

Financial Services and Markets

The Greenlight case - the saga continues

Following the publication of decision notices against Greenlight Capital Inc. and David Einhorn on 25 January 2012, the FSA has published final notices against Alexander Edward Ten-Holter (the compliance officer at Greenlight Capital (UK) LLP) and Caspar Jonathan William Agnew (a trading desk director at JP Morgan Cazenove Limited) for failing to suspect market abuse in respect of the trades effected by Greenlight Capital Inc. in the shares and derivatives of Punch Taverns Plc.

Alexander Edward Ten-Holter

Mr Ten-Holter occupied the positions of trader, compliance officer and money laundering reporting officer at Greenlight Capital (UK) LLP. One of his roles involved executing trades according to instructions received from the portfolio management team at Greenlight Capital Inc. and it was in this capacity that he received the instruction to dispose of Greenlight's position in Punch Taverns. The FSA found that at the time the instruction was received for the sale of the Punch position, sufficient information was given to indicate to Mr Ten-Holter that there was a risk of market abuse and that he should, accordingly, have taken action to satisfy himself that no such risk existed before deciding whether to execute the trade. He did not do this.

Mr Ten-Holter was fined £130,000 and the FSA imposed a prohibition order prohibiting him from performing the compliance and money laundering reporting officer roles in future on the ground that he is not a fit and proper person to perform those functions. Mr Ten-Holter's fine was double that given to Mr Agnew (see below). This reflected Mr Ten-Holter's role as compliance officer, a key part of which is detecting and preventing market abuse.

Key point

The FSA found that Mr Ten-Holter placed significant reliance on his view of Greenlight Capital Inc's high standards of compliance in making any assessment of risk. The case is a clear reminder to firms that compliance by FSA regulated firms must be considered on an independent basis in the context of relevant UK requirements. Over-reliance must not be placed on group procedures or protocols in other jurisdictions.

Caspar Jonathan William Agnew

At the relevant time, Mr Agnew was a director on the trading desk at JP Morgan Cazenove and received the instruction from Mr Ten-Holter to dispose of Greenlight's stake in Punch Taverns. The FSA found that, while he may not have suspected market abuse on receipt of the initial instruction to start selling the position on 9 June 2009, his suspicions should have been aroused when, on Monday 15 June 2009, Punch Taverns made an unscheduled announcement to the market. The FSA considered that, in view of the indicators, Mr Agnew should have considered the issue and raised any concerns with his compliance department or senior management. Had he done so, this might have resulted in the submission of a suspicious transaction report to the FSA. Mr Agnew was fined £65,000.

Key point

This is the second fine from the FSA against a market participant for failure to give appropriate consideration to suspicious circumstances. It is not that Mr Agnew ignored a suspicion; rather the FSA found that in the circumstances, he *should* have been suspicious. The fine, particularly in the context of so high profile a case, underlines the FSA's expectation that it is the function of the market, as well as its regulators, to help identify and stamp out market abuse.

The case also reminds firms that consideration as to whether the circumstances of a trade are suspicious should be made both at time the order is received and in the light of subsequent events, even if the order has already been executed.

Other materials

Our client briefing in relation to the decision notices issued against Greenlight Capital Inc. and David Einhorn can be found [HERE](#).

The enforcement notices can be found by clicking on the names below:

- [Greenlight Capital, Inc.](#)
- [David Einhorn](#)
- [Alexander Edward Ten-Holter](#)
- [Caspar Jonathan William Agnew](#)

We regularly advise in relation to the market abuse regime in relation to both contentious and non-contentious matters. Please follow the links for further information in relation to our [Financial Services and Markets team](#) and our [Regulatory Investigations team](#).

To view our client bulletin in relation to the review of the Market Abuse Directive, click [HERE](#).

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