Financial Services Authority

FINAL NOTICE

To:	**Greenlight Capital Inc.**
Firm Address:	**2 Grand Central Tower** **140 East** **45 Street** **Floor 24** **New York** **NY 10017**
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 Greenlight Capital Inc ("Greenlight") a Decision Notice on the 12 January 2012 which notified Greenlight that the FSA decided to impose a financial penalty, pursuant to section 123(1) of the Act, of £3,650,795 for engaging in market abuse in breach of section 118(2) of the Act.

1.2. The financial penalty to be imposed on Greenlight consists of the following elements:

i. A disgorgement of financial benefit arising from the market abuse of £650,795 representing the losses Greenlight avoided by way of reduced performance and management fees through the sale of Punch Taverns Plc ("Punch") shares;

ii. An additional penalty element of £3 million.

1.3. Greenlight has not referred the matter to the Upper Tribunal (Tax and Chancery Chamber).

1.4. Accordingly, for the reasons set out below, the FSA hereby imposes on Greenlight a financial penalty of £3,650,795 for engaging in market abuse.

2. REASONS FOR THE ACTION

2.1. This notice is issued to Greenlight as a result of the behaviour of David Einhorn ("Mr Einhorn") between 9 and 12 June 2009. Greenlight is wholly owned by Mr Einhorn and he is the President and sole portfolio manager of Greenlight and is responsible for all investment decisions on behalf of Greenlight. Mr Einhorn's behaviour is attributable to Greenlight and Greenlight has therefore engaged in market abuse, for the reasons set out below.

2.2. Greenlight is an investment management firm based in the United States. Greenlight manages investments held by various entities ("the Greenlight Funds"). Several of the Greenlight Funds had shareholdings in Punch. (The Greenlight Funds held a combination of Punch shares and contracts for difference referenced to Punch shares. There is no material difference between shares and contracts for difference for the purpose of this Notice and, for convenience, this Notice therefore refers to the Greenlight Funds holding 'shares' in Punch and being 'shareholders' in Punch even though part of the investment was through contracts for difference.) The Greenlight Funds first acquired shares in Punch on 16 June 2008 and, by June 2009, the Funds owned 13.3% of Punch's issued share capital.

2.3. On Monday 15 June 2009, Punch announced a transaction to issue new equity in order to raise approximately £375 million of capital ("the Transaction"). Merrill Lynch International ("MLI") was joint book runner and co-sponsor on the Transaction. Prior to the announcement of the Transaction, various shareholders and potential investors had been wall crossed by MLI. Specific wall crossing procedures were in place for Punch's existing large US-based shareholders whereby they would be asked to agree the terms of a non disclosure agreement ("NDA"). (The terms "wall crossing" and "non-disclosure agreement" or "NDA" are explained further at paragraphs 3.8-3.12 below.)

2.4. On Monday 8 June 2009 (7 days before the announcement of the Transaction), MLI raised with Greenlight the subject of a possible equity issuance by Punch, and invited Greenlight to be wall crossed in relation to Punch. Mr Einhorn refused this request, but a call was arranged for the following day between Punch's management and Mr Einhorn on a non-wall crossed basis.

2.5. On Tuesday 9 June 2009, the MLI broker and Punch management proceeded to have a telephone conference call with Mr Einhorn ("the Punch Call").[1]

2.6. Even though the Punch Call was expressly set up on a 'non-wall crossed' basis, inside information was disclosed to Mr Einhorn during the call. The inside information disclosed to Mr Einhorn 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.

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

2.7. Immediately following the Punch Call, Mr Einhorn directed that Greenlight traders sell the Greenlight Funds' entire shareholding in Punch. The decision to sell was solely Mr Einhorn's. Mr Einhorn decided to sell on the basis of the inside information he received on the Punch Call (albeit not solely on this basis). Between 9 June and 12 June 2009, Greenlight sold 11.65 million shares in Punch and thereby reduced the Greenlight Funds' stake from 13.3% to 8.98%.

2.8. The Transaction was announced to the market on 15 June 2009. Following the announcement of the Transaction, the price of Punch's shares fell by 29.9%. Greenlight's sale of Punch shares prior to the announcement of the Transaction had resulted in loss avoidance of approximately £5.8 million for the Greenlight Funds.

2.9. The FSA considers this to be a serious case of market abuse by Greenlight arising from the behaviour of Mr Einhorn, in particular for the following reasons:

(i) Greenlight's trading took place over a period of four days and represented a large part of the daily volume traded in Punch shares over that period. Such significant trading in a stock on the basis of inside information severely undermines confidence in the market. The trading was highly visible to market participants.

(ii) The trading resulted in loss avoidance for the Greenlight Funds of £5.8 million.

(iii) Greenlight is a high profile hedge fund, at which Mr Einhorn occupies a prominent position as President.

(iv) Mr Einhorn is an experienced trader and portfolio manager. He has had over 15 years of experience running an investment management firm and should therefore be held to the highest standards of conduct and the highest levels of accountability.

(v) Given Mr Einhorn's position and experience, it should have been apparent to him that the information he received on the Punch Call was confidential and price sensitive information that gave rise to legal and regulatory risk. The Punch Call was unusual in that it was a discussion with management following a refusal to be wall crossed. In the circumstances Mr Einhorn should have been especially vigilant in assessing the information he received. It was a serious error of judgement on Mr Einhorn's part to make the decision after the Punch Call to sell Greenlight's shares in Punch without first seeking any compliance or legal advice despite the ready availability of such resources within Greenlight.

2.10. Despite being a serious case of market abuse which merits the imposition of a substantial financial penalty, the market abuse was not deliberate or reckless. Mr Einhorn did not believe that the information that he had received was inside information, and he did not intend to commit market abuse. Nevertheless, the FSA considers Mr Einhorn's error of judgement to be a serious failure to act in accordance with the standards reasonably expected of market participants. The FSA considers that Mr Einhorn's behaviour can be attributed to Greenlight.

3. FACTS AND MATTERS

Mr Einhorn and Greenlight

3.1. Greenlight is a private investment management firm, wholly owned by Mr Einhorn and based in the United States. In 2009, Greenlight had approximately US$5 billion of assets under management and 31 employees, mainly based in the US with a small number in the UK.

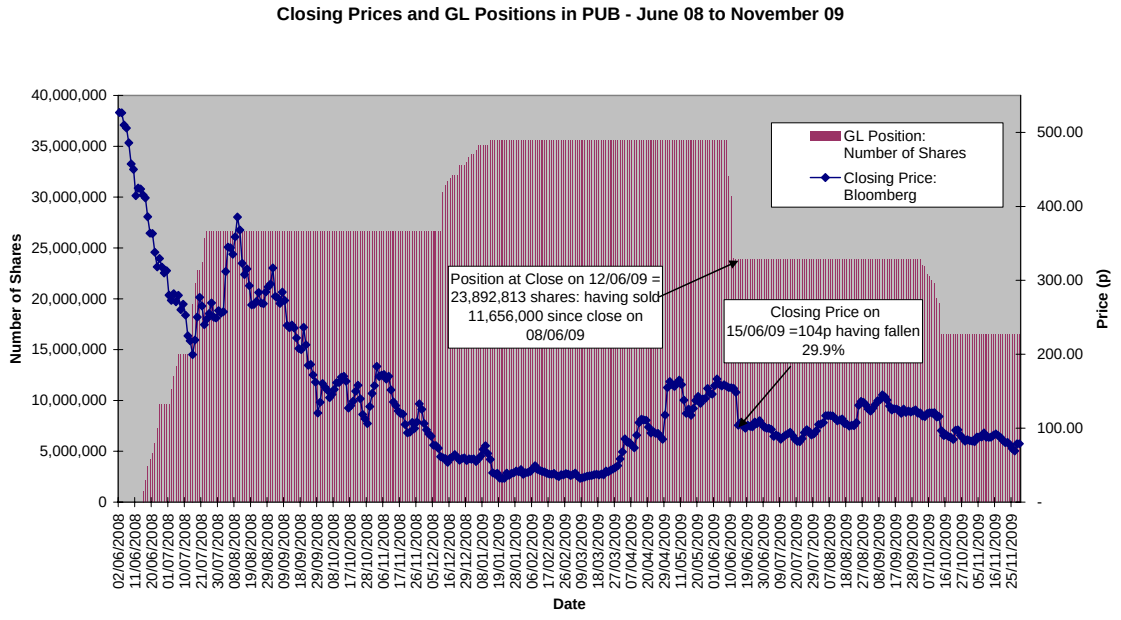
3.2. Greenlight follows a value-oriented investment philosophy and generally invests in shares and other investments that it considers to be mispriced. It mainly invests in stocks trading on the US markets, and those in Europe, including the UK.

3.3. Mr Einhorn was one of the two founding members of Greenlight in 1996 and is the President and sole portfolio manager of Greenlight. He has responsibility for all of Greenlight's investment decisions.

3.4. Mr Einhorn has significant experience as a trader and a portfolio manager. His experience includes dealings in stocks admitted to trading on EU regulated markets, including the UK markets.

The Greenlight Funds' investment in Punch

3.5. Greenlight first acquired shares in Punch on 16 June 2008 for the Greenlight Funds. Greenlight bought shares in June and July 2008 (approximately 26.6 million shares) and then bought again in December 2008 and January 2009 (approximately a further 9 million shares). The price of Punch shares as against the Greenlight Funds' position in Punch is shown on the graph below:



3.6. Greenlight was therefore a buyer of Punch shares between June 2008 and January 2009 and the position was held until June 2009. At no time prior to the Punch Call on 9 June 2009 had Greenlight sold or attempted to sell any Punch shares.

3.7. Mr Einhorn's initial decision to invest in Punch shares was made on the basis that Punch stock was mispriced by the market and that the chances of an equity issuance were not high. In Greenlight's letter to investors dated 1 October 2008, reasons for investing in Punch were explained:

> *During the quarter, the market began pricing in a high risk of default or cash trapping within the securitisations. In addition, PUB* [PUB is the Bloomberg ticker for Punch] *announced its intention not to pay a final dividend for fiscal year 2008 to conserve cash at the parent company. The market took PUB's conservatism as a sign of potential cash flow problems regarding the debt and began pricing in an equity issuance to pay down the convertibles. Based on conversations with the company and analysis of the debt documents, Greenlight believes PUB has the flexibility to manage its securitisations without a liquidity crunch, even in difficult periods for pubs. PUB is likely to use the cash savings from the cancelled dividend to pay down some of its debt early. We do not think the chances of an equity issuance are high. Greenlight initiated the position at £2.83, or less than 4x estimated 2008 profits. PUB shares ended the quarter at £1.32 (you do the multiple).*

Wall crossing

3.8. 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.

3.9. 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).

3.10. 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.

3.11. 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.

3.12. 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.

Events leading up to the Punch Call on 9 June 2009

3.13. 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.

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

3.15. 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 a 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.)

3.16. MLI was Punch's existing corporate broker at the time of the Transaction. It was appointed as joint book runner and co-sponsor on the Transaction. Andrew Osborne, a Managing Director in corporate broking at MLI, led the corporate broking account for Punch and led the corporate broking team at MLI in relation to the Transaction.

3.17. Preparations for the Transaction were progressed in May. In early June, the Board 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. 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 for the purpose of gauging support for the Transaction and understanding the level of interest in purchasing new equity in Punch.

3.18. A significant stake in Punch was held at this time by shareholders based in America ("the US Shareholders"), one of which was Greenlight. 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 was that they would be

invited to be wall crossed and to agree to the terms of a written NDA. Only once the terms of the NDA were agreed could details of the Transaction be provided to the US Shareholders.

3.19. 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.

3.20. 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).

3.21. 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 Mr Einhorn. Mr Einhorn would not agree to Greenlight being wall crossed and this decision was relayed back to Mr Osborne via 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.

Information disclosed during the Punch Call

3.22. On Tuesday 9 June, Mr Osborne and Punch management participated in the Punch Call with Mr Einhorn and the Greenlight analyst. The Punch Call lasted for approximately 45 minutes and involved a considerable amount of discussion between Punch management and Greenlight.

3.23. The inside information received by Mr Einhorn 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 Punch Call has been considered in the context in which it took place and in its entirety:

(i) with regard to context, Mr Einhorn knew in advance of the Punch Call that MLI wanted to wall cross Greenlight in relation to Punch. When Mr Osborne spoke to the Greenlight analyst and asked Greenlight to agree to be wall crossed he had said that the wall crossing related to Punch. Mr Osborne and the Greenlight analyst had also discussed Punch issuing equity on the same telephone call; and

(ii) the Punch Call has been considered as a whole. The particular pieces of information that are said to amount to inside information must be read as part of the entire conversation. The merits of Punch issuing equity form the subject matter of the majority of the call. Punch management and Mr Osborne attempted to persuade Mr Einhorn of the merits of an equity issuance and discussed the risks to the company of not issuing equity. There was no

discussion of any other possible new approach to address risks that Punch may take.

3.24. A number of particular points of information that were disclosed to Mr Einhorn during the Punch Call are derailed below.

3.25. First: Mr Einhorn was told that the amount of any possible equity issuance would need to be about £350 million in order to repay the convertible and create 10% headroom in the securitisations. This information was offered by Mr Osborne[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.*

3.26. This 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 the issuance under consideration was of a very significant size; Punch was not considering a small equity issuance in the sum of, for instance, around £50 million. Whilst Mr Osborne did not give the sum of £350 million as a definitive figure, what he said to Mr Einhorn made it clear that the transaction was to raise a sum of equity that would be of considerable size relative to Punch's market capitalisation (Punch's market capitalisation at the time of the Punch Call was approximately £400 million).

3.27. Second: Mr Einhorn was told that an NDA would last for less than a week. Mr Osborne offered to give Mr Einhorn a "*timeframe*" in respect of an NDA and when questioned by Mr Einhorn on what that would be, Mr Osborne stated "*Well, within less than a, kind of, week.*"[3]

3.28. 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 informed Mr Einhorn that the issuance was at an advanced stage.

3.29. Third: Mr Einhorn was told 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 issuance was at an advanced stage and likely to proceed. Mr Osborne said[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.

3.30. The reference to other NDAs further indicated that the issuance was likely to take place within a short period of time.

3.31. 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 to Mr Einhorn the purpose and anticipated size and timing of the issuance.

3.32. 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.

Events following the Punch Call

3.33. Having decided that Greenlight should sell the entire shareholding in Punch, immediately after the Punch Call ended Mr Einhorn gave the Greenlight analyst instructions to that effect. He did not take the opportunity to consult with Greenlight's internal compliance or legal advisers. This was despite the unusual circumstances of the call following his refusal to be wall crossed, and despite Greenlight's own policy regarding insider dealing which stated:

In practical terms, information you obtain that makes you want to trade, or affects your investment decision making may well be material.

3.34. Within about two minutes of the conclusion of the Punch Call, the analyst had passed on Mr Einhorn's sell order to Greenlight traders.

3.35. Trades effecting the sale of Punch shares commenced through an external UK broker less than 30 minutes after the Punch Call ended. On 9 June, Greenlight sold 3,456,000 shares of Punch which accounted for approximately 63% of the day's volume. Greenlight continued to sell Punch shares between 10 - 12 June and dominated trading in Punch shares on the London Stock Exchange on these days:

- 10 June – Punch's stock closed at 154.75p. Greenlight traded 2,000,000 shares, 62.28% of the daily volume;

- 11 June – Punch's stock closed at 154p. Greenlight traded 6,100,000 shares, 85.52% of the daily volume;

- 12 June – Punch's stock closed at 148.5p. Greenlight traded 100,000 shares, 6.15% of the daily volume.

3.36. On Friday 12 June at 08:31, a Regulatory News Story ("RNS") was released by Greenlight stating:

> *Greenlight reduced their investment in Punch Taverns to 12.02% on 9 June, 11.27% on 10 June, and 9% on 11 June.*

3.37. 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).

3.38. 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. As stated above, the market abuse by Greenlight arises by the attribution of Mr Einhorn's behaviour to Greenlight. The analysis of the breach set out below is therefore based on Mr Einhorn's behaviour.

4.3. Mr Einhorn's behaviour fell within section 118(1)(a) of the Act, in that it occurred in relation to Punch shares:

(i) shares in Punch are qualifying investments and contracts for difference referenced to Punch shares are related investments under section 130A(3) of the Act for the purpose of section 118(2) of the Act; and

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

4.4. Mr Einhorn's behaviour amounted to market abuse by way of insider dealing in breach of section 118(2) of the Act for the following reasons (as detailed further below):

(i) Mr Einhorn was an insider;

(ii) Mr Einhorn dealt in the investment;

(iii) Mr Einhorn had inside information; and

(iv) Mr Einhorn dealt on the basis of that inside information.

4.5. Mr Einhorn was an insider because he had inside information as a result of having access to information through the exercise of his employment at Greenlight and his duties as President and portfolio manager of Greenlight.

4.6. Mr Einhorn dealt in the investment by directing Greenlight traders to sell Greenlight's Punch shares.

4.7. The information received by Mr Einhorn 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 4.9–4.12 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 4.13–4.16 below);

(iii) the information was not generally available (see paragraphs 4.17–4.18 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 4.19 below).

4.8. Mr Einhorn dealt on the basis of the inside information (see paragraph 4.20 below).

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

4.9. The information disclosed to Mr Einhorn was sufficiently precise to indicate that a share issuance may reasonably be expected to occur. It was not necessary for Mr Einhorn to be told that the issuance was definitely going to proceed and, indeed, the Transaction was not a certainty at the time of the disclosures.

4.10. From what he was told, Mr Einhorn understood 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.

4.11. 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 issuance. When a firm wall crosses investors, a transaction is usually close to launch. Firms do not usually 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 disclosed to Mr Einhorn, provided a clear indication that the issuance was at an advanced stage, probably with a timescale of around a week.

4.12. The information disclosed to Mr Einhorn 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 issuance on the price of Punch shares

4.13. With regard to the price sensitivity of the information, the information given to Mr Einhorn 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.

4.14. The conclusion could be drawn that when the issuance 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.

4.15. 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 issuance 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 may reasonably be expected to 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.

4.16. In these circumstances, it was predictable that the share price would fall. The information received by Mr Einhorn 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

4.17. There was some speculation in the market that Punch may have to raise capital by way of new equity in or around 2009. However, public statements by 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.

4.18. There was no generally available information regarding the timing, size and shareholder support for the issuance and these factors could not have been deduced from other public information by market participants. Thus, 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

4.19. It follows from the analysis at paragraphs 4.13 - 4.16 above that a reasonable investor would be likely to use the information disclosed to Mr Einhorn as part of the basis of his investment decisions.

Dealing on the basis of the inside information

4.20. The FSA's view is that Mr Einhorn's decision to deal was based on the inside information he received. It is sufficient that a decision to deal is materially influenced by the inside information, it need not be the sole reason for the trading.

5. SANCTION

Financial Penalty

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 the behaviour attributable to Greenlight that mean a substantial financial penalty is warranted:

(i) Greenlight's trading took place over a period of four days and represented a large part of the daily volume traded in Punch shares over that period. Such significant trading in a stock on the basis of inside information severely undermines confidence in the market. The trading was highly visible to market participants.

(ii) The trading resulted in loss avoidance for the Greenlight Funds of £5.8 million.

(iii) Greenlight is a high profile hedge fund, at which Mr Einhorn occupies a prominent position as President.

(iv) Mr Einhorn is an experienced trader and portfolio manager. He has had over 15 years of experience running an investment management firm and should therefore be held to the highest standards of conduct and the highest levels of accountability.

(v) Given Mr Einhorn's position and experience, it should have been apparent to him that the information he received on the Punch Call was confidential and price sensitive information that gave rise to legal and regulatory risk. The Punch Call was unusual in that it was a discussion with management following a refusal to be wall crossed. In the circumstances Mr Einhorn should have been especially vigilant in assessing the information he received. It was a serious error of judgement on Mr Einhorn's part to make the decision after the Punch Call to sell Greenlight's shares in Punch without first seeking any compliance or legal advice despite the ready availability of such resources within Greenlight.

5.8. It is noted that Mr Einhorn did not deliberately or recklessly contravene the regulatory requirements. Further, he voluntarily attended an FSA interview under caution, and neither he nor Greenlight has 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 Greenlight of £3,650,795. The financial penalty consists of the following elements:

(i) A disgorgement of financial benefit arising from the market abuse of £650,795 representing the losses Greenlight avoided by way of reduced performance and management fees through the sale of Punch shares.

(ii) An additional penalty element of £3 million.

6. REPRESENTATIONS AND FINDINGS

6.1. Below is a brief summary of the key written and oral representations made by Mr Einhorn on behalf of Greenlight, 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 the representations made, whether or not explicitly set out below.

Information disclosed on the Punch Call

6.2. Mr Einhorn made representations that:

(i) on a fair view of the Punch Call, taken as a whole and in context, and bearing in mind relevant market practice, no inside information was conveyed. Although the pros and cons of Punch potentially issuing equity were discussed on the Punch Call, the discussion was high-level and conceptual. Punch management invited Mr Einhorn's views and engaged in debate with him, and the discussion ended inconclusively. Punch's management made it clear that they were considering different alternatives, that no decisions had been made regarding an equity issuance or other course of action, and that Punch was continuing to operate on a 'business as usual' basis;

(ii) even on the FSA's case there was no single statement of inside information; rather, the information comprised various comments scattered throughout the 45-minute call. Since Mr Einhorn was not aware of what Punch were actually planning or doing, he therefore had to interpret the overall information

provided to him, taking the Punch Call as a whole. Mr Einhorn was entitled to expect, having refused to sign an NDA and be wall crossed, that he would not be given inside information. Although this did not mean that he could act on inside information if he received it, in order to know whether he had received it he interpreted what he was told in light of that expectation. Further, there were a number of experienced professionals on the call, who were aware of Punch's plans, none of whom raised any concern that inside information had been disclosed, even when Mr Einhorn stated that Greenlight might sell its Punch shares. This suggested that nothing said on the call should be interpreted as constituting inside information;

(iii) it would not be fair to require Mr Einhorn, or any reasonable investor, to deduce that they had been given inside information by making inferences and assumptions, and ignoring the plain meanings of the words spoken to them. Mr Einhorn was told that an NDA would last for less than a week, not that an equity issuance was less than a week away. He was not told what the NDA covered. He did not understand this to mean that an equity issuance was taking place imminently, particularly since an NDA does not indicate that a transaction is about to occur, and that a timescale of a week, as opposed to a day, would indicate that any transaction was not yet at an advanced stage. The fact that Punch management wanted him to sign an NDA suggested matters were still at the discussion phase. The conversation was presented as a hypothetical back and forth, and included a number of 'disclaimers' from Punch management that it was purely conceptual. Mr Einhorn took Punch management at their word;

(iv) none of the parties on the call thought that inside information had been disclosed. This supports the view that, as a matter of objective fact, no inside information was disclosed as the information disclosed would not indicate to a reasonable investor that an event may reasonably have been expected to occur; and

(v) even if inside information was, as a matter of objective fact, disclosed to Mr Einhorn, he did not understand it. He did not know what Punch was going to do after the call because the inside information, as formulated by the FSA, was not a conclusion that he drew. In his view he had simply participated in a conversation about the potential issuance of equity at some future time, about which Punch management had made no decisions.

6.3. The FSA has found that:

(i) taking the Punch Call as a whole and in context, it was sufficiently clear that an equity issuance was reasonably to be expected to occur imminently. Punch management's comments to the contrary made that no less apparent when taken in context;

(ii) while there was no single statement of inside information, and some interpretation was required, the clear interpretation of the comments made on the Punch Call disclosed inside information;

(iii) reasonable investors are expected to interpret comments made to them in an appropriate manner, which may sometimes mean understanding more than the precise words spoken, or interpreting certain comments in light of the context. If it is sufficiently clear that a discussion is not, in fact, merely conceptual, even express words to the contrary will not prevent inside information from being given. In the specific circumstances of the Punch Call it was clear that the equity issuance was imminent and that the reference to a timetable for the NDA disclosed the anticipated timetable for the issuance;

(iv) the fact that none of the parties to the call raised concerns regarding the disclosure of inside information does not affect the objective test of whether the information disclosed was inside information. In the FSA's view it was; and

(v) Mr Einhorn interpreted and understood the inside information disclosed, notwithstanding that he did not believe that it was inside information.

Inside information

6.4. Mr Einhorn made representations that:

(i) the information alleged by the FSA to have been disclosed on the Punch Call did not in any event amount to inside information;

(ii) the equity issuance was not reasonably expected to occur at the time of the Punch Call; and

(iii) the information lacked sufficient detail to be 'specific' within the meaning of section 118C of FSMA. It lacked detail, such as regarding the type of shares to be issued, and how and with whom they were to be placed. It was therefore not possible to draw a conclusion as to whether the effect on the share price would be to increase or decrease it.

6.5. The FSA has found that:

(i) the information disclosed to Mr Einhorn on the Punch Call did amount to inside information, for the reasons set out in detail in this Notice;

(ii) 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; and

(iii) 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'.

Dealing 'on the basis of' inside information

6.6. Mr Einhorn made representations that:

(i) even if inside information was disclosed on the call, he did not deal on the basis of it. Although there was a presumption that he did so, the evidence here showed both that he did not interpret the call in way that gave him that information and that in fact he traded for other reasons. Mr Einhorn did not understand the inside information disclosed, and therefore did not trade on the basis of a conclusion that he did not reach. His reasons for trading did not include, as a material factor, an appreciation of an imminent equity issuance. He did not dispute that he traded on the basis of the Punch Call, but stated that this was because the call made him lose faith in Punch as an investment, with which he was already unhappy. In particular, Punch's CEO stated that the stock was fairly valued at its then-current price, which Mr Einhorn found very surprising, and that there were 'pluses and minuses' unknown to the market, that might mean the stock price would be discounted if the market knew. Overall he found Punch management's tone to be surprisingly negative, and he began to doubt Greenlight's understanding of Punch. Given Punch's troubled nature and the relatively small size of the position compared to Greenlight's overall portfolio (less than 2%), he did not believe it made sense to stay invested when there were better uses for Greenlight's capital; and

(ii) the manner of Greenlight's actual trading evidences that it did not trade 'on the basis' of the alleged inside information. The trading was not aggressive, and in the end Greenlight still suffered a big loss at the time of the announcement and subsequent price drop, since Greenlight still owned two-thirds of its previous total amount of shares. If Mr Einhorn had understood that Punch was planning an imminent equity issuance he either would have sold much more aggressively or held all of his shares in order to vote against the issuance and prevent it from going ahead.

6.7. The FSA has found that:

(i) as set out above, Mr Einhorn did understand the inside information disclosed to him. In the view of the FSA he has not rebutted the presumption that he dealt on the basis of that information. Although the FSA accepts that Mr Einhorn may have had more than one reason for trading, he has not shown that the equity issuance did not play a material part in that decision; and

(ii) while Greenlight's selling was not as aggressive as it could have been, it still disposed of around one third of its Punch shares within a matter of days, resulting in an avoidance of loss of over £5 million.

Section 123 of the Act

6.8. Mr Einhorn made representations that:

(i) he took all reasonable precautions and exercised all due diligence to avoid committing, and reasonably believed that he had not committed, market abuse. He refused to be wall crossed, and relied on Punch management and

the other insiders on the Punch Call not to give him inside information, or to tell him if they inadvertently did so. None of the experienced parties on the call raised any concerns, even after he stated that he was considering selling Punch shares. Punch management told him that they were talking only in general terms and having an in-concept discussion – as a matter of market practice it was reasonable for him to place considerable weight on those disclaimers. Further, towards the end of the call he asked if the decision to issue equity had been made and was told that no formal decision had been made, and that the firm was consulting with various parties. He was also still being told at the end of the call that he was not wall crossed. He took these comments as confirmation that he was 'nowhere close' to having inside information; and

(ii) he did not consult with internal or external compliance staff because he believed, reasonably and in good faith, that there was nothing to consult about. Further, the sell order was relayed to the trader who served as Greenlight UK's compliance officer, and the sales were vetted by Greenlight's in-house counsel to make sure that the necessary regulatory filings were made.

6.9. The FSA has found that:

(i) Although Mr Einhorn's approach to the Punch Call is not criticised, following the call Mr Einhorn should have been aware that he had been given inside information, or at the very least that there was a risk of this. He had a responsibility to consider whether the information received during the call constituted inside information before instructing the sale of shares. Given that the call took place following Mr Einhorn's refusal to sign an NDA, Mr Einhorn should have been even more diligent than usual in considering whether inside information had been disclosed to him before selling. Having received the information, although it is accepted that he did not believe that it was inside information, before dealing he should have taken steps to ensure that it was not before dealing, such as obtaining compliance or legal advice, or contacting Punch management again to specifically clarify whether the information he had been given was inside information. Although he was entitled to give some weight to the fact that neither Punch nor its corporate advisers raised any concerns either during or immediately after the call, that does not remove the obligation on Mr Einhorn to remain alert to the risk, make his own assessment of any information he received, and take steps as necessary to confirm it. That the trading was subject to Greenlight's usual processes for dealing does not mitigate these failings; and

(ii) in the absence of these necessary further steps, it cannot be said that Mr Einhorn took all reasonable precautions and exercised all due diligence to avoid committing market abuse, nor that his honestly-held belief that he was not committing market abuse was reasonable.

Penalty

6.10. Mr Einhorn made representations that:

(i) deterrence should not be a significant factor in determining the penalty in this case, since there is no evidence of a material risk of these circumstances being replicated. A private warning or disgorgement-only penalty would be sufficient. A significant penalty is impossible to reconcile with the finding that the conduct was not deliberate;

(ii) bearing in mind the penalties imposed in other FSA cases, the penalty imposed on Greenlight should be much lower; and

(iii) any breach was not deliberate or reckless, but totally accidental. If Mr Einhorn had thought he was "anywhere close to the line" he would not have traded. In the circumstances this was, at worst, an understandable misjudgement.

6.11. The FSA has found that:

(i) the trading in this case was very significant in terms of volume, highly visible, and related to a large public company. Although the market abuse was inadvertent, it is appropriate and necessary to deter similar errors of judgement in relation to inside information, both in the same circumstances and more generally, through the imposition of a significant penalty;

(ii) any penalty must be sufficiently substantial to be meaningful, and act as a credible deterrent, to highly visible and influential investors like Greenlight, who have a significant involvement in the markets and commensurate access to company management. Such market participants must act with due caution when liaising with companies and their brokers; and

(iii) Mr Einhorn did not act deliberately or recklessly. However, having been asked to and having refused to sign an NDA, with knowledge that the subject of the Punch Call with management and its advisors was the issuance of equity, Mr Einhorn, a highly experienced market professional, should have recognised that there was a real risk of inside information being disclosed to him, and that extreme caution would be required before any trading following the call. His failure to apply the necessary care and rigour, while unintentional, was an extremely serious matter, and warrants a substantial penalty.

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 Greenlight under section 127 and in accordance with section 388 of the Act.

Manner and time for payment

8.2. The financial penalty must be paid in full by Greenlight to the FSA by no later than the 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 the 1 March 2012 the FSA may recover the outstanding amount as a debt owed by Greenlight 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*
> *(iii) in the case of subsection (2) or (3) behaviour, investments which are related investments in relation to such qualifying investments, and*
> *(b) falls within any one or more of the types of behaviour set out in subsections (2) to (8).*

2. "Related investments" are defined at section 130A(3) as "*an investment whose price or value depends on the price or value of the qualifying investment*."

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

> *… 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.*

4. 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.*

5. Section 130A of the Act defines dealing as follows:

> *in relation to an investment, means acquiring or disposing of the investment whether as principal or agent or directly or indirectly, and includes agreeing to acquire or dispose of the investment, and entering into and bringing to an end a contract creating it.*

6. 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.

7. 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.*

8. 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.*

9. 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.*

10. 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.*

11. 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

12. 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.

13. 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.

14. 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

15. 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.*

16. 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).

17. MAR 1.3.3 E sets out factors that are to be taken into account in determining whether or not a person's behaviour is "on the basis of" inside information and sets out a number of factors that are indications that it is not (none of which are relevant to the facts of this case).

Decision Procedures and Penalties Manual ("DEPP")

18. 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 DEPP.

19. 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 Greenlight, the FSA has had regard to DEPP 6 as it applied in June 2009.

20. With regard to defences to a penalty for market abuse under section 123(2) of the Act, DEPP 6.3.2 G sets out factors that the FSA may take into account in determining whether the conditions of 123(2) are met:

> *(1) whether, and if so to what extent, the behaviour in question was or was not analogous to behaviour described in the Code of Market Conduct (see MAR 1) as amounting or not amounting to market abuse or requiring or encouraging;*
>
> *(2) whether the FSA has published any guidance or other materials on the behaviour in question and if so, the extent to which the person sought to follow that guidance or take account of those materials (see the Reader's Guide to the Handbook regarding the status of guidance.) The FSA will consider the nature and accessibility of any guidance or other published materials when deciding whether it is relevant in this context and, if so, what weight it should be given;*
>
> *(3) whether, and if so to what extent, the behaviour complied with the rules of any relevant prescribed market or any other relevant market or other regulatory requirements (including the Takeover Code) or any relevant codes of conduct or best practice;*
>
> *(4) the level of knowledge, skill and experience to be expected of the person concerned;*
>
> *(5) whether, and if so to what extent, the person can demonstrate that the behaviour was engaged in for a legitimate purpose and in a proper way;*
>
> *(6) whether, and if so to what extent, the person followed internal consultation and escalation procedures in relation to the behaviour (for example, did the person discuss the behaviour with internal line management and/or internal legal or compliance departments);*
>
> *(7) whether, and if so the extent to which, the person sought any appropriate expert legal or other expert professional advice and followed that advice; and*
>
> *(8) whether, and if so to what extent, the person sought advice from the market authorities of any relevant prescribed market or, where relevant, consulted the Takeover Panel, and followed the advice received*

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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