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FCA hands out provisional fines after saying Carillion “recklessly published announcements” that were “misleading”

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The FCA has publicly censured the now insolvent and in-liquidation Carillion and handed out fines to three of the businesses former bosses, the latter provisional on a review by the Upper Tribunal.

It comes after the FCA concluded Carillion recklessly published announcements on 7 December 2016, 1 March 2017 and 3 May 2017 that were misleading and did not accurately or fully disclose the true financial performance of Carillion. The FCA said those announcements made misleadingly positive statements about Carillion’s financial performance generally and in relation to its UK construction business in particular. The FCA added the announcements did not reflect significant deteriorations in the expected financial performance of Carillion’s UK construction business and the increasing financial risks associated with it.

Furthermore, the FCA believes Carillion’s systems, procedures and controls were not sufficiently robust to ensure that contract accounting judgments made in its UK construction business were appropriately made, recorded and reported internally to the Board and the Audit Committee.

The FCA said that it also considers that Richard John Howson (former chief executive officer), Richard Adam (former finance director) and Zafar Khan (former finance director) acted recklessly and were “knowingly concerned” in Carillion’s contraventions. In the FCA’s view, Mr Howson, Mr Adam and Mr Khan were each aware of the deteriorating expected financial performance within Carillion’s UK construction business and the increasing financial risks associated with it. They failed to ensure that those Carillion announcements for which they were responsible accurately and fully reflected these matters, the FCA said. The FCA then added that despite their awareness of these deteriorations and increasing risks, they also failed to make the Board and the Audit Committee aware of them, resulting in a lack of proper oversight.

In the three individuals’ Decision Notices, the FCA has decided to fine Mr Howson (former chief executive officer) £397,800, Mr Adam (former finance director) £318,000 and Mr Khan (former finance director) £154,400.

The three individuals have referred their respective Decision Notices to the Upper Tribunal where they will each present their case. Any findings in the individuals’ Decision Notices are therefore provisional and reflect the FCA’s belief as to what occurred and how it considers their behaviour should be characterised.

Carillion has not referred its Decision Notice to the Upper Tribunal.

The Upper Tribunal will determine whether to uphold the FCA’s decisions against the three individuals or not and whether there are any other actions that should be taken by the FCA. The Upper Tribunal’s decision will be made public on its website following a hearing. Accordingly, the action outlined in the three individuals’ Decision Notices has no effect pending the determination of the cases by the Upper Tribunal.

Mark Steward, Executive Director of Enforcement and Market Oversight, said: “Carillion failed to take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations under the Listing Rules.

“As a result its true financial position remained hidden over many months and the effects of its collapse were aggravated, causing substantial harm to shareholders and creditors. This is market abuse, and as damaging to market integrity as insider dealing and manipulation, though not often described in this way. It should be. The FCA’s decisions on the three senior individuals whom the FCA alleges were involved in these failures will now be reviewed in the Upper Tribunal.”