
FINAL NOTICE

To: Erik Boyen

Date of birth: 26 January 1953

Date: 12 January 2009

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

1. THE PENALTY

1.1. The FSA gave Erik Boyen a Decision Notice on 12 January 2009 which notified Erik Boyen that pursuant to section 123(1) of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose on Erik Boyen a financial penalty of £176,254.85 for engaging in market abuse.

1.2. The financial penalty consists of the following elements:

1.2.1. a disgorgement of financial benefit arising from the market abuse of £127,254.85 (being the profit derived by Erik Boyen from the purchase and sale of the shares); and

1.2.2. an additional penalty element of £49,000.

- 1.3. Erik Boyen agreed to settle at an early stage of the FSA's investigation. He therefore qualified for a 30% (Stage 1) reduction in the additional penalty element of the financial penalty under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty consisting of the disgorgement set out in paragraph 1.2.1 above and an additional penalty element of £70,000.
- 1.4. Erik Boyen has confirmed that he will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.5. Accordingly, for the reasons set out below and having agreed with Erik Boyen the facts and matters relied on, the FSA imposes a financial penalty on Erik Boyen in the amount of £176,254.85.

2. REASONS FOR THE ACTION

Summary

- 2.1. On or about 28 January 2007, Erik Boyen's brother, Filip Boyen, was asked by Richard Ralph, Executive Chairman of Monterrico Metals Plc ("the company"), to buy shares in the company on his behalf. The company is a resource development company incorporated in the UK whose shares are quoted on the Alternative Investment Market of the London Stock Exchange ("AIM"). It was publicly known at the time (and it was known by Erik Boyen) that the company had received an indicative takeover proposal and that discussions were ongoing.
- 2.2. Filip Boyen told Erik Boyen that he was intending to buy shares in the company on his own account as well as buying shares for Mr Ralph as requested. Filip Boyen requested Erik Boyen to purchase further shares on his behalf.
- 2.3. Erik Boyen bought shares in the company on his own account as well as buying shares for Filip Boyen as requested. Erik Boyen also encouraged a third party to purchase shares in the company, but did not pass on inside information to that third party.
- 2.4. Erik Boyen:
 - 2.4.1 dealt in the company's shares on the basis of inside information; and
 - 2.4.2 encouraged another to deal when he was in possession of inside information.
- 2.5. Between 29 January and 2 February 2007, Erik Boyen bought 7,000 shares on Filip Boyen's behalf at a cost of £16,450 and bought a further 130,500 shares on his own account at a further cost of £332,295.15. Erik Boyen sold 25,000 shares on 26 February 2007 for £90,000, and a further 15,000 shares on 7 March 2007 for £52,800. Erik Boyen submitted the remainder of the shares in the company to the general settlement following the takeover at 350 pence per share. Erik Boyen transferred proceeds of €35,800 to Filip Boyen on 13 August 2007 in respect of shares purchased on Filip Boyen's behalf. Erik Boyen personally profited by £127,254.85.

2.6. Erik Boyen's behaviour constituted insider dealing in breach of section 118(2) of the Act. He also acted in breach of section 123(1)(b) of the Act by encouraging another to engage in behaviour which, if he engaged in himself, would amount to market abuse.

Relevant Statutory and Regulatory Provisions

2.7. Section 118(1) of the Act defines "market abuse" as behaviour (whether by one person alone or by two or more persons jointly or in concert) which:

occurs in relation to (i) qualifying investments admitted to trading on a prescribed market; ... and

falls within any one or more of the types of behaviour set out in subsections (2) to (8).

2.8. Section 130A of the Act provides that the Treasury may specify the markets and investments to which Part VIII (Penalties for Market Abuse) applies. AIM is a prescribed market by reason of the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001, being a market established under the rules of a UK recognised investment exchange.

2.9. Section 118(2) provides:

The first type of behaviour is where an insider deals, or attempts to deal, in a qualifying investment or related investment on the basis of inside information relating to the investment in question.

2.10. Section 118B provides in relation to insiders:

For the purposes of this Part an insider is any person who has inside information—

(e) which he has obtained by other means and which he knows, or could reasonably be expected to know, is inside information.

2.11. Section 118C defines inside information:

(2) In relation to qualifying investments, or related investments, which are not commodity derivatives, 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 or more of the qualifying investments, and

(c) would, if generally available, be likely to have a significant effect on the price of the qualifying investments or on the price of related investments.

(5) *Information is 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) *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.*

2.12. The FSA is authorised pursuant to section 123(1) of the Act to exercise its power to impose a financial penalty where it is satisfied that a person (A) (a) 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. Statutory defences are set out at section 123(2) of the Act.

Code of Market Conduct

2.13. The FSA has issued the Code of Market Conduct ("MAR"), pursuant to section 119 of the Act.

2.14. MAR 1.2.3 provides that there is no requirement for the person engaging in the behaviour in question to have intended to commit market abuse.

2.15. MAR 1.2.12 E (inside information): factors which the FSA regards as relevant in deciding whether information is generally available include:

- whether the information has been disclosed to a prescribed market;
- whether the information is contained in records open to the public;
- whether the information is otherwise generally available or can be obtained from analysing or developing other information which is generally available.

Relevant Guidance

2.16. In deciding to take the action proposed, the FSA has had regard to section 124 of the Act and to guidance published in the FSA Handbook. The FSA has also had regard to the equivalent provisions in the Enforcement Manual, part of the FSA Handbook at the time of the misconduct.

2.17. 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 Procedure and

Penalties manual (“DEPP”). 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.

- 2.18. DEPP 6.2 sets out a number of factors to be taken into account when the FSA decides to take action for behaviour appearing to be market abuse. They are not exhaustive, but include the nature and seriousness of the suspected behaviour and the conduct of the person concerned after the behaviour was identified.
- 2.19. In enforcing the market abuse regime, the FSA’s priority is to protect prescribed markets from any damage to their fairness and efficiency caused by the misuse of information in relation to the market in question. 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 protection of consumers’ objective, as well as deterring potential future market abuse.
- 2.20. DEPP 6.5 states that the FSA will consider all the relevant circumstances of a case when it determines the level of a financial penalty that is appropriate and in proportion to the breach concerned. DEPP 6.5 identifies a non-exhaustive list of factors which may be relevant including deterrence, the nature, seriousness and impact of the breach in question, the extent to which the breach was deliberate or reckless, whether the person on whom the penalty is to be imposed is an individual, the amount of benefit gained or loss avoided, the difficulty of detecting the breach and conduct after the breach.
- 2.21. The FSA has made it clear that wrongdoers must not only realise that they face a real and tangible risk that they will be held to account but that they must also expect a significant penalty. The FSA has stated that it will seek to ensure that the sanctions it imposes, including financial penalties, are fixed at levels that are sufficient to deter potential wrongdoers and that, where necessary, the FSA will increase penalties to achieve this.

Facts And Matters Relied On

(a) Background

- 2.22. Erik Boyen is a Belgian national and resident in Belgium. He is an experienced amateur investor and he and Filip Boyen had regular discussions every week or so about their investments.
- 2.23. Mr Ralph was appointed Executive Chairman of the company on 14 August 2006. Prior to that, Mr Ralph was British Ambassador to Peru from 2003 to 2006. Filip Boyen, who was also based in Peru at the time, became close friends with Richard Ralph.
- 2.24. Filip Boyen bought 10,000 shares in the company on 12 September 2006 because of Mr Ralph’s appointment which he regarded as good news for the company. He subsequently sold these shares at a profit. Filip Boyen told Erik Boyen that the trigger for his share purchase was his friend Richard Ralph’s appointment as Chairman which

he thought was a positive thing for the company. Shortly after Filip Boyen told him this, Erik Boyen also bought 10,000 shares in the company.

2.25. At the time of the share transactions referred to in this Notice, the company was seeking a partner to invest in its projects. On 20 October 2006, the company announced that it had received a very preliminary approach from a party expressing an interest in formulating an offer for the company but that no terms had been indicated or details provided. The company announced on 22 December 2006 that it had received an indicative takeover proposal at a modest premium to the share price on 21 December 2006 of 257.5 pence and that discussions were ongoing.

2.26. Erik Boyen was aware of these developments.

(b) Dealing in shares

2.27. Filip Boyen informed Erik Boyen on or about 28 January 2007 that Mr Ralph had asked him to buy shares in the company on his behalf and that he thought this was a very positive development. Erik Boyen was aware at the time of Mr Ralph's connection with the company and that the company was engaged in takeover discussions.

2.28. Filip Boyen asked Erik Boyen to buy some shares in the company on his behalf using funds of €25,000 which Erik Boyen owed him.

2.29. Shortly after that conversation with Filip Boyen, Erik Boyen bought shares in the company as follows:

Date	Time	Quantity	Price	Cost of shares
29/01/2007	09.37	8,000	235p	£18,800.00
29/01/2007	13.02	28,000	240.5p	£67,340.00
29/01/2007	16.31	4,000	242p	£9,680.00
30/01/2007	08.48	40,000	241.5p	£96,600.00
31/01/2007	16.00	45,000	267.667p	£120,450.15
02/02/2007	13.54	12,500	287p	£35,875.00
Total		137,500		£348,745.15

2.30. Erik Boyen purchased 137,500 shares in the company in six separate transactions conducted over four days between 29 January and 2 February 2007, of which 130,500 shares were purchased on his own behalf. 7,000 of the 8,000 shares purchased by Erik Boyen at 09.37 on 29 January 2007 were purchased on behalf of Filip Boyen.

- 2.31. On 30 January 2007 at 15.12, the company announced that, further to its announcement on 22 December 2006 that it had received an indicative proposal from a party interested in making a takeover offer, it had provided the potential offeror with all the due diligence information requested and that discussions were ongoing. The closing market price on Monday 29 January 2007 was 239 pence. On Tuesday 30 January 2007, following the announcement, the closing market price was 259 pence. As shown in the table above, Erik Boyen continued to purchase shares after this announcement.
- 2.32. Erik Boyen continued to purchase more of the company's shares even when he was told that his orders were increasing the share price in the stock. His broker suggested to him in a conversation on 29 January that he had "a crush" on the company, to which Erik Boyen replied "Yes... yes I think something is on the cards soon."
- 2.33. It was announced on 5 February 2007 that a Chinese mining consortium, Xiamen Zijin Tongguan Investment Development Co Ltd ("Zijin") and the company had reached agreement on the terms of a recommended cash offer at 350 pence per share. The closing market price on Friday, 2 February 2007 was 297.5 pence and on Monday, 5 February 2007 following the announcement 366 pence.
- 2.34. Zijin announced on 30 April 2007 that its offer had successfully closed following receipt of acceptances equal to 89.90% of shares with voting rights. On completion of the takeover, Zijin held nearly 90% of the shares of the company. The company's shares are still quoted on AIM.
- 2.35. Erik Boyen sold 25,000 shares on 26 February 2007 for £90,000, and sold a further 15,000 shares on 7 March 2007 for £52,800. Erik Boyen transferred proceeds of €35,800 on 13 August 2007 in respect of 7,000 shares purchased on behalf of Filip Boyen. Erik Boyen submitted the remainder of the shares in the company to the general settlement following the takeover at 350 pence per share.
- 2.36. Erik Boyen's total profits from the shares he bought in the company between 29 January 2007 and 2 February 2007 were £127,254.85, as shown in the table below. This does not include the profits made from the purchase and sale of 7,000 shares for Filip Boyen.

Date sold	Quantity sold	Price (p)	Cost of shares £	Proceeds £	Profit £
26/02/2007	25,000	360		90,000	
07/03/2007	15,000	352		52,800	
In general settlement	90,500	350		316,750	
Total	130,500		332,295.15	459,550	127,254.85

(c) Encouragement of another

2.37. Erik Boyen also encouraged a third party to purchase shares shortly after his conversation with Filip Boyen on about 28 January 2007. Erik Boyen did not, however, pass inside information concerning Mr Ralph's share purchase to that third party. The third party, who was not an experienced investor and had no knowledge of the company, purchased 9,500 shares in the company on 29 January 2007 in two transactions at a cost of £22,805.75. The third party made a profit of £10,444.25 after these shares were submitted in the general settlement agreement.

Conclusions – Market abuse

Sections 118 (2) and 123 (1) – insider dealing

2.38. Shares in the company are qualifying investments traded on AIM, a prescribed market for the purposes of the Act.

2.39. At the time he bought shares in the company on 29 and 30 January 2007 and on 2 February 2007, Erik Boyen was in possession of information which was inside information for the purposes of Section 118C of the Act, namely he knew of Mr Ralph's intention to deal clandestinely in the company's shares at a time when it was publicly known that the company had engaged in takeover discussions. He knew that Filip Boyen had been asked to deal on Mr Ralph's behalf. Erik Boyen also knew that Filip Boyen thought Mr Ralph's request was a very positive development and that Filip Boyen had decided to buy shares in the company himself.

2.40. This information in relation to Mr Ralph's intention to deal was inside information for the purposes of section 118C of the Act:

- (a) the information was precise;
- (b) the information was not generally available: indeed Mr Ralph dealt in a way designed to avoid the requisite announcement regarding his dealing being made to the market;
- (c) the information related directly to the company;
- (d) the information would, if generally available, have been likely to have had a significant effect on the price of the company's shares.

2.41. Erik Boyen was an insider for the purposes of section 118B(e) because he knew, or could reasonably be expected to know, that this was inside information. The behaviour i.e. the dealing by Erik Boyen in the company's shares was on the basis of the inside information.

Encouragement of another to engage in behaviour, which if engaged in by Mr Erik Boyen, would amount to market abuse.

2.42. Erik Boyen advised a third party to purchase shares shortly after his conversation with Filip Boyen on about 28 January 2007. The third party, who was not an experienced

investor and had no knowledge of the company, placed an order to purchase shares after the discussion with Erik Boyen as a result of his recommendation.

- 2.43. For the reasons set out above, Erik Boyen's purchase of shares at a time when he was in possession of inside information was insider dealing contrary to section 118(2) of the Act. Erik Boyen's encouragement of a third party to purchase shares in the company when he was in possession of inside information amounted to encouragement of another to commit market abuse within the meaning of section 123(1)(b) of the Act.

Defences

- 2.44. The FSA finds that there are no reasonable grounds for not imposing a penalty for market abuse (section 123(2) of the Act).

Conclusion

- 2.45. Erik Boyen has engaged in market abuse contrary to sections 118(2) and 123(1)(a) and 123(1)(b) of the Act.

3. SANCTION

- 3.1. The FSA considers Erik Boyen's conduct to be serious for the following reasons:

- (a) Erik Boyen was an experienced investor who was following the company's share price and announcements. He knew or should have known that Mr Ralph's clandestine share dealing was not permitted and that the information provided by Filip Boyen was inside information;
- (b) Erik Boyen dealt in the company's shares in large quantities on the basis of inside information. He bought 137,500 shares in six separate transactions conducted over four days. He gained a substantial profit, £127,254.85, from his purchase and sale of 130,500 shares on his own behalf on the basis of inside information;
- (c) Erik Boyen not only dealt on his own behalf and on behalf of Filip Boyen but also encouraged a third party to deal; and
- (d) other market users have been disadvantaged because they would have made investment decisions without having access to the inside information. Confidence in the AIM market could be damaged or put at risk by the misuse of inside information.

- 3.2. The FSA has had regard to the need to punish Erik Boyen and to deter him and others from engaging in market abuse. The FSA has also had regard to penalties imposed in other market abuse cases including the penalties imposed on Mr Ralph and Filip Boyen. As a matter of principle, Erik Boyen's profit should be disgorged.

Conclusions

3.3. In all the circumstances, the FSA considers that a total financial penalty of £176,254.85 is appropriate. The financial penalty consists of the following elements:

- (a) a disgorgement of financial benefit arising from the market abuse of £127,254.85 (being the profit derived by Erik Boyen from the purchase and sale of the shares); and
- (b) an additional penalty element of £49,000, reduced from £70,000 for early settlement.

3.4. Pursuant to section 123 of the Act, the FSA has taken into account all the relevant circumstances in deciding that Erik Boyen has engaged in market abuse and should have imposed on him a financial penalty of £176,254.85.

4. DECISION MAKER

4.1. The decision which gave rise to the obligation to give this notice was made on behalf of the FSA by the Settlement Decision Makers.

5. IMPORTANT

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

Manner of and time for Payment

5.2. The FSA is in possession of evidence that it would cause you serious financial hardship or financial difficulties if you were required to pay the full payment in a single instalment. Accordingly, the financial penalty of £176,254.85 must be paid in full in instalments as follows:

- (a) £101,254.85 by no later than 14 days from the date of the Final Notice; and
- (b) three further payments each of £25,000 payable on 27 February 2009, 27 March 2009 and 28 April 2009 respectively.

5.3. Payment in full is to be received by 28 April 2009.

If the financial penalty is not paid

5.4. If all or any of the instalments of the financial penalty is outstanding on its due date for payment, the FSA may recover the full amount outstanding of the financial penalty as a debt owed by you and due to the FSA.

Publicity

- 5.4 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Notice relates. Under those provisions, the FSA must publish such information about the matter to which this Notice relates as the FSA considers appropriate. The information may be published in such 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 consumers.
- 5.5 The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 5.6 For more information concerning this matter generally, you should contact Matthew Nunan (Tel: 020 7066 2672) of the Enforcement Division of the FSA.

Jamie Symington
FSA Enforcement Division