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Insights

FCA PUBLICLY CENSURES AIM COMPANY FOR MARKET ABUSE

29 June 2020

SUMMARY

The FCA has published a public censure against an AIM company, Redcentric PLC ("Redcentric"), for committing market abuse by publishing false information about its debt and cash positions. As an IT firm providing services including to NHS Trusts, the FCA decided not to issue a fine in order to avoid any impact to its business, given it provides vital services in relation to COVID-19. Redcentric agreed to set up a scheme to compensate investors and as a result, the FCA concluded Redcentric was reasonably taking steps to compensate investors who suffered a loss as a result of its market abuse. The FCA made clear that, in normal circumstances, a substantial penalty would be justified.

Facts

The FCA found that Redcentric had published unaudited interim results and audited final year results which incorrectly overstated its cash position and understated its net debt position in circumstances where it knew, or ought to have known that the information was false and misleading.

The unaudited interim results and the final results each caused Redcentric's shares to rise and as a result investors who acquired shares during the relevant period 9 November 2015 to 7 November 2016 paid a higher price than they would have done if the information had been accurate.

Redcentric took a number of steps to address its failing including:

- commissioning an independent review once it discovered these issues;
- making improvements to its systems and controls to ensure compliance in the future; and
- setting up a scheme to provide compensation to purchasers of Redcentric's shares who suffered losses as a result of the market abuse. This is the first time that an AIM listed

company has offered to implement its own scheme to pay some compensation to those affected by the harm it caused as a result of market abuse.

The FCA chose not to impose a financial penalty on Redcentric because as a provider of vital IT services to numerous NHS Trusts, it felt this would give rise to a significant risk of disruption to Redcentric's business at a time when it is providing vitally needed services in the fight against COVID-19. The FCA explained that in the unique circumstances of the case, the balance of public interest was against the issue of a penalty. As a result, the FCA issued a censure, rather than a fine.

Whilst the FCA estimated the loss to affected shareholders caused by the market abuse to be in the region of £43 million, the value of the scheme Redcentric is to set up is £11.4 million so it appears each claimant will receive some compensation, but not a full recovery.

In a separate action, the FCA has instituted criminal proceedings against three former employees of Redcentric including for making a false or misleading statement, contrary to Section 89(1) of the Financial Services Act 2012.

We consider that the FCA's decision not to impose a financial penalty due to COVID related pressures is significant and indicates the approach the FCA is likely to take in relation to enforcement in the current environment, where firms can show that they are likely to suffer prejudice through making payment of a fine and where they are performing essential services.

Generally, we also expect firms to offer similar redress schemes for investors who have experienced market abuse, in order to seek to avoid or reduce a penalty.

Final Notice

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