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Corporate & Financial Weekly Digest

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FSA Imposes Bans and Fines for Publishing Misleading Information

On March 28, the UK Financial Services Authority (FSA) announced that it had fined and banned three former directors of Cattles plc (Cattles) and its subsidiary Welcome Financial Services Limited (Welcome) for publishing misleading information to investors about the credit quality of Welcome's loan book and acting without integrity in discharging their responsibilities. The FSA also publicly censured Cattles and Welcome for publishing misleading information.

James Corr, Cattles' finance director, was fined £400,000 (approximately $640,000) and Peter Miller, Welcome's finance director was fined £200,000 (approximately $320,000), and both have been banned from performing any functions in relation to any FSA regulated activities. The FSA has also banned John Blake, Welcome's managing director, and fined him £100,000 (approximately $160,000). (Blake has appealed this penalty to the Upper Tribunal). All three fines were reduced on account of the directors' current personal financial circumstances.

The FSA found numerous breaches of its market abuse, listing and disclosure rules and its Principles for Businesses.

At the relevant time, Cattles was a sub-prime lender listed on the London Stock Exchange. Most of its business was conducted through Welcome. Cattles' 2007 Annual Report contained highly misleading arrears, impairment and profit figures. It stated that £900 million (approximately $1.4 billion) of Welcome's approximately £3 billion (approximately $5 billion) loan book was in arrears. If accounting standards had been properly applied the correct arrears figure would have been about 50% higher. Cattles also announced a pre-tax profit of £165.2 million for 2007 (approximately $265 million). If accounting standards had been correctly applied Cattles would have suffered a pre-tax loss of £96.5 million (approximately $155 million) – a difference of £261.7 million (approximately $420 million).

The misleading figures from the Annual Report were also included in a rights issue prospectus released by Cattles in April 2008. It was likely that investors would have regarded this as highly material when subscribing under the rights issue which was fully subscribed. When the true state of Cattles' loan book emerged in 2009, trading in Cattles' shares was suspended. On March 2, 2011 Cattles announced a scheme of arrangement under which its shareholders would receive only 1p for each share, less than 1% of the rights issue price.

The FSA found that Cattles breached the FSA's Listing Principles by failing to act with integrity towards its shareholders and potential shareholders, and failing to communicate information in such a way as to avoid the creation or continuation of a false market. Welcome breached Principle 3 of the FSA Principles for Businesses by failing to take reasonable care to organize and control its affairs responsibly and effectively, with adequate risk management systems. Both companies engaged in market abuse by disseminating the inaccurate information. Corr, Miller and Blake were personally responsible for the breaches by the companies of which they were directors and also committed market abuse.

The FSA has publicly censured Cattles and Welcome and stated that it would have imposed substantial financial penalties on the two companies had it not been for their financial circumstances.

Tracey McDermott, the FSA's acting Director of Enforcement and Financial Crime, said: "The consequences for shareholders of the misleading statements issued by Cattles and Welcome have been devastating. These directors failed to act with integrity in discharging their responsibilities. They failed in their obligations to shareholders, the wider market and the regulator."

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