

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 circumstances of a case, including:

The nature and seriousness of the conduct

- the impact of the conduct on the integrity of the securities and futures market and/or the reputation of Hong Kong as an international financial centre
- whether significant costs have been imposed on, or losses caused to others, especially clients, market users or the investing public generally
- whether the conduct was intentional, reckless or negligent, including whether prior advice was sought on the lawfulness or acceptability of the conduct by a firm from its advisors
- the duration and frequency of the conduct
- whether the conduct is widespread in the relevant industry (and if so, for how long) or there are reasonable grounds for believing it to be so widespread
- whether the conduct was engaged in by the firm alone or as part of a group and the role the firm played in that group
- whether a breach of fiduciary duty was involved
- whether the conduct reveals serious or systematic weaknesses, or both, in respect of the management systems or internal controls, particularly in respect of the firm's customer due diligence and record-keeping procedures, relating to all or part of that firm's business
- whether the SFC has issued any guidance in relation to the conduct in question
- whether the conduct has facilitated or occasioned any offence or whether an offence is attributable to the conduct

Any benefit from the conduct

- a firm and its related parties should not benefit from the conduct

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
- any remedial steps taken since the conduct was identified, including any steps taken to identify whether clients or others have suffered loss and any steps taken to sufficiently compensate those clients or others, any disciplinary action taken by a firm against those involved and any steps taken to ensure that similar conduct does not occur in future
- the previous disciplinary record of the firm, including its previous similar conduct particularly that for which it has been disciplined before or previous good conduct, whether the firm has previously undertaken not to engage in the conduct or not to repeat the act or omission concerned

Other relevant factors, including

- what action the SFC has taken in previous similar cases – in general similar cases should be treated consistently
- any punishment imposed or regulatory action taken or likely to be taken by other competent authorities
- result or likely result of any civil action taken or likely to be taken by third parties – successful or likely successful civil claims may reduce the part of a fine, if any, that is intended to stop a firm benefiting from their conduct.

Securities and Futures Commission