

FCA ISSUES PUBLIC CENSURE IN RELATION TO BREACH OF LISTING AND TRANSPARENCY RULES

On 26 October, the FCA issued a public censure against Aviva plc for failing to take "reasonable care" in relation to a statement made in its March 2018 announcement of its preliminary year-end results.

The statement highlighted Aviva's ability to cancel some of its preference shares at par in a section of the announcement discussing returns to shareholders and liability management. Whilst the statement did not say that Aviva intended to use that right to cancel at par, the FCA [found](#) that the statement was reasonably capable of being read that way, particularly by retail investors (who made up a large proportion of the preference shareholders) and that Aviva had failed to take reasonable care to foresee and address this potential misunderstanding.

Whilst the case is fact specific, the following points arising from it are of broader interest:

1. The statement was in fact included voluntarily by Aviva with a view to correcting a lack of understanding in the market that the preference shares were capable of being cancelled. Thus the decision brings into focus some of the risks and considerations when making a voluntary clarificatory announcement. It is not clear that Aviva could or would have been sanctioned if it had made no statement at all in relation to the ability to cancel its preference shares as that information was already public knowledge (albeit not widely understood).
2. Although Aviva sought external advice in relation to the announcement, the FCA was critical of Aviva for not specifically requesting advice in relation to its obligations under LR 1.3.3R and DTR 1A.3.2. Whilst we are of the view that this can largely be attributed to the specific facts of the case, it does highlight the need to ensure that external advisors reviewing an announcement are appropriately briefed on the context of it and its likely impact.
3. The FCA found that statements made in the results presentation accompanying the announcement were of relevance to assessing how the announcement would be understood by the market, thus underlining the need for care to be taken with statements made around the time of the announcement, and not just the announcement itself.

For further insights, please contact any of the authors of this briefing.

Key issues

- The FCA has issued a public censure against Aviva plc for failing to take "reasonable care" in a statement made in its 2018 preliminary results announcement.
- The statement in question was included voluntarily and highlights some of the risks and considerations when making a voluntary clarificatory announcement.

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