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Guernsey Financial
Services Commission

**GUERNSEY FINANCIAL SERVICES
COMMISSION**

DISCRETIONARY FINANCIAL PENALTIES

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1. GLOSSARY

Unless the context requires otherwise:

“Commission” means the Guernsey Financial Services Commission,

“customers” includes, collectively, actual and potential customers, beneficiaries, investors, unit holders, policy holders, depositors and those who have or had a relationship with the party or, where the party is an individual, had a relationship with the Licensee with which the party is or was associated,

“Discretionary Financial Penalty” means a Discretionary Financial Penalty imposed pursuant to section 11D of the FSC Law or section 13 of the Prescribed Businesses Law,

“Enforcement Policy” means the Guidance Note on the Commission’s general approach to Enforcement dated 22 April 2016,

“FSC Law” means the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended,

“Licensee” means a person who holds or is deemed to hold or has held a licence, consent, registration, permission or authorisation from the Commission under the regulatory Laws,

“Note” means this Explanatory Note,

“prescribed business” means any business which is a relevant business for the purposes of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 Law (as amended), but does not include:

- a) business of a type described in paragraphs 2 (“High value dealing”) or 4 (“Casinos and organised gambling”) of Schedule 2 of the Law, or
- b) a small business (as defined in the Prescribed Businesses Law),

and which is registered under the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008, as amended,

“Prescribed Businesses Law” means the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008, as amended,

“prescribed Laws¹” means:

- a) the regulatory Laws,
- b) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,
- c) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,

¹ As defined in section 24 of the FSC Law.

- d) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,
- e) the Disclosure (Bailiwick of Guernsey) Law, 2007,
- f) the Transfer of Funds (Guernsey) Ordinance, 2007,
- g) the Transfer of Funds (Alderney) Ordinance, 2007,
- h) the Transfer of Funds (Sark) Ordinance, 2007,
- i) the Single Euro Payments Area (Guernsey) Ordinance, 2016, and
- j) any other enactment or statutory instrument prescribed for the purposes of section 24 of the FSA Law in connection with the definition of “prescribed Laws”,

all, as amended,

“**regulatory body**” means a body formed or mandated under the terms of a legislative act or statute to supervise and ensure compliance with the provisions of that act or statute and in carrying out its purpose,

“**regulatory Laws**” means:

- a) the Banking Supervision (Bailiwick of Guernsey) Law, 1994, (“**Banking Supervision Law**”),
- b) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 (“**Fiduciaries Law**”),
- c) the Insurance Business (Bailiwick of Guernsey) Law, 2002 (“**Insurance Business Law**”),
- d) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 (“**IMI Law**”),
- e) the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (“**POI Law**”),
- f) the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 (“**FSC Law**”),
- g) the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (“**Registered Businesses Law**”), and
- h) any other enactment or statutory instrument prescribed for the purposes of section 24 of the FSC Law in connection with the definition of “regulatory Laws”,

all, as amended, and

“**regulatory sanction**” includes those measures as summarised in the Commission’s Enforcement Powers summary on its website, and such equivalent measures as agreed to or imposed upon a party by another regulatory body.

2. EXECUTIVE SUMMARY

This document sets out the Commission's approach and methodology in relation to the imposition of a Discretionary Financial Penalty.

3. INTRODUCTION

The Enforcement Policy provides that the Commission is committed to a fair, proportionate and consistent use of its enforcement powers, to achieve effective outcomes. Where appropriate, the Commission will address contraventions or misconduct by agreement with the person concerned through ordinary supervisory processes, and will endeavour to agree the implementation of a remedial action plan to restore that person to compliance as soon as possible. This may involve agreement to changes in corporate governance, management and internal controls, agreement to discontinue some or all of the person's operations or areas of activity or agreement to amended or additional registration conditions framed to encourage or ensure compliance going forward.

However, that approach is not always possible. The Commission will generally seek to use its enforcement powers in relation to more serious or repeated breaches of the law although it would be improper for the Commission to, a priori, rule out enforcement proceedings in relation to any breach.

It is important that the Commission is able to fulfil its regulatory objectives and apply its Enforcement Policy. However, the Commission is also aware of the serious detrimental effect that a Discretionary Financial Penalty may have on the reputation, livelihood or business of the individual concerned.

The Commission may impose a Discretionary Financial Penalty alone or in addition to any other sanction which it is empowered to impose under the regulatory Laws, as it determines to be reasonable and appropriate. Such determination will be made on a case by case basis.

4. RELEVANT LEGISLATIVE PROVISIONS

4.1. THE POWER TO IMPOSE DISCRETIONARY FINANCIAL PENALTY

The Commission has the power under the FSC Law to impose a Discretionary Financial Penalty of up to £4,000,000 in the case of a licensee or former licensee, but not a personal fiduciary licensee or former such licensee and £400,000 in the case of a personal fiduciary licensee or former such licensee or a relevant officer² where it is satisfied that the Licensee, former Licensee or relevant officer³:

² See bandings under the enforcement policy/discretionary financial penalties schedule.

³ The FSC Law, section 11D(1); the Prescribed Businesses Law, section 13(1).

- a) has contravened in a material particular a provision of, or made under, the prescribed Laws, or
- b) does not fulfil any of the minimum criteria for licensing specified in the regulatory Laws and applicable to the party.

The Commission also has the power under the Prescribed Businesses Law⁴ to impose a Discretionary Financial Penalty of up to £200,000 where it considers that a registered prescribed business or any person who is a director, controller, partner, senior officer or beneficial owner of a registered prescribed business has contravened or not fulfilled in a material particular a provision of, or made under, that Law or any of the relevant enactments.

Under both of the Laws, the Commission must consider the factors summarised in 4.2 below, when deciding whether to impose a Discretionary Financial Penalty and, if so, the amount of such a penalty.

A person aggrieved by the Commission's decision to impose a Discretionary Financial Penalty may appeal to the Court against that decision⁵.

4.2. LEGISLATIVE REQUIREMENTS

The Commission will first determine:

- i. Whether to impose a Discretionary Financial Penalty, and,
- ii. If it decides to do so, the amount of such penalty.

In deciding i and ii above, the Commission must take into account the following factors⁶:

- a) whether the contravention or non-fulfilment was brought to the attention of the Commission by the person concerned,
- b) the seriousness of the contravention or non-fulfilment,
- c) whether the contravention or non-fulfilment was inadvertent,
- d) what efforts, if any, have been made to rectify the contravention or non-fulfilment and to prevent any re-occurrence,
- e) the potential financial consequences to the person concerned, and to third parties including customers and creditors of that person, of imposing a Discretionary Financial Penalty, and
- f) Discretionary Financial Penalties imposed by the Commission in other cases.

Discretionary Financial Penalties imposed by the Commission in other cases will be taken into account, but will not be binding.

⁴ The Prescribed Businesses Law, section 13(1).

⁵ The FSC Law, section 11H(1)(d); the Prescribed Businesses Law, section 4(1)(e).

⁶ The FSC Law, section 11D(2); the Prescribed Businesses Law, section 13(2).

5. THE COMMISSION'S APPROACH

5.1. WHETHER TO IMPOSE A DISCRETIONARY FINANCIAL PENALTY

When deciding whether to impose a Discretionary Financial Penalty the Commission will have regard to the factors listed in section 11D(2) of the FSC Law and section 13(2) of the Prescribed Businesses Law (summarised at 4.2 to this Note).

5.2. ASSESSMENT OF PENALTY QUANTUM

The Commission has determined that it would not be appropriate for it to prescribe a specific discretionary penalty quantum in respect of each possible breach of the regulatory Laws. Instead, the Commission will determine the quantum having regard for the factors listed in section 11D(2) of the FSC Law and section 13(2) of the Prescribed Businesses Law (summarised in 4.2 of this Note).

6. PUBLICATION

The Commission may publish the name of the person on whom the Discretionary Financial Penalty has been imposed, along with the amount⁷.

The Commission will proceed on the basis of a presumption in favour of publication, on the basis that the public interest served by disclosure will only be overridden by other factors in exceptional circumstances, particularly where the continuing exercise by the Commission of its statutory duties would be prejudiced by present disclosure. Publication will take place upon the imposition of the Discretionary Financial Penalty.

7. THE CONSEQUENCES OF DISCRETIONARY FINANCIAL PENALTY

The imposition of a Discretionary Financial Penalty is a regulatory sanction that is applied as a result of regulatory non-compliance. The payment of a Discretionary Financial Penalty will not expunge it from the party's regulatory history with the Commission. The Commission reserves its right, should it determine it reasonable to do so, to take the Discretionary Financial Penalty into account should regulatory concerns arise in the future.

⁷ The FSC Law, section 11D(3); the Prescribed Businesses Law, section 13(3).