

ADMINISTRATIVE PENALTIES REGULATORY FRAMEWORK

Q & A

Q: Why are Administrative Penalties (“APs”) imposed?

A: APs are an important and effective enforcement tool to address regulatory misconduct. APs not only penalise contraveners for contravening requirements, they significantly deter repetitive misconduct and act as a warning to the others in the industry. APs can be flexible, accessible and enable viable businesses to continue to operate whilst being subject to appropriate sanctions for any misconduct they engage in. The imposition of APs is useful in reflecting the seriousness of misconduct and assist in enhancing deterrence.

The proportionate and effective imposition of APs will play an important role in securing public confidence in the regulatory regime and the regulated industry. APs are also an effective means of tackling offending behaviour at an early stage, and often before such behaviour becomes so egregious that only the most serious sanctions of revocation and disqualification are appropriate.

The Financial Services Commission (the “Commission”) is committed to adopting international regulatory best practices and meeting the standards set out by the International Organisation of Securities Commissions, International Association of Insurance Supervisors and International Organisation of Pension Supervisors. APs are recognised by these international organisations and applied by regulators across the globe as an effective enforcement tool to address regulatory misconduct.

The Commission is also cognisant of the July 2018 report of the Eastern and Southern Africa Anti-Money Laundering Group which emphasises the need to ensure that sanctions are effective, proportionate and dissuasive as well as commensurate with the severity of infringements. APs are an effective mechanism because they can be applied proportionately to greater or lesser breaches. In this regard, they are less likely to affect consumers of financial services and financial products adversely.

Q: How are APs implemented?

A: The Commission has powers to impose an AP in accordance with section 7(1)(c)(v) of the Financial Services Act (“FSA”). Currently, the Commission is making use of its powers to

impose APs under the [Financial Services \(Administrative Penalties\) Rules 2013](#)¹ for specific breaches mentioned in the Schedule therein.

The Commission has now devised an [Administrative Penalties Regulatory Framework](#) (the “Framework”) which sets out guiding principles and approach for the Enforcement Committee to impose an AP on a licensee pursuant to section 52(3)² of the FSA. These APs, imposed by the Commission for the breaches of relevant laws, are going to be decided on a case by case basis.

The Framework is not intended as an exhaustive description of the Commission’s approach to the exercise of its enforcement powers. The Framework does not create additional compliance requirements for licensees

Additionally, it is to be highlighted that this Framework does not supersede the Financial Services (Administrative Penalties) Rules 2013.

Q: Does that mean the penalties for non-filing of accounts are going to be imposed on a case by case basis?

A: No, APs will be applied by the Commission to sanction licensees for instances of regulatory breaches that require enforcement action. Penalties for non-filing of statutory documents and statistical information are provided for under the Financial Services (Administrative Penalties) Rules 2013.

Q: What factors were taken into consideration in devising the Framework?

A: The Commission issued a [Consultation Paper on Administrative Penalties](#) (“CP”) on 10 May 2019. At the end of the consultation period, the Commission received feedback and comments from the industry, relevant professionals and the public. These have been duly taken into consideration in devising the Framework.

The Framework has also been benchmarked against tried and tested protocols adopted by various jurisdictions and international regulators.

¹ https://www.fscmauritius.org/media/2088/financial_services__administrative_penalties__rules_2013_final.pdf

² Section 52(3) of the FSA provides that the Enforcement Committee may exercise the disciplinary powers of the Commission under section 7(1)(c) to impose an administrative sanction on a licensee.

The Framework sets out three key stages:

- Identification of breach;
- Deciding on the appropriate sanction; and
- If the appropriate sanction is an AP, deciding its appropriate amount. This stage involves a five-step approach which takes into account the amount of any benefit derived from the contravention (disgorgement), seriousness of the breach, aggravating or mitigating factors, deterrence and finally serious financial hardship

Q: Is this not just more pressure on the sector?

A: For the most part we are very encouraged that most regulated entities are compliant. Therefore compliant firms have nothing to fear. APs complement the range of sanctions that already exist. APs provide a suitable means of tackling breaches and contraventions proportionately and in some instances early. This enables swift action before the failings become so egregious that only revocation and disqualification can result.

Furthermore, the financial services sector is evolving at a rapid pace and there is the need to adopt a balance of measures and sanctions to ensure compliance and effective deterrence.

Q: How can a person challenge decisions on AP?

A: The Enforcement Committee (the “Committee”) is primarily tasked with exercising the disciplinary powers of the Commission. As APs are one of the sanctions that can be imposed, the procedure set out in the FSA must be followed, unless matters are otherwise resolved through settlement³.

Decisions made by the Committee are subject to the same protections set out in section 53 of the FSA and these include a right of the concerned party to apply to the Financial Services Review Panel, within 21 days of the issue of the Decision Notice, for a review of the decision of the Committee.

Q: How are the levels of APs decided?

A: APs will be determined on a case by case basis. However the factors that will be taken into consideration in setting the amount include the amount of any benefit derived from the

³ Settlement protocols are set out under separate cover

contravention (disgorgement), seriousness of the breach, aggravating or mitigating factors, deterrence and finally serious financial hardship. The Framework explains the step by step approach that may be taken and also includes illustrations.

Q: What is the Commission’s Enforcement approach?

A: The Commission’s effective and proportionate use of its enforcement powers plays an important role in deterring misconduct and maintaining fair and efficient markets, financial services and economies. In this way, it contributes to the protection of consumers and fosters investor confidence.

The Commission, through the Enforcement Directorate and the Committee, will endeavour where appropriate to pursue the least punitive or restrictive response necessary to achieve the most appropriate result. In so doing, the Commission will explore all possible and expeditious means of obtaining remediation.

In circumstances where the Commission decides to take disciplinary action, the effective use of enforcement powers will play an important role. In this regard, the Commission will seek robust sanctions in order to encourage propriety and compliance with relevant laws and regulations and standards of behaviour and to deter future contraventions.

The credibility of any deterrence programme relies on the resolve of those who are responsible for its administration. It is for this reason that the Commission seeks the imposition of sanctions that are effective, proportionate and dissuasive, in order to ensure that the credibility of the Framework is not undermined.

The publication of enforcement actions is also very important in promoting compliance and demonstrating that there are real consequences of failure to adhere to relevant laws.

Q: Is this a money raising venture, what is the money going to be used for?

A: No, this is not a money raising venture. The Framework provides an additional and long over-due tool which enables the Commission to address the broad spectrum of non-compliance, whilst encouraging innovation, growth and high standards of conduct.

APs paid to the Commission will be credited to the Commission’s General Fund and the uses to which the fund can be put are set out in the FSA. The Commission may also consider other

uses for any funds generated through APs which may include initiatives to prevent future non-compliance, including helping firms better understand the relevant laws they need to comply with and how, and for consumer education.

Q: Reference has been made to settlement. What is it and will it entail a separate process for imposing APs?

A: The Commission is devising a protocol which will enable the early resolution of enforcement matters in appropriate circumstances and where both parties agree, in line with international standards. The full suite of enforcement sanctions will remain open to the Commission to impose in settled cases. Therefore, the Framework will be applied. However, the advantage of settlement is that it will afford an early opportunity for dialogue and resolution.

Q: What is meant by “messages to the industry and the public”?

A: One of the most effective means of ensuring deterrence and protecting consumers is in publicising the actions the Commission has taken and the outcomes achieved. It is for this reason that the Commission’s policy is to publish the salient details of enforcement outcomes. Publication is a tool deployed by many regulators and international organisations to allay public concerns and deliver key messages. The industry is entitled to know of the behaviours and activities that they must avoid and consumers are entitled to be educated about those who engage in poor practices so that they may exercise appropriate caution. Furthermore, publication also allows sanctioned entities and persons to demonstrate, where applicable, that by accepting responsibility, they are learning from their mistakes and have taken appropriate remedial steps.