

THE FINANCIAL SECTOR CONDUCT AUTHORITY

CASE NO: 5/2019

RE: GLOBAL CREDIT RATING Co. (PTY) LIMITED

ORDER IN TERMS OF SECTION 167 OF THE FINANCIAL SECTOR REGULATION ACT NO.9 OF 2017 IMPOSING AN ADMINISTRATIVE PENALTY ON GLOBAL CREDIT RATING Co. (PTY) LTD

1. Introduction

1.1. The Financial Sector Conduct Authority (the Authority) is a juristic person established in terms of section 56 of the Financial Sector Regulation Act, No.9 of 2017 (the FSR Act).

1.2. The functions of the Authority are *inter alia* to regulate and supervise the conduct of financial institutions in accordance with financial sector laws.

1.3. Global Credit Rating Co. (Pty) Limited (Global) is a registered credit rating agency authorised in terms of the Credit Rating Services Act, 24 of 2012 (the CRS Act) and is subject to the Authority's regulatory powers.

2. The Authority's finding

2.1. During 2018 the Authority conducted a supervisory on-site inspection on Global to establish its level of compliance with the CRS Act. The on-site visit, revealed that Global contravened the conflict of interest provisions and in particular Rules 5 (8), 5 (11) and 5 (12) of the Credit Rating Agency Rules issued under Board Notice 228 of 2013 (the Rules).

3. A summary of the common cause facts are set out below.

- 3.1. On 31 October 2017 Global's chief executive officer whilst acting for Global and whilst the rules required him to operate separately from the rating analysis teams undertook to an issuer, whose credit rating had expired, that Global would issue a credit rating "*which would enable [the issuer] to continue to market a rating to its funders until the rating tender is awarded.*"
- 3.2. At the time the issuer was procuring through a tender process for the services of a credit rating agency. Global was one of the applicants.
- 3.3. The Authority established that Global's credit rating process that followed the communication referred to in paragraph 3.1 was compromised and was affected by Global's business interests to obtain a ratings tender from the Issuer.
- 3.4. On 5 December 2017 the issuer awarded the tender for the "Provision of Long and Short – Term National Scale Rating Services" (IF- 20068) to Global for a total contract fee of R487 000.
- 3.5. On the strength of the common cause facts the Authority was satisfied and found that Global had contravened Rules 5 (8), 5 (11) and 5 (12) of the Rules in that it failed to deal with the conflict of interest outlined above as prescribed by the Rules.

4. The Administrative Penalty

- 4.1. After due consideration of the relevant factors set out in section 167 (2) of the FSR Act, the Authority hereby imposes an administrative penalty of **R487 000 (four hundred and eighty-seven thousand rand)**, inclusive of costs on Global to be paid within 14 working days from the date of this order.
- 4.2. In arriving at a quantum of the penalty the Authority *inter alia* considered the following factors:
- 4.2.1. A breach of the conflict of interest provisions is a serious transgression of the Rules aimed at ensuring the credibility and reliability of credit ratings;
- 4.2.2. The breach of the Rules took place during October and November 2017 after similar issues were raised with Global during previous supervisory;

- 4.2.3. Global co-operated with the Authority's inspection and demonstrated that active steps had been taken to ensure that the commercial aspects of its business were separated and isolated from its analytical functions.
- 4.2.4. Global had previously been fined an amount of R49 000 for the late submission of documentation on the appointment of a director, in contravention the CRS Act.
- 4.3. The Authority decided to disgorge from Global for penalty purposes the contract value of the issuer's tender award amounting to R487 000.
- 4.4. Global was afforded an opportunity to make representations as to the Authority's findings and the intended penalty.
- 4.5. In its submissions Global contended that the proposed penalty was excessively high compared to penalties imposed by other regulators in foreign jurisdictions and because of its size relative to Global's capital base the penalty had the potential to "*materially impede GCR's financial and operational sustainability*".
- 4.6. Having considered Global's submissions, the Authority is of the view that, other than providing general guidance as to the seriousness of contraventions of conflict of interest rules in the context of credit ratings, the quantum of penalties issued by foreign regulators is not a factor applicable to the statutory framework of the Authority which is distinguishable from the economic and regulatory framework applicable in foreign jurisdictions. The Authority took into account that the quantum of an administrative penalty should be such so as to deter similar contraventions by credit rating agencies and that deterrence overrides affordability to pay a penalty.

5. Further Take note that:

- 5.1. If Global fails to pay the administrative penalty within the period prescribed by this order, in terms of section 169 of the FSR Act, interest, at the rate prescribed in terms of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), will be payable in respect of any unpaid portion of the administrative penalty until it is fully paid.

5.2. Failure to comply with this order will result in the provisions of section 170 of the FSR Act being invoked, which provides that:

"(1) The responsible authority that makes an administrative penalty order may file with the registrar of a competent court a certified copy of the order if:-

(a) the amount payable in terms of the order has not been paid as required by the order; and

(b) either:-

(i) no application for reconsideration of the order in terms of a financial sector law, or for judicial review in terms of the Promotion of Administrative Justice Act of the Tribunal's decision, has been lodged by the end of the period for making such applications; or

(ii) if such an application has been made, proceedings on the application have been finally disposed of.

(2) The order, on being filed, has the effect of a civil judgment, and may be enforced as if lawfully given in that court."

5.3. In terms of section 230 of the FSR Act a person aggrieved by this decision has a right to apply for the reconsideration of the decision by the Financial Services Tribunal (the Tribunal). An application for reconsideration must be made –

(a) in accordance with the Tribunal rules; and

(b) within the time periods set out in section 230(2) of the FSR Act.

You may contact the secretary of the Tribunal at (012) 428 8012 or per electronic mail at LEG.Tribunal@fsca.co.za.

Signed at Pretoria on 29 April 2019



**Mr J A BOYD
FOR THE AUTHORITY**