SFC Disciplinary Fining Guidelines

Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Considerations relevant to the level of a disciplinary fine

These guidelines are made under section 23(1) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (“Ordinance”) to indicate the manner in which the Securities and Futures Commission (“SFC”) proposes to exercise the power to impose a pecuniary penalty (“fine”) on a financial institution under sections 21(1) and 21(2)(c) of the Ordinance. Section 23(2) of the Ordinance requires the SFC to have regard to these guidelines in exercising its power to impose a fine under section 21(2)(c) of the Ordinance. Factors that the SFC proposes to take into account in exercising its fining power are included in the considerations set out below.

Under section 21 of the Ordinance, the SFC may impose a fine either on its own or together with other disciplinary sanctions. The SFC regards a fine as a more severe sanction than a public reprimand. The SFC will not impose a fine if the circumstances of a particular case only warrant a public reprimand. As a matter of policy, the SFC will publicise all fining decisions.

When considering whether to impose a fine under sections 21(1) and 21(2)(c) of the Ordinance, and the size of any fine, the SFC will consider all the circumstances of the particular case, including the Specific Considerations described below. A fine should deter non-compliance with the requirements of the Ordinance, and the Guideline on Anti-Money Laundering and Counter-Terrorist Financing (“Guideline”) published under the Ordinance, so as to protect the reputation of Hong Kong as an international financial centre.

Although section 21(2)(c)(ii) of the Ordinance states that one alternative maximum level of fine that can be imposed is three times the profit made or secured, or costs avoided or reduced, the SFC will not automatically link the fine imposed in any particular case with the profit made or secured, or costs avoided or reduced.

The more serious the conduct, the greater the likelihood that the SFC will impose a fine and that the size of the fine will be larger.

In determining the seriousness of conduct, in general, the SFC views some considerations as more important than others. The General Considerations set out below describe conduct that would be generally viewed as more or less serious. In any particular case, the General Considerations should be read together with the Specific Considerations in determining whether or not the SFC will impose a fine and, if so, the amount of the fine.

General considerations

The SFC generally regards the following conduct as more serious:

- conduct that is intentional or reckless
- conduct that brings the reputation of Hong Kong as an international financial centre into disrepute
- conduct that facilitates or increases the risks of money laundering or terrorist financing
- conduct that damages the integrity of the securities and futures market
- conduct that causes loss to, or imposes costs on, others
- conduct which provides a benefit to the firm engaged in that conduct or any other person.

The SFC generally regards the following conduct as less serious and so generally deserving a lower fine:

- negligent conduct – however, the SFC will impose disciplinary sanctions including fines for negligent conduct in appropriate circumstances
- conduct which only results in a technical breach of a regulatory requirement or principle in that it:
  - causes little or no damage to market integrity and/or the reputation of Hong Kong as an international financial centre; and
  - causes little or no loss to, or imposes little or no costs on, others
- conduct which produces little or no benefit to the firm engaged in that conduct and its related parties.

These are only general considerations. These considerations together with the other circumstances of each individual case including the Specific Considerations described below will be determinative.

Specific considerations

The SFC will consider all the circ

Other circumstances of the firm

- a fine should not have the likely effect of putting a firm in financial jeopardy. In considering this factor, the SFC will take into account the size and financial resources of the firm. However, if a firm takes deliberate steps to create the false appearance that a fine will place it in financial jeopardy, eg by transferring assets to third parties, this will be taken into account
- whether a firm brings its conduct to the SFC's attention in a timely manner. In reviewing this, the SFC will consider whether the firm informs the SFC of all the conduct of which it is aware or only part, and the manner in which the disclosure is made and the reasons for the disclosure
- the degree of cooperation with the SFC and other competent authorities
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