
FINAL NOTICE

To: Filip Boyen

Date of birth: 18 April 1958

Date: 12 November 2008

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 Filip Boyen a Decision Notice on 12 November 2008 which notified Mr Boyen that pursuant to section 123(1) of the Financial Services and Markets Act 2000 (“the Act”), the FSA has decided to impose on Mr Boyen a financial penalty of £81,982.95 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 £29,482.95 (being the profit derived by Mr Boyen from the purchase and sale of the shares); and

1.2.2. an additional penalty element of £52,500.

- 1.3. Mr 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 £75,000.
- 1.4. The level of the penalty reflects the fact that Mr Boyen has co-operated with the FSA's investigation. But for that considerable co-operation, the FSA would have proposed to impose a greater financial penalty. Alternatively, the FSA may have brought criminal proceedings against Mr Boyen.
- 1.5. Mr Boyen has confirmed that he will not be referring the matter to the Financial Services and Markets Tribunal.
- 1.6. Accordingly, for the reasons set out below and having agreed with Mr Boyen the facts and matters relied on, the FSA imposes a financial penalty on Mr Boyen in the amount of £81,982.95.

2. REASONS FOR THE ACTION

Summary

- 2.1. On or about 28 January 2007, Filip Boyen was asked by his friend, 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 Mr Boyen) that the company had received an indicative takeover proposal and that discussions were ongoing.
- 2.2. Mr Boyen bought shares in the company on his own account as well as buying shares for Mr Ralph as requested. Mr Boyen also disclosed inside information to a third party.
- 2.3. Mr Boyen:
 - 1.3.1. dealt in the company's shares on the basis of inside information; and
 - 1.3.2. disclosed inside information to another person otherwise than in the proper course of the exercise of his employment, profession or duties.
- 2.4. Between 29 January and 2 February 2007, Mr Boyen bought 12,350 shares on behalf of Mr Ralph at a cost of £30,533.59 and bought a further 30,470 shares on his own account at a further cost of £77,162.05. Mr Boyen sold all the shares at 350 pence per share in the general settlement agreement following the takeover. Mr Boyen transferred to Mr Ralph profits of £12,691.41. Mr Boyen personally profited by £29,482.95 from the purchase and sale of his shares.

2.5. Mr Boyen's behaviour constituted insider dealing in breach of section 118(2) of the Act and improper disclosure of information in breach of section 118(3) of the Act.

Relevant Statutory and Regulatory Provisions

2.6. 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).

2.7. 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.

2.8. 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.

2.9. Section 118(3) provides:

The second [type of behaviour] is where an insider discloses inside information to another person otherwise than in the proper course of the exercise of his employment, profession or duties.

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) has engaged in market abuse or 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.

2.16. MAR 1.4.5 E (improper disclosure): factors which the FSA regards as relevant in deciding whether the disclosure was made by a person in the proper course of the exercise of his employment, profession or duties include:

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

Relevant Guidance

2.17. 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.

- 2.18. 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.
- 2.19. 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.
- 2.20. 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.
- 2.21. 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.
- 2.22. 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

- 2.23. Filip Boyen, a Belgian national, is an experienced businessman. Since August 2006, Mr Boyen has been based in London; before that, he was based in Peru from 1999 to 2006.
- 2.24. In Peru, Mr Boyen met and became close friends with Richard Ralph, who was then British ambassador to Peru. As British ambassador, Mr Ralph established close links

with British mining companies in Peru including the company, a junior exploration company which was developing certain mining projects in Peru. Mr Boyen also met representatives of the company in Peru and took an active interest in the company and its projects.

2.25. On 14 August 2006, after retiring from HM Diplomatic Service, Mr Ralph was appointed Executive Chairman of the company in London. Mr Boyen also relocated to London in August 2006 and their friendship continued. Mr Boyen is an experienced investor in stocks and shares. Mr 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 sold these shares at a profit on 2 November 2006.

2.26. 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.

2.27. Mr Boyen was aware of these developments.

(b) Dealing in shares for Richard Ralph

2.28. On or about Sunday 28 January 2007, Mr Ralph asked Mr Boyen if he could buy shares in the company on his behalf. Mr Boyen's recollection was that Mr Ralph initially asked him to buy £20,000-worth of shares and that, after these shares had been purchased on 29 January 2007, Mr Ralph then asked Mr Boyen to buy a further £10,000-worth of shares. Mr Boyen agreed to do so. Mr Boyen was aware from the company's announcements that the company was involved in takeover discussions. He was also aware that Mr Ralph was Executive Chairman of the company. As an experienced investor and businessman Mr Boyen knew that there were restrictions on dealings by company directors in their companies' shares, including periods when dealing was not permitted, but he did not express any concerns about Mr Ralph's request.

2.29. To carry out Mr Ralph's request, on Monday 29 January 2007 Mr Boyen directed his bank to buy shares in the company. He bought 12,350 shares on behalf of Mr Ralph on 29 and 30 January 2007 at a total cost of £30,533.59 in two tranches as follows:

| Date | Time | Quantity | Price | Cost of shares £ | Dealing costs £ | Total cost £ |
|------------|-------|----------|---------|------------------|-----------------|--------------|
| 29/01/2007 | 10:15 | 8,500 | 236p | 20,060.00 | 250.75 | 20,310.75 |
| 30/01/2007 | 14:04 | 3,850 | 262.25p | 10,096.63 | 126.21 | 10,222.84 |

- 2.30. Mr Boyen bought both tranches of shares before he was put in funds by Mr Ralph. Mr Boyen received £30,000 from Mr Ralph on 5 February 2007 towards the cost of the shares. Mr Boyen deducted the remaining £533.59 due from Mr Ralph from the sale proceeds before remitting these to Mr Ralph.
- 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 shares Mr Boyen bought for Mr Ralph were all acquired prior to the announcement made by the company on 30 January 2007. 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.
- 2.32. 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. 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.
- 2.33. Mr Boyen submitted the shares he had bought for Mr Ralph in the general settlement agreement on the takeover by Zijin. He forwarded the net sale proceeds of £42,691.41 to Mr Ralph by bank transfer on 3 May 2007.

(c) Dealing in shares on Mr Boyen’s own account

- 2.34. In addition to and at the same time as dealing in shares on behalf of Mr Ralph, Mr Boyen bought shares in the company on his own behalf as follows:

| Date | Time | Quantity | Price | Cost of shares £ | Dealing costs £ | Total cost £ |
|------------|-------|----------|--------|------------------|-----------------|--------------|
| 29/01/2007 | 09:37 | 7,000 | 235p | 16,450.00 | Not known | 16,450.00 |
| 29/01/2007 | 10:07 | 12,760 | 236p | 30,113.60 | 376.42 | 30,490.02 |
| 30/01/2007 | 14:08 | 3,860 | 262.2p | 10,120.92 | 126.51 | 10,247.43 |
| 02/02/2007 | 13.55 | 6,850 | 288p | 19,728.00 | 246.60 | 19,974.60 |
| Total | | 30,470 | | | | 77,162.05 |

- 2.35. Mr Boyen sold all his shares in the company at 350 pence per share by accepting the takeover offer made for the company and submitting his shares in the general settlement agreement. Mr Boyen profited by £29,482.95 on the sale and purchase of these shares.

2.36. At the time he bought his shares, Mr Boyen had been made aware by Mr Ralph that he, the Executive Chairman, wanted to buy a substantial number of shares in the company clandestinely at the prevailing price of about 250 pence per share. It was public knowledge from the company's announcement on 22 December 2006 that the company had received an indicative takeover proposal and Mr Boyen was aware of this.

2.37. Mr Boyen has stated that he interpreted Mr Ralph's request to buy shares on his behalf as a sign that the company was doing well. He regarded it as a very positive development which prompted him to decide to buy shares for himself.

(d) Disclosure by Mr Boyen

2.38. Mr. Boyen also disclosed inside information to a third party. The inside information disclosed was that Mr Ralph had asked him to buy shares on his behalf which he thought was a very positive development.

(e) Profits made by Mr Boyen

2.39. Mr Boyen's total profits from the shares he bought in the company between 29 January 2007 and 2 February 2007 were approximately £29,482.95, as shown in the table below. This does not include the profits of £12,691.41 made from the share dealing for Mr Ralph.

| Date | Quantity | Price (p) | Cost of shares £ | Dealing costs £ | Total cost £ | Proceeds £ | Profit £ |
|--------------|----------|-----------|------------------|-----------------|--------------|------------|-----------|
| 29/01/2007 | 7,000 | 235 | 16,450.00 | Not known | 16,450.00 | 24,500 | 8,050.00 |
| 29/01/2007 | 12,760 | 236 | 30,113.60 | 376.42 | 30,490.02 | 44,660 | 14,169.98 |
| 30/01/2007 | 3,860 | 262.2 | 10,120.92 | 126.51 | 10,247.43 | 13,510 | 3,262.57 |
| 02/02/2007 | 6,850 | 288 | 19,728.00 | 246.60 | 19,974.60 | 23,975 | 4,000.40 |
| Total | 30,470 | | 76,412.52 | 749.53 | 77,162.05 | 106,645 | 29,482.95 |

Conclusions – Market abuse

Section 118 (2) – insider dealing

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

2.41. At the time he bought shares in the company on 29 and 30 January 2007 and on 2 February 2007, Mr 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 he had been asked to buy a substantial number (in total £30,000-worth) of shares in the company on behalf of Mr Ralph, the company's Executive Chairman.

2.42. 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.

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

Section 118(3) – improper disclosure

2.44. It was public knowledge as at 28 and 29 January 2007 that Mr Ralph was Executive Chairman of the company and that takeover discussions were taking place. For the reasons stated above, Mr Boyen was an insider for the purposes of s.118B(e).

2.45. Mr Boyen disclosed to a third party information regarding Mr Ralph's intention to deal at a time when it was publicly known, and Mr Boyen knew, that the company had engaged in takeover discussions. This disclosure was not made in the proper performance of Mr Boyen's employment, profession or duties.

2.46. This 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.

2.47. It was information which a reasonable investor would be likely to use as part of the basis of his investment decisions and which would, if made public, be likely to have a significant upwards effect on the price of the company's shares particularly since the company was known to be in takeover discussions.

Defences

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

Conclusion

2.49. Mr Boyen dealt in the company's shares at a time when he was in possession of unpublished price sensitive information following Mr Ralph's disclosure to him. Mr Boyen then himself disclosed inside information to a third party otherwise than in the proper performance of his employment, profession or duties.

2.50. In the circumstances, Mr Boyen has therefore engaged in market abuse contrary to sections 123(1), 118(2) and 118(3) of the Act.

3. SANCTION

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

- (a) Mr Boyen dealt on his own behalf on the basis of inside information obtained from Mr Ralph. He gained a substantial profit, £29,482.95, from his purchase and sale of shares on the basis of that inside information;
- (b) Mr Boyen was an experienced investor and businessman and was aware that a director had to seek permission to deal and that, if permitted, a director's dealings should be disclosed to the market. Notwithstanding his close relationship with Mr Ralph, he knew or should have known that Mr Ralph's clandestine share dealing was not permitted; and
- (c) 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 taken into account Mr Boyen's conduct after his dealing in the company's shares. Mr Boyen has provided considerable co-operation and assistance to the FSA's investigation into the timely trading by Mr Boyen and related trading. He has attended voluntary interviews and answered the investigators' questions. He has provided all the assistance requested of him by the FSA.

3.3. The FSA has had regard to the need to punish Mr 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. As a matter of principle, Mr Boyen's profit should be disgorged.

- 3.4. The FSA has taken into account Mr Boyen's considerable co-operation in deciding on the financial penalty to be imposed. But for that co-operation, the penalty would have been significantly higher.
- 3.5. The FSA has decided not to prosecute Mr Boyen for the criminal offence of insider dealing in light of the considerable co-operation he has provided to the FSA's investigation.

Conclusions

- 3.6. In all the circumstances, the FSA considers that a total financial penalty of £81,982.95 is appropriate. The financial penalty consists of the following elements:
 - (a) a disgorgement of financial benefit arising from the market abuse of £29,482.95 (being the profit derived by Mr Boyen from the purchase and sale of the shares); and
 - (b) an additional penalty element of £52,500, reduced from £75,000 for early settlement.

Sanction

- 3.7. Pursuant to section 123 of the Act, the FSA has taken into account all the relevant circumstances in deciding that Mr Boyen has engaged in market abuse and should have imposed on him a financial penalty of £81,982.95.

4. DECISION MAKERS

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

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 financial penalty of £81,982.95 must be paid by you by no later than 26 November 2008, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 5.3. If all or any of the financial penalty is outstanding on 27 November 2008 the FSA may recover the outstanding amount 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