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Guernsey Financial
Services Commission

**GUERNSEY FINANCIAL SERVICES
COMMISSION**

PUBLIC STATEMENTS

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1. GLOSSARY

Unless the context requires otherwise:

“Commission” means the Guernsey Financial Services Commission,

“contravention” includes failure to comply,

“customers” means, collectively, actual and potential consumers, beneficiaries, investors, unitholders, 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,

“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,

“Note” means this Explanatory Note,

“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,

“party” means the individual and/or entity who is proposed to be the subject of the Public Statement,

“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 to that 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 Laws"¹ 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 under section 24(1) 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,

(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,

“Public Statement” means a written statement published by the Commission, pursuant to section 11C of the FSC Law or section 14 of the Prescribed Businesses Law,

“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,

“regulatory Laws²” means –

(a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987,

(b) the Banking Supervision (Bailiwick of Guernsey) Law, 1994,

(c) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000,

(d) the Insurance Business (Bailiwick of Guernsey) Law, 2002,

(e) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,

(f) the Registration of Non-Regulated Financial Services Businesses Law, 2008,

(g) any other enactment or statutory instrument prescribed for the purposes of section 24 of the FSA Law in connection with the definition of “regulatory Laws”,

all, as amended,

“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, and

“relevant officer” means a person who when the contravention or non-fulfilment in question took place was a director, controller, partner, manager, general representative or authorised insurance representative.

² As defined under section 24(1) of the FSC Law

2. EXECUTIVE SUMMARY

This document sets out the Commission's approach and methodology in relation to issuing a Public Statement.

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, or agreement to discontinue some or all of the person's operations or areas of activity, or agreement to amended or additional licence 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.

The Commission may issue a Public Statement 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. In order to do so the matters in 4.1(a) or (b) below must be met and those at 4.2 addressed.

The Commission, in light of international practice, will always seek the imposition of a public statement from the Enforcement Process, subject to the grounds set out under section 11C(1) of the FSC Law being appropriately taken into account. Where the grounds under section 11C(1) of the FSC Law are satisfied, the Senior Decision Maker must also consider the factors in 4.2 below to justify the imposition of such a statement and will have had the opportunity to consider any submissions made. It is noted that a public statement both makes clear the identity of the individual involved but also raises awareness of the issues where standards have fallen short. When settling with the Commission, a matter that requires the agreement of all parties, the Commission would expect a public statement to be issued.

4. RELEVANT LEGISLATIVE PROVISIONS

4.1. POWER TO PUBLISH A PUBLIC STATEMENT

The Commission has the power under the FSC Law to publish a statement where it is satisfied that a person, Licensee, a former Licensee or a relevant officer³:

³ The FSC Law, section 11C(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 publish a statement 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 above Laws, the Commission must consider the factors summarised in 4.2 below, when deciding whether to publish a Public Statement and, if so, its terms.

A person aggrieved by the Commission's decision to publish a Public Statement may appeal to the court against that decision⁵.

4.2. LEGISLATIVE REQUIREMENTS

The Commission will first determine:

- i. Whether to publish a Public Statement, and,
- ii. If it decides to do so, its terms.

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-fulfilment⁷,
- (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 recurrence,
- (e) The potential financial consequences to the person concerned, and to third parties including customers and creditors of that person, of publishing a Public Statement, and
- (f) Public Statements published by the Commission in other cases.

Public Statements published by the Commission in other cases will be taken into account, but will not be binding.

⁴ The Prescribed Businesses Law, section 14(1).

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

⁶ The FSC Law, section 11C(2).

⁷ As interpreted by the Court of Appeal in *Schrauwers (Chmn of GFSC) v Merrien* 2016 GLR 106

5. THE COMMISSION'S APPROACH

5.1. WHETHER TO PUBLISH A STATEMENT

When deciding whether to publish a Public Statement the Commission will have regard to the factors listed in section 11C(2) of the FSC Law and section 14(2) of the Prescribed Businesses Law (summarised at 4.2 of this Note).

5.2. TERMS OF A STATEMENT

The Commission will generally follow the process described below in determining the terms of a Public Statement, but reserves the right to deviate from this approach, as it may deem necessary or appropriate.

The Commission has determined that it would not be appropriate for it to prescribe specific criteria in respect of the terms that might be included in a Public Statement. Instead, the Commission will determine the terms having regard to the factors listed in section 11C(2) of the FSC Law and section 14(2) of the Prescribed Businesses Law (summarised 4.2 of this Note). Generally the terms of the Public Statement will the identify the persons in respect of whom the Public Statement is being made, explain the circumstances which have given rise to the Public Statement, identify the breach or non-fulfilment and set out any other sanctions imposed in respect of the relevant behaviour.

6. REMOVAL OF STATEMENT

The FSC Law provisions do not specifically provide the Commission with the power to revoke or remove a statement, once it has been published.