

## Corporate & Financial Weekly Digest

January 27, 2012 by [Edward Black](#)

### David Einhorn and Greenlight Capital Inc. Fined £7.2M for Insider Trading

On January 25, the UK Financial Services Authority (FSA) announced the imposition of penalties totaling £7.3M (approximately \$11.5M) on David Einhorn and Greenlight Capital Inc. (Greenlight), for market abuse in June 2009 in relation to trading in equities of Punch Taverns plc (Punch).

On June 9, 2009, when 13.3% of Punch's outstanding equity capital was held by funds managed by Greenlight, Einhorn participated in a forty five minute conference call (the Punch Call) during which it was disclosed to him by a corporate broker acting on behalf of Punch that the company had reached an advanced stage of planning a sizeable equity fundraising. Very shortly after the end of the Punch Call, Einhorn gave instructions for the sale all of Greenlight's holding in Punch. The FSA Decision Notice states that "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 June 9 and June 12, 2009, Greenlight sold 11.65 million Punch shares, reducing its holding in Punch from 13.3% to 8.98%.

On June 15, 2009, Punch announced a £375 million (approximately \$588 million) fundraising. Following that announcement the price of Punch shares dropped by just under 30%. Greenlight's sale of shares prior to the fundraising announcement therefore avoided losses of approximately £5.8 million (approximately \$9.1 million).

The FSA Decision Notice states that, "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 judgment to be a serious failure to act in accordance with the standards reasonably expected of market participants." The Decision Notice also states that, "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."

Tracey McDermott, FSA's acting director of enforcement and financial crime, said: "Einhorn is an experienced professional with a high profile in the industry. We expect someone in his position to be able to identify inside information when he receives it and to act appropriately. His failure to do so is a serious breach of the expected standards of market conduct. It is highly damaging to market confidence when privileged shareholders commit market abuse, and the high penalty reflects the seriousness of his breach."

Einhorn's fine is £3,638,000 (approximately \$5.7 million), a penalty element of £3 million and £638,000 with respect to disgorgement of financial benefit. Greenlight's fine is £3,650,795 (approximately \$5.7 million), a penalty element of £3 million and £650,795 with respect to disgorgement of financial benefit.

For more information about David Einhorn, click [here](#).

For more information about Greenlight Capital, click [here](#).

Katten Muchin Rosenman LLP  
Charlotte Chicago Irving London Los Angeles New York Washington, DC