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UK Financial Services Authority Sets Precedent Under New Penalty Policy

FSA's methodology for calculating financial penalties is expected to lead to significantly higher fines than in the past.

On 18 March, the UK Financial Services Authority (FSA) published a final notice¹ imposing a fine of £2.4m on Lamprell plc—a UK-listed, oil and gas-focused specialist engineering company based in the United Arab Emirates—for significant failings in its financial systems and controls. The failings resulted in breaches of the FSA Listing Principles, Disclosure and Transparency Rules, and Model Code on dealings in securities by persons discharging managerial responsibilities.

From early 2012, Lamprell's financial performance against its budget had been deteriorating as a result of various operational reasons. However, the company did not update the market on its deteriorating financial performance until it released a trading update on 16 May 2012. In response to this trading update, Lamprell's share price fell by 57%. According to the FSA, Lamprell could not adequately monitor its financial performance against its budget and market expectations and therefore failed in its obligations as a UK-listed company to keep the market fully informed of its deteriorating financial position. The FSA further found that, when Lamprell did eventually recognise the deterioration in its financial performance, it did not act quickly enough to update the market. The final notice also states that Lamprell was too slow in acting to prevent its employees from continuing to deal in its shares once the inside information regarding its poor financial performance had been recognised by senior management.

The final notice sets out how the FSA determined the level of the fine, by reference to its five-step approach to setting penalties (as set out in the Decision Procedure and Penalties Manual), which was introduced in 2010.² Of particular note is that the FSA decided that, when determining the seriousness of the breach in this case, a fine set by reference to revenue was not an appropriate indicator of the harm or potential harm caused by Lamprell. Instead, the FSA found that the level of the fine should be determined by reference to Lamprell's average market capitalisation during the period of the breach. The final notice also sets out the scale to be used in cases where market capital is used to determine the appropriate level of a fine under step two of the five-step approach (seriousness of the breach), with the FSA considering that a scale of 0%–0.5% of market capitalisation (applied according to the seriousness of the breach) is appropriate in such cases. In this case, the FSA determined that a level four breach had occurred, resulting in a fine of 0.375% of market capitalisation. The resulting £2.4m fine is nearly five times larger than the penalties imposed by the regulator in previous cases of this type.

The methodology used by the FSA in Lamprell's case sets a precedent for similar breaches by UK-listed companies and is expected to increase the level of financial penalties for these types of breaches in the future.

Contacts

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact any of the following Morgan Lewis lawyers:

1. View the final notice at <http://www.fsa.gov.uk/static/pubs/final/lamprell.pdf>.

2. View the relevant provisions of the FSA Handbook at <http://fsahandbook.info/FSA/html/handbook/DEPP/6/5A>.

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