, the number was 6.5 billion pounds. Now -- now, the enterprise value of the business today -- sorry, the -- the -- the value of the debt on a gross basis is around 4.5 billion pounds, so that would imply -- so there is a -- roughly a 2 billion-pound asset value that is attributable to the equity.

DAVID EINHORN: Right, now, what's the value of -- of the debt at market?

PUNCH CEO: Right, the market value of the debt is around 3.5 billion pounds so that's a 3 billion implied value to the equity.

DAVID EINHORN: Okay. Then -- and -- then we --

PUNCH CEO: So that [overspeaking] -- so that compares to a, you know, a position today of just over 400 million pounds market cap. It seems like a very large delta which is worth -- worth preserving and that's my -- so my view on that basis is it's, you know, the valuation is grossly undervalued. On the other hand --

DAVID EINHORN: Mm hmm.

PUNCH CEO: -- if I trip over some further issue and the house of cards, you know, you know, takes effect and we lose all of that --

DAVID EINHORN: Mm hmm.

PUNCH CEO: -- we won't have time to turn around and say, "Let's fill in the gap today", because it will have gone, it won't be attributable to us in a direct form. It will be very difficult to extract.

DAVID EINHORN: Mm hmm. So -- so how much equity do you think you need to raise to protect the situation?

PUNCH CEO: Well, I -- I think -- I -- I think the market sort of dictates this. I don't think it's a matter for the market to dictate that. We -- our view is simple, that is, that, you know, we have to make sure that we can preserve a sensible headroom to the covenant from a securitisation and -- and take out the convertible as the -- the maximum and minimum requirement of any discussion. But there's absolutely -- if you go back over the history, and I know -- I -- and I -- and I perfectly respect that you've not been involved from the beginning, but when we originally floated the company, we did an initial public offering of 116 million pounds. We have only done since that time --,

that's 161 million pounds. We have only done, since that time, 175 million pounds [inaudible]. So, to be absolutely clear, I don't -- I don't look at the business from an equity perspective and if -- you know, and it's not my intention to over-equitise this business whatsoever. The transactions that we've done, for example, we've shown, pretty substantially dispassion in what we've sold to ensure that we maximise value on the debt and, so this -- so it's merely about making sure that -- and we can turn around to the shareholders and say, "Actually, anything that we do is sufficient to give ourselves a – headroom for a considerable period of time into the future and also addresses the convertible". That's the maximum and that would be the minimum that would be worth considering.

DAVID EINHORN: Mm hmm. So, would you -- as you pencil that out, what do those amounts turn out to be?

ANDREW OSBORNE: Something like 350 sterling.

DAVID EINHORN: 350 million sterling?

ANDREW OSBORNE: If you were -- if you were to roughly sort of work on the basis that you kinda took out the -- the converts, and that's something that gives you, say, 10 percent headroom in within both of the covenants, filed covenants.

DAVID EINHORN: Wow, wow. That would be shockingly horrifying from my perspective. Can you sell half the company just at a buck and a half -- a Euro -- a pound and half? Oh, no.

ANDREW OSBORNE: So those proceeds are applied to buying back debt at say 60 in the pound and remember any --

DAVID EINHORN: Who cares --

PUNCH CEO: -- [inaudible].

DAVID EINHORN: -- who cares, who cares, after a year of going through this, now we're going to dilute ourselves like this. Oh, no.

ANDREW OSBORNE: Why do you get diluted?

DAVID EINHORN: Because you doubled the share capital almost.

PUNCH CFO: Yeah, but [overspeaking].

DAVID EINHORN: And this is --

ANDREW OSBORNE: You know, and on a pre-emptive basis.

DAVID EINHORN: We've done -- we've done all of this. We get to double our investments and have basically still highly levered thing, subject to all the same operating risk, just so that you guys don't have to follow through and, you know, deal with the converters. We've been discussing with you for the last year and a half, where, at worst, it was gonna get very close to some small amount.

PUNCH CEO: Dave -- Dave -- David, but we're sorry, we're -- we are acting on the basis of the current plans so you -- today, we announced the transaction to sell 11 sites to Greene King.

DAVID EINHORN: Right.

PUNCH CEO: We're not done, you know, that is -- that is the priority and we're carrying on business as usual. On the other hand, I

would be -- I would be at fault if I did not, sort of at least identify the -- the risk profile of the issue.

DAVID EINHORN: Right, I don't -- I -- I don't think --

PUNCH CEO: I'm – I'm not –

DAVID EINHORN: -- if there is -- if there is risks that we don't understand, we should talk about them some more, but, I mean, we've -- we have spent a fair amount of time kinda going through this; and we understand it's -- it's a -- and it's not that we're callous towards the risk that the company might -- you know, faces. We've survived watching the stock go all the way to 40 pence, for crying out loud. But, man, this sort of like validates the worst fears, and it seemed to me like you're --

PUNCH CEO: [overspeaking].

DAVID EINHORN: -- it seems like -- it seems like you guys were really on a course towards figuring out how to manage the securitisations, manage the liquidity, manage the covenants, sell assets, you know appropriately, take advantage of discounts where available in the market, and, you know, this doesn't -- I don't see that this gains us anything. I mean, you're gonna be able to pay out unless you -- if there is some reason why you're not gonna have any money to upstream to pay the convert that you need to pre-fund and fully fund that now because the thing is that if you do this offering the -- the price of the converts, the majority is going to go straight to par. So you're not gonna get to buy it back at any discount at all, maybe 95 or some thing like this.

PUNCH CEO: Sure, well just [overspeaking].

DAVID EINHORN: You know, in -- in -- in fact -- in fact -- in fact you lose the opportunity also within the securitisations to buy a lot of the debt back at a discount because the market - the debt market will better revalue to reflect the higher solvency of the company and the equity market will say, “Jeez, that’s all well and nice, but there’s twice as many shares outstanding”.

PUNCH CFO: Okay, just [overspeaking].

DAVID EINHORN: I wanna -- I would rather -- I mean, if I were a bondholder, I would love this.

PUNCH CEO: Okay. To me -- to me this -- just a couple of fill-in points, in turn. Firstly, that we very much preserve -- process -- progress this business as usual. This is -- is not a, you know, this is not a, uh, we can’t – we’re not going to carry on unless we do this -- this -- that, you know, unless we contemplate some alternative. We are operating on that basis and we have disproved the market for a very long time, specifically on that basis by -- by moving ahead or being ahead of the curve on the disposals, and on our ability to buy back debt.

DAVID EINHORN: Right, but we haven’t yet [overspeaking].

PUNCH CEO: You know, it’s very –

DAVID EINHORN: But -- but as equity holders -- we -- as equity holders we have not -- we, in our minds -- in Greenlight’s minds we

think that that's true, and in your mind I think you think that it's true, but we just haven't seen it in the stock price.

PUNCH CEO: Well, let me just come back -- just come back to that, okay, because there is this more compared -- more to that. We have -- we have cash that we could -- to spend on the convertible right now. We have cash to spend on the convertible. The convertible is trading at the levels that you were just talking about so therefore, that isn't readily avail -- the convertible isn't readily available to discount already. And that's just a function of the fact that it is small, relatively illiquid, tightly held and also has a relatively short period of maturity. So, therefore, [overspeaking].

DAVID EINHORN: Well, and -- and also -- and also because the market is judging it to be likely to be repaid.

PUNCH CEO: Correct.

DAVID EINHORN: Correct.

PUNCH CEO: Correct. See -- so, therefore, if we - if we are – if we're at fault for anything, we've done too good a job on affecting the market expectations. On the other hand, on the securitised debt, there is 4.5 billion pounds on the securitised debt, there are 21 tranches, and despite the fact that at the interim we gave a clear indication of the magnitude as to which we've been able to buy debt in the market, as I said earlier, we have continued to be able to buy debt in the market and we will continue to do so, and we do not believe that whilst I -- that the market will close -- that the market arbitrage pursuant to that will close down and -- in -- to the same extent. So, to the point – from the

point – at the moment what we are doing is we are – we are risking – increasing the risk on the securitisation at the cost of the securitisation for the sake of paying off the convertible at -- at or close to par. That's what we're doing at the moment because that's the short-term requirement. Now, that is inefficient. If you can redirect your resources that you're doing to buying back securitised debt at a -- at a continued discount, then that is more efficient use of shareholders funds. It comes to the same thing. By 2010, we have to have generated 208 -- 212 million pounds or 220 million pounds including accrual to meet the secure -- to meet the convertible. But, at the same time, what I don't want to do is to do that and then to be at a position where we trip to default on any of the securitisations.

DAVID EINHORN: Well…

PUNCH CEO: The -- there is of course -- there is of course another factor which is, as we get to the year-end this year, when -- when we get to within 12 to 15 months of the -- of the repayment date on the convertible, then we have to have debates with the accountants about going concern, emphasis of matter type of conversation. And then of course, if the market perceives this to be a risk then we go back to the sort of [inaudible] -- you know, analysis on share price that we had back in January.

DAVID EINHORN: I -- I didn't understand what he said.

PUNCH CFO: When we get to the August [overspeaking].

DAVID EINHORN: I'm sorry, I didn't -- I didn't understand what you just said.

PUNCH CFO: Yeah, at the year-end, clearly our accounts are audited --.

DAVID EINHORN: Yeah.

PUNCH CFO: -- and the auditors are required to look at least 12 months forward to ensure that there are no events in that time horizon that would give any kind of questions or -- or concerns around a -- a going concern type of deliberation. And -- and clearly at the year-end, when we look forward 12-15 months, there are a couple of events on the horizon that – that the auditors will have to get their minds around. First of all, the convertible, and I -- I think we talked about that one at length. The second one is the -- the securitisations themselves following upstream are very tight on their covenant default test. By –[reference to Punch CEO's] point is taking the cash out to deal with convertible, does take the securitisations very tight for their default test, and actually one of them, Punch B, starts to amortise which makes achieving the DSCR default test that much more difficult. So, the two events on the horizons of the auditors will have to deliberate on and -- and -- and take into consideration that have real risk attached is the extent of the company to repay -- to repay the convertible in full and -- and -- and, you know, based on the kind of conversations we've had before, you could see a potential shortfall of up to 50 million for -- for that. The second thing they'll have to have a look at is -- is the tightness of the covenants within the securitisations, particularly within Punch B as it starts to amortise and -- and whether again there is comfort there that no default will happen in that time horizon. So, actually, the bulk of the -- yeah, the bulk of the cash that we've been talking about is all about creating headroom within the securitisations on an ongoing basis, uh, to -- to a default, a potential default. Now, if the auditors can't get themselves comfortable with all of those

things then they are required under UK accounting practices to comment specifically on that and then – and that itself will adversely affect market sentiment, that's the point that is being made.

DAVID EINHORN: Look, you know, if you think that the company is gonna default on the debt and go -- become worthless, of course you should sell equity. Not only that, we should sell our equity and -- because then the equity just isn't gonna do so well. Even if you raise equity, you know, it – it unwinds so many of the things that we've been believing for the last year and a half, we will need to reassess. And that's unfortunate because I've been feeling very good about this investment.

PUNCH CEO: Yeah, I mean, I am -- to make it quite clear, you know, and we're -- you know, I'm the largest private shareholder in the business and I'm very, very clear in terms of my responsibility --

DAVID EINHORN: No, I'm pretty sure -- I'm pretty sure I'm the largest private shareholder.

PUNCH CEO: Well, I wouldn't -- got it, sorry. I have got something like Greenlight as any financial institution rather than -- rather than an individual, but, I mean, given that your name is ascribed to -- to the holding collectively, I will accept that. The -- so -- it -- it, you know, I -- I'm trying to balance out the various -- the various components of the -- of the risk, that's all I'm trying to do. Happy to have a more detailed conversation with you about some of those -- those issues, but it -- it is not possible to do that without having to -- having to require -- having to have you sign an NDA. That's just a legal requirement and – and we're happy to do

that at short notice. And, you know, we'll take it from there. As to the -- as for the business, I think -- actually we're still, you know, we're still trading in line with expectations and we, you know, we're working very hard, as I said, on the -- on with the activities that we could -- we outlined when we saw [reference to Greenlight Analyst] in New York a couple -- a month and a half ago.

DAVID EINHORN: Yeah. That's good.

GREENLIGHT ANALYST: If you've done so well through the first half and since then at buying back debt, why are, in particular, the Punch B securitizations still going to amortise over the next year when you -- those tranches could be easily prepaid? Have you been buying back other debt?

PUNCH CEO: Yes, I mean, the answer is -- specifically on Punch B, [reference to Greenlight Analyst], the -- the -- it's the Punch B amortising debt, the A7, been trading at virtually -- virtually at par. So -- so actually there'll be -- the -- the -- the advantage of buying back that tranche of debt is marginal compared to other tranches of debt that are available in the marketplace.

GREENLIGHT ANALYST: Isn't the advantage of buying back that tranche of debt the ability to avoid a potential cash trap or default?

PUNCH CEO: Of course -- of course and that's why when we measure that…

DAVID EINHORN: [overspeaking].

PUNCH CEO: --when we measure any of the debt that we -- we -- we do look at, we look at it in terms of its DSCR impact, not just

its absolute value. So, of course that's the fact and as you said, you know, we do not believe that there's any reason why we would not up -- upstream Punch B this year, but we've got to look forward beyond that. We've got to look at the impact of that. We looked at -- look at the trading performance of that portfolio and the -- the quantum of debt that we would have to repay to ensure that we don't trigger a default in due course and then, you know, those are factors that we have to keep in mind. You know that's as a general point.

DAVID EINHORN: Yeah. Well look, we're -- obviously we're not in favour of you defaulting on the debt.

GREENLIGHT ANALYST: Is the problem that you've sold so many pubs that your cash generating ability is notably lower than historical?

PUNCH CEO: No, no, but it is a function of course. When we're looking at disposal of pubs, we obviously got to take into account the reduction in EBITDA versus the reduction in debt and the interest and all the – sorry, the DSCR cost of that.

DAVID EINHORN: Right.

PUNCH CEO: And of course -- of course what we've been doing has been highly accretive, and that's why we'll continue to do that because we've been buying back debt that is disproportionately more expensive than the loss of the EBITDA from those sites, and that is very much part of the core strategy and we will continue to do that come what may.

GREENLIGHT ANALYST: We appreciate that. I think that the difference in we do not want you to default is that we do not think that the math

follows, that it is accretive to sell low priced equities to buy back debt at a discount. We just don't think that math works unless the equity is of course high priced, which we disagree with.

PUNCH CEO: Yeah, but I -- I mean, I think on pure maths -- on the pure maths of that trade, you're right. There -- there is -- you know, there is a point at which that's not worthwhile. It is a question of what we do with that, and what would be the consequences if we didn't do that. Those are the -- those are the factors we have to take into account. And also for that matter, the quantum, because I mean, if we were suggesting a quantum that was completely out of line, then, you know, which would over-equitise the company, then I of course would understand that that was completely unnecessary.

DAVID EINHORN: Right.

PUNCH CEO: The point I tried to make earlier was that's never been the way we've approached the business.

DAVID EINHORN: Right, and that's the -- that's the issue. The issue is -- is that the equity is trading still as an option, at least in my opinion, and whether it's a £1.60 option or a 40-pence option, or even a 2 or 2.5 pound option, it's really an option on a very highly levered capital structure. And so, you know, it seems to me that raising the kind of equity you're talking about, it doesn't put the company into a situation where everybody will agree that it's de-risked. People will still look at it and say it's a very highly levered capital structure. And so it'll still have the basic economic risk of the -- you know, the UK consumer, and so on and so forth, that is there. It'll still have the risk of a -- you

know, of a highly geared capital structure. And I think what you'll wind up with is some re-rating of the debt but not really much of a re-rating of the equity, and really all we'll have done is sort of validated, you know, the criticisms of the company that -- you know, that we've been hearing for a long period of time. Now, obviously, if a company looks at the math on the maturity of the convert and says, "Jeez, we're gonna be , you know, 20 million pound short or 30 million pound short", it makes all the sense in the world to not run that right up to the wire in year-end 2010, but to decide that one needs to prepay the entire -- pre-fund three -- 300 – 400 million pounds of -- of stock to give, you know -- you know, headroom at such a -- at such a dilutive time – Um…Mmm…I'm not really sure that you're gonna to get the re-rating from whatever risk that you're [overspeaking].

PUNCH CEO: I think [overspeaking] sort of implies that there would be the ability to do a two-stage process, and of course, markets don't necessarily like that, but -- but be that as it may, I mean, I think, the problem we have we keep -- we're going around in circles. I mean, you know, these -- these are talking in principles, and you know I -- I – I totally respect your view, you know, our -- our approach to the business has been exactly that basis. But, at the same time, you know, we've done significant analysis, and we come -- you know, we -- we have to consider those -- that, that analysis is to determine, you know, where that takes us strategically.

DAVID EINHORN: Yeah, I agree with you. You've done [overspeaking].

PUNCH CEO: Hear about it more detail, and that detail goes beyond where we can go, so --

DAVID EINHORN: Of course. So, if you're -- if you're now -- look I mean the thing is that we're not gonna make this decision, you're gonna make this decision. You guys are the managers, you guys are in charge of the company; we're shareholders, and we prefer to be passive shareholders and not run the company. If we wanted to run the company, we should be doing something different. We want to run our company, not your company. If you've done the analysis, and come to the conclusion that on it's own, the company is not going to make it, it makes all of the sense in the world to raise equity at whatever the price is, so that you can know that the company, you know, is – is going to make it. Now, what that brings to my mind though is, you know, obviously we haven't done your analysis, we haven't done -- signed an NDA; I don't know that we're going to sign an NDA, because we prefer to just remain investors, but from my perspective, and I'll be just straight up with you, is that gives a lot of signalling value. And the signalling value that comes from figuring out the company has figured out that it's not going to make it on it's own is that we've just grossly misassessed the -- you know what's going on here. And -- and that, that will cause us to have to just reconsider what we're doing, which is not the end of the world to you. You will continue on even if we don't continue on with you. Its' -- it's -- it -- it really is some -- it really is okay, it's not what we're looking for, and I'm not trying to browbeat you into doing something that's going to bankrupt the company because there's a lot of reasons the company shouldn't want to go bankrupt. But that -- that -- that is how I --

PUNCH CEO: 6,000 employees worth, yeah.

DAVID EINHORN: No, no, no, I'm -- no, I'm -- I'm totally serious.

PUNCH CEO: Yeah, yeah -- no, I -- I -- listen -- I appreciate that David. And -- don't get me wrong. As a major shareholder, we have to give you the opportunity to have the conversation and we're just simply trying to sort of give you that opportunity. I totally appreciate that we've had a very good dialogue with [reference to Greenlight Analyst] throughout the time as shareholders and yourself and so, you know, I'm just – we can take that conversation as far as we can on this basis or we can take you further if you want to on – on a different basis. You know, clearly, if we decide to do something and it comes in a, a, -- and it's in the public domain, then we can have further conversations at that time.

DAVID EINHORN: Sure that's -- you know, but that's -- you know that that's fine. You know, if there's something that you think, you know, can be explained to us, you know, without crossing any lines, we would -- uh, we would love to come to a full understanding, and see the -- you know, see the sensibility of what you're saying. If -- if that can't be done, then unfortunately we're probably left to, you know, to just draw our own – our own conclusions.

PUNCH CEO: [overspeaking].

DAVID EINHORN: And I - I don't mean that -- I don't mean that in a negative way, it's just that it's just what we have to do.

PUNCH CEO: What I would ask you -- I will ask you to do that in fact -- if that's the case, then don't draw conclusions right now on the basis of this conversation because it's it is a slightly sort of -- sort of a -- in-concept conversation rather than one that we're, you know, than -- than anything else.

DAVID EINHORN: Okay, fair enough.

ANDREW OSBORNE: You know, I was gonna say, David, I mean look -- and clearly, you know, we've -- we've -- there's a whole lot of analysis sort of behind this and there's a sort of presentation, if you wanted to, but I mean, we would need to kind of talk your counsel about an NDA if, you know, if you wanted to go down that route which [overspeaking].

DAVID EINHORN: Well, I look at -- I don't -- I don't mind -- I don't mind the concept of an NDA in the sense that we're not going to, you know, pass on information to others that could, you know, be competitively harmful to you and so on and so forth. I -- I am uncomfortable with an NDA that is going to, you know, restrict our ability to, you know, to transact.

PUNCH CEO: We're -- we're well aware of that, and to the extent anything, we ever did anything like that, we would have to be -- give you the -- a clear understanding of the timescales, which that -- that covers and the, you know, to the fact that the company will cleanse any -- any conversation to allow you to trade in due course.

DAVID EINHORN: Yeah, that's -- that's right.

PUNCH CEO: Well, we're absolutely aware of that and -- and if that's, you know, and if you want us to consider that on that basis, I'm happy to do so.

ANDREW OSBORNE: We can give you a timeframe.

DAVID EINHORN: So, what would -- what -- what would that be?

ANDREW OSBORNE: Well, within less than a, kind of a week.

DAVID EINHORN: Within a week? Yeah, we can [overspeaking] we could probably do something with --

PUNCH CEO: We -- we have a [inaudible].

DAVID EINHORN: Well, I mean, let me ask you this. Is the decision basically taken? I mean, have you basically decided and it's just a question of discussing it with people and, you know, having these kinds of conversations and the analysis is done and the decision has, you know, effectively been made; or has the decision not really been taken and you're just kind of thinking things through and haven't really determined what you want to do?

PUNCH CEO: No – I mean huge analysis has been done.

DAVID EINHORN: Right.

PUNCH CEO: But no -- no formal decision has been making – been made and we're -- we're consulting with various people of the consequences of that -- of that analysis. There -- there are -- there are other external factors that we have to take into account, as you said, about, you know, 11th hour type decisions and -- and things like that which -- which mean that, at some point this conversation, you know, we -- we were going to have to contemplate this. You know, in the list of things that we would have to we would be -- we would be remiss, if we did not consider this in the list of things we have to consider as -- as running the company.

DAVID EINHORN: Okay, fine.

ANDREW OSBORNE: Really, it's fair to say like, consulting with all of the -- the major shareholders in terms of taking, you know, taking into account, their views.

DAVID EINHORN: Okay. Is there a -- I mean -- do -- what do the other shareholders you talked to say?

ANDREW OSBORNE: I think, I mean, a num -- a number of people have sort of signed NDAs because we had a bit more open conv -- conversations. I think it's fair to say that, you know, broadly, most of the other shareholders are supportive.

DAVID EINHORN: Supportive of what?

PUNCH CEO: Well, I – stuff that's in the NDA –

DAVID EINHORN: Oh, I see. All right, look, if it's a question of – let us – let us think this through. Let us -- let us -- let us think this through whether it makes sense to sign an NDA or not. I'm -- I'm not sure that it does.

PUNCH CEO: Look -- well, it's a -- I do -- I really appreciate the time; I really appreciate the frankness of the conversation and – hopefully we can have further conversation in due course.

DAVID EINHORN: Very good. Thank you guys for -- for spending the afternoon with us.

PUNCH CEO: Thanks very much.

DAVID EINHORN: Bye now.

GREENLIGHT ANALYST: Thank you.

PUNCH CFO: Bye.

[END]

END OF CALL