



Financial Services (Financial Penalties and Public Censures) Policy 2009

QFCRA Policy 2009-2

The Board of the Qatar Financial Centre Regulatory Authority issues the following statement of policy prepared under the *Financial Services Regulations*, article 79 and schedule 1, paragraph 19.3.

Dated 27 September 2009

~~Chairman~~



Financial Services (Financial Penalties and Public Censures) Policy 2009

QFCRA Policy 2009-2

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Part 1 Preliminary

1 Name of policy

This statement of policy is the *Financial Services (Financial Penalties and Public Censures) Policy 2009*.

2 Commencement

This statement of policy commences on the day it is issued.

3 Revocation of earlier policy

- (1) The *Financial Services Regulations (Financial penalties—late returns or reports) Policy 2009* (QFCRA Policy 2009-01) (the *earlier policy*) is revoked.
- (2) Despite the revocation, if immediately before the commencement of this statement of policy the earlier policy applied in relation to a contravention, the earlier policy continues to apply in relation to the contravention as if it had not been revoked.

4 Scope of policy

- (1) This statement of policy applies only in relation to the imposition of financial penalties and the publication of public censures, and does not apply in relation to the *Regulatory Authority's* other powers under the *Financial Services Regulations*, part 9 (Disciplinary and enforcement powers).
- (2) However, the following provisions apply in relation to all of the *Regulatory Authority's* disciplinary powers under that part:
 - section 15 (Routine matters and minor contraventions)
 - section 16 (How disciplinary powers will be exercised).

5 Main purpose of financial penalties and public censures

- (1) It is the *Regulatory Authority's* policy that the main purpose of imposing a financial penalty or publishing a public censure is to promote high standards of conduct by—
 - (a) deterring *persons* who have committed contraventions from committing further contraventions; and
 - (b) deterring others from committing similar contraventions; and
 - (c) demonstrating generally the benefits of compliance with regulatory requirements.
- (2) Financial penalties and public censures are therefore tools that, among others, the *Regulatory Authority* may use to help it achieve the Regulatory Objectives in the *Financial Services Regulations*, article 12 (3).
- (3) Without limiting subsection (1) and to remove any doubt, deterrence may include the imposition of punitive financial penalties.

6 Interpretation

- (1) The *Regulatory Authority's Interpretation and Application Rulebook (INAP)* applies to this statement of policy as if it were a rulebook.
- (2) For this statement of policy, a *public censure* is a statement under the *Financial Services Regulations*, article 58 (Public censure).

Part 2 Notification and reporting contraventions

7 Application of pt 2

- (1) This part applies if—
- (a) a *person* contravenes a *relevant requirement* within the meaning of the *Financial Services Regulations*, article 84 by failing to provide a notification, report or return (however described) to the *Regulatory Authority* as, or within the time within which, it is required to be provided; and
 - (b) the notification, report or return is required to be provided 5 *business days* or more after the happening of an event, or the day an event happens, (however described).

Note If the notification, report or return is required to be provided to the *Regulatory Authority* immediately or within a period less than 5 *business days* after the happening of an event, or the day an event happens, part 3 (Other contraventions) will then apply.

- (2) However, this part does not apply to the contravention if—
- (a) the contravention is a failure to provide a notification, report or return (however described) required by the *Regulatory Authority* in the *exercise* of its powers under the *Financial Services Regulations*, part 8 or 9; or
 - (b) the *Regulatory Authority* decides under section 10 (When pt 2 does not apply) that this part should not apply to the contravention.

Note Part 3 (Other contraventions) will then apply to the contravention.

- (3) Without limiting subsection (1) and to remove any doubt—
- (a) this part applies in relation to a notification (however described) required to be provided to the *Regulatory Authority*

under a provision of any *regulations* or *rules* whether the word ‘notify’, ‘advise’, ‘inform’ or ‘tell’, or some other word, is used; and

- (b) this part applies to a failure to provide a notification, report, or return, (however described) to the authority as, or within the time within which, it was required to be provided if—
 - (i) the notification, report or return was not received (or considered to have been received) at all by the authority within that time; or
 - (ii) the notification, report or return was received by the authority within that time, but it—
 - (A) was incomplete or inaccurate in a material respect; or
 - (B) was otherwise not in substantial compliance with the form (if any) in which it was required to be provided to the authority under any *regulations* or *rules*; or
 - (C) was otherwise not properly prepared, completed or signed as required under any *regulations* or *rules*; or
 - (D) was not provided (however described) to the authority in the way (if any) in which it was required to be provided under any *regulations* or *rules*.
- (4) In this section, a reference to a *notification*, *report*, or *return*, (however described) includes a reference to any part of the notification, report or return.

8 General policy—notification and reporting contraventions

- (1) The *Regulatory Authority’s* general policy is that a financial penalty of the relevant amount is to be imposed on a *person* for a contravention by the *person* to which this part applies if—

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- (a) the contravention continues for at least 5 *business days*; and
 - (b) the *person* does not satisfy the authority that the contravention was caused by circumstances beyond the *person's* control or should otherwise be excused.
- (2) For this part, the *relevant amount* is the total of—
- (a) US\$ 500; and
 - (b) US\$ 100 for each *business day* (or part of a *business day*) after the 6th *business day* during which the contravention continues.

9 Amount of the financial penalty—notification and reporting contraventions

- (1) The *Regulatory Authority* considers that it would generally be appropriate for the amount of the financial penalty to be the relevant amount.
- (2) However, in determining the amount of the financial penalty to be imposed for the contravention, the *Regulatory Authority* must have regard to—
 - (a) the seriousness of the contravention in relation to the nature of the requirement contravened; and
 - (b) the extent to which the contravention was deliberate or reckless; and
 - (c) whether the *person* on whom the penalty is to be imposed is an individual; and
 - (d) the effect on third parties, clients or customers and the best interests of the *financial system* (including those matters to which the *Financial Services Regulations* apply).
- (3) To remove any doubt, subsection (2) does not limit the matters to which the *Regulatory Authority* may have regard in determining the amount of the financial penalty to be imposed for the contravention.

10 When pt 2 does not apply

The *Regulatory Authority* may decide that this part should not apply to a contravention by a *person* of a *relevant requirement* if it considers that the Regulatory Objectives in the *Financial Services Regulations*, article 12 (3) require that other enforcement action (including, for example, the imposition of a financial penalty of more than the relevant amount) be taken for the contravention.

Examples

The *Regulatory Authority* may consider that the Regulatory Objectives require that other enforcement action be taken for the contravention if any of the following apply:

- (a) the contravention is continuing;
- (b) the contravention has ended, but the authority considers that there was excessive delay in complying with the *relevant requirement*;
- (c) the *person* has, on a number of occasions, contravened a *relevant requirement* by failing to provide a notification, report, or return, (however described) to the authority either at all or otherwise than as, or within the time within which, it was required to be provided;
- (d) if the *person* is an *authorised firm*—the authority considers that the contravention happened because the *person's* systems, procedures or controls, or the resources (including staffing) allocated to them, were inadequate or ineffective;
- (e) the authority considers that the *person* may not be dealing with it in an open and cooperative manner.

Part 3 Other contraventions

11 Application of pt 3

This part applies if a *person* contravenes a *relevant requirement* within the meaning of the *Financial Services Regulations*, article 84 but part 2 (Notification and reporting contraventions) does not apply to the contravention.

12 General policy—deciding whether to take action for pt 3 contraventions

- (1) The *Regulatory Authority* will consider the full circumstances known to it of each case in deciding whether or not to take action against a *person* for a financial penalty or public censure for a contravention to which this part applies.
- (2) Schedule 1 lists factors that may be relevant in making this decision in a particular case.
- (3) The list is indicative only and is not exhaustive: not all listed factors may be relevant to a particular case, and there may be other factors, not listed, that are relevant.

13 General policy—deciding whether to publish public censure rather than imposing financial penalty

- (1) The *Regulatory Authority* will consider the full circumstances known to it of each case in deciding whether to publish a public censure, rather than imposing a financial penalty, for a contravention to which this part applies.
- (2) Schedule 2 lists factors and considerations that may be relevant in deciding whether to publish a public censure rather than imposing a financial penalty.

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- (3) The list is indicative only and is not exhaustive: not all listed factors and considerations may be relevant to a particular case, and there may be other factors or considerations, not listed, that are relevant.
 - (4) However, it would only be in an exceptional case that the *Regulatory Authority* would decide to publish a public censure rather than impose a financial penalty if a financial penalty would otherwise be the appropriate disciplinary action.

Examples of exceptional cases

- 1 verifiable evidence that the *person* would suffer serious financial hardship if the authority imposed a financial penalty
- 2 verifiable evidence that the *person* would be unable to meet regulatory requirements, particularly financial resource requirements, if the authority imposed a financial penalty of an appropriate amount

14 General policy—deciding amounts of financial penalty for pt 3

- (1) The *Regulatory Authority* will consider the full circumstances known to it in deciding the amount of the financial penalty to be imposed for a contravention to which this part applies.

Note Section 15 (5) sets limits on the financial penalty that may be imposed for a contravention that is a routine matter or minor contravention.

- (2) Without limiting subsection (1), in determining the amount of the financial penalty to be imposed for the contravention, the *Regulatory Authority* must have regard to—
 - (a) the seriousness of the contravention in relation to the nature of the requirement contravened; and
 - (b) the extent to which the contravention was deliberate or reckless; and
 - (c) whether the *person* on whom the penalty is to be imposed is an individual; and
 - (d) the effect on third parties, clients or customers and the best interests of the financial system (including those matters to which the *Financial Services Regulations* apply).

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- (3) Schedule 3 lists factors and considerations that may be relevant in making this decision in a particular case.
 - (4) Subject to subsection (2), the list in schedule 3 is indicative only and is not exhaustive: not all listed factors and considerations may be relevant to a particular case, and there may be other factors or considerations, not listed, that are relevant.

Part 4 Other provisions

15 Routine matters and minor contraventions

- (1) This section applies if a *person* contravenes a *relevant requirement* within the meaning of the *Financial Services Regulations (FSR)*, article 84.

Note 1 Under the *FSR*, sch 1, par 19.1 (7) the *Regulatory Authority's* Board may delegate the power to issue decision notices for the exercise of disciplinary powers only to the extent provided by par 19.3.

Note 2 That paragraph provides that decision notices may be issued by a committee of the Board, the Chief Executive Officer or, as permitted by the authority's internal procedures, other authority executive officers 'to the extent they relate to routine matters or minor contraventions within the meaning of and treated in accordance with policies issued and approved by the Regulatory Authority Board from time to time'.

Note 3 This section sets out policy on the meaning of 'routine matters or minor contraventions'.

Note 4 Subject to s (3), all contraventions to which pt 2 (Notification and reporting contraventions) applies are routine matters or minor contraventions. Contraventions to which pt 3 (Other contraventions) applies may also be routine matters or minor contraventions.

- (2) This subsection applies to the contravention, and the contravention is not a routine matter or minor contravention for the purposes of the *FSR*, schedule 1, paragraph 19.3, if—

(a) it is a contravention of—

- (i) the *QFC Law*, article 11.2, including any contravention of the scope of an *authorisation*; or
- (ii) the *FSR*, article 41, including any contravention of the scope of an *approved individual's* approval; or
- (iii) an undertaking given by the *person* under the *FSR*, article 61; or

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- (iv) a prohibition or restriction imposed on the *person* under the *FSR*, article 62;
- unless the *Regulatory Authority's* Board (the *Board*), or a committee of the Board, decides that the contravention should be treated as a routine matter or minor contravention; or
- (b) the contravention is—
- (i) an act of fraud; or
- (ii) an abuse of any fiduciary duty of the *person*; or
- (c) for any other contravention—the *Regulatory Authority's* Board, a committee of the Board, or the authority's Chief Executive Officer, decides under subsection (3) that the contravention should not be treated as a routine matter or minor contravention.
- (3) The *Regulatory Authority's* Board, a committee of the Board, or the Chief Executive Officer, (the *decision-maker*) may decide that the contravention should not be treated as a routine matter or minor contravention if the decision-maker considers that either or both of the following paragraphs apply:
- (a) that any decision notice given under the *FSR*, article 71 for the contravention should be given by the Board;
- (b) that the Regulatory Objectives in the *FSR*, article 12 (3) require that the contravention should not be dealt with as a routine matter or minor contravention (for example, because any financial penalty imposed for the contravention may exceed the amount that would otherwise apply under subsection (5)).
- (4) If subsection (2) does not apply to the contravention, the contravention is a routine matter or minor contravention for the purposes of the *FSR*, schedule 1, paragraph 19.3.
- (5) If the contravention is a routine matter or minor contravention, any financial penalty imposed on the *person* for the contravention must

not exceed—

- (a) if the *person* is an *authorised firm*—US\$ 100,000; or
- (b) if the *person* is not an *authorised firm*—US\$ 20,000.

16 How disciplinary powers will be exercised

The *Regulatory Authority* will exercise its disciplinary powers under the *Financial Services Regulations*, part 9 in accordance with part 10 (Enforcement procedure) of those regulations.

Note 1 The procedures in pt 10 provide, among other things, for the following:

- that, if the authority proposes to exercise certain disciplinary powers (including publishing a public censure or imposing a financial penalty) in relation to a *person*, it must first give the *person* a written notice specifying the action that it proposes to take and an opportunity to make written representations to it in relation to the notice;
- that, if the authority decides to exercise any of those disciplinary powers in relation to a *person*, it must give the *person* a written decision notice that, among other things, gives its reasons for the decision and, for the imposition of a financial penalty, states the amount of the financial penalty and the period within which it is to be paid;
- that the *person* has a right to access the material on which the authority relied in making its decision or to be given written notice of its refusal to provide access and its reasons for the refusal;
- appeal rights by the *person* and affected third parties.

Note 2 Under the *FSR*, art 18 (1) (H), the authority must, subject to the completion of any applicable appeal or expiry of any applicable right to appeal, make available to the public during normal working hours information about ‘public censures and the results of other enforcement or disciplinary actions pursuant to Part 9 (Disciplinary and Enforcement Powers)’. However, under art 18 (3) the authority is not obliged to make information available to the public or otherwise publish it if it believes that to do so would not be in the public interest or the interests of the financial system, or would be unfair to anyone to whom the information relates.

Schedule 1 Factors in deciding whether to take action for pt 3 contravention

(see s 12)

S1.1 Nature, seriousness and impact

The nature, seriousness and impact of the contravention, including for example, the following:

- (a) whether the contravention was deliberate or reckless;
- (b) the duration and frequency of the contravention;
- (c) the amount of any benefit gained or loss avoided because of the contravention;
- (d) if the *person* is (or was) an *authorised firm*—whether the contravention happened because—
 - (i) of serious or systemic weaknesses in the *person's* systems, procedures or controls; or
 - (ii) the resources (including staffing) allocated to them were inadequate;
- (e) the impact or potential impact of the contravention on the following:
 - (i) efficiency, transparency and the integrity of the *QFC*;
 - (ii) confidence in the *QFC* by users and potential users of the *QFC*;
 - (iii) the financial stability of the *QFC*, including systemic risk relating to the *QFC*;
 - (iv) the reputation of the *QFC*;

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- (f) the loss or risk of loss caused to clients, customers and other affected people;
 - (g) whether the contravention had an effect on particularly vulnerable people, whether intentionally or otherwise;
 - (h) the nature and extent of any *financial crime* facilitated or occasioned by, or otherwise attributable to, the contravention;
 - (i) the scope for any potential *financial crime* to be facilitated or occasioned by, or to otherwise happen, as a result of the contravention;
 - (j) whether there are a number of smaller issues, which individually may not justify disciplinary action, but which do so when taken together.

S1.2 Subsequent conduct

The conduct of the *person* after the contravention, including, for example, the following:

- (a) how quickly, effectively and completely the *person* brought the contravention to the attention of the *Regulatory Authority* or another relevant regulatory authority;
- (b) the degree of cooperation the *person* showed during the investigation of the contravention;
- (c) any remedial steps the *person* has taken in relation to the contravention, including whether these were taken on the *person's* own initiative or that of the *Regulatory Authority* or another relevant regulatory authority;

Examples of remedial steps

- 1 identifying whether clients or customers suffered loss and compensating them if they have
- 2 correcting any misleading statement or impression
- 3 if appropriate, taking disciplinary action against, or providing additional training for, staff involved in the contravention
- 4 recruiting new staff to have sufficient resources

5 introducing new policies and procedures to reduce the likelihood of the contravention happening again

- (d) the likelihood that the same type of contravention (whether by the *person* or others) will recur if no action is taken;
- (e) whether the *person* has complied with any relevant requirements or rulings of the *Regulatory Authority* or another relevant regulatory authority in relation to the contravention;
- (f) the nature and extent of any false, misleading or inaccurate information given by the *person* to the *Regulatory Authority* or another relevant regulatory authority in relation to the contravention and whether the information appears to have been given carelessly or in an attempt to mislead.

S1.3 Disciplinary record and compliance history

The disciplinary record and compliance history of the *person*, including, for example, the following:

- (a) whether the *Regulatory Authority* has previously taken any disciplinary action resulting in adverse findings against the *person*;
- (b) whether the *Regulatory Authority* has previously taken own initiative action against the *person* under the *FSR*, article 31 or article 46;
- (c) whether the *person* has previously given an undertaking under the *FSR*, article 61;
- (d) whether the *Regulatory Authority* has previously given the *person* a notice under the *FSR*, article 62 (Prohibitions and restrictions);
- (e) whether an order has previously been made against the *person* under the *FSR*, article 63 (Injunctions) or article 64 (Restitution orders);

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- (f) whether the *Regulatory Authority* has previously asked the *person* to take remedial action, and the extent to which the remedial action has been taken;
 - (g) the general compliance history of the *person*, including whether the *Regulatory Authority* has previously privately warned the *person*.

S1.4 Action in similar cases

Action taken or to be taken by the *Regulatory Authority* in relation to similar cases involving others.

S1.5 Action by other regulatory authorities

Action taken or to be taken by other relevant regulatory authorities in relation to the contravention or similar contraventions by the *person*.

S1.6 Additional approved individual factors

In addition to any relevant factors mentioned in section S1.1 to S1.5, if the *person* is (or was) an *approved individual* for an *authorised firm*, the following factors:

- (a) the *person's* position and responsibilities and, in particular, how senior the *person* is (or was) in the firm and how important the *person's* duties in the firm are (or were);
- (b) whether the *person's* conduct was such that disciplinary action should be taken against the *person*;

Examples

The *Regulatory Authority* may decide that disciplinary action should be taken against the *person* because the *person's* conduct was deliberate or was of a standard below what could reasonably be expected.

- (c) whether disciplinary action against the firm rather than the *person* would be a more appropriate regulatory response;

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- (d) whether disciplinary action against the *person* would be a proportionate response to the nature and seriousness of the contravention.

Schedule 2 Factors and considerations in deciding whether to publish public censure rather than impose financial penalty

(see s 13)

S2.1 Deterrence

Whether or not deterrence may be effectively achieved by publishing a public censure.

S2.2 Financial gain

If the *person* made a profit or avoided a loss as a result of the contravention, this may be a consideration in favour of imposing a financial penalty, on the basis that the *person* should not be permitted to benefit from the contravention.

S2.3 Seriousness

If the contravention is more serious in nature or degree, this may be a consideration in favour of imposing a financial penalty, on the basis that the sanction should reflect the seriousness of the contravention. Other things being equal, the more serious the contravention, the more likely it is that the *Regulatory Authority* will impose a financial penalty.

S2.4 Disclosure

If the *person* brought the contravention to the attention of the *Regulatory Authority* or another relevant regulatory authority, this may be a consideration in favour of publishing a public censure, depending on the nature and seriousness of the breach, and how quickly, effectively and completely the *person* brought the contravention to the authority's attention.

S2.5 Cooperation and compensation

If the *person* admitted the contravention, provided full and immediate cooperation to the *Regulatory Authority*, and took steps to ensure that anyone who suffered loss because of the contravention was fully compensated, this may be a consideration in favour of publishing a public censure rather than imposing a financial penalty, depending on the nature and seriousness of the contravention, and how quickly the *person* admitted the contravention and took the steps.

S2.6 Disciplinary history and compliance history

If the *person* has a poor disciplinary record or compliance history (for example, the *Regulatory Authority* has previously brought disciplinary action resulting in adverse findings against the *person* in relation to the same or similar conduct), this may be a consideration in favour of imposing a financial penalty, on the basis that it may be particularly important to deter future cases.

S2.7 Regulatory Authority's approach in similar cases

The *Regulatory Authority* will seek to achieve a consistent approach to its decisions on whether to impose a financial penalty or publish a public censure.

S2.8 Impact on the person

- (1) In exceptional circumstances, if the *person* has inadequate means (excluding any manipulation or attempted manipulation of assets) to pay the financial penalty that would otherwise be imposed, this may be a consideration in favour of publishing a public censure (or imposing a smaller financial penalty).
- (2) However, subsection (1) is subject to section 13 (4) (General policy—deciding whether to publish public censure rather than imposing financial penalty).

Schedule 3 Factors and considerations in deciding amounts of financial penalties for pt 3

(see s 14)

S3.1 Seriousness

- (1) The seriousness of the contravention in relation to the nature of the requirement contravened.

Note The *Regulatory Authority* must have regard to this factor (see s 14 (2) (General policy—deciding amounts of financial penalty for pt 3)).

- (2) Without limiting subsection (1), the following factors may be relevant for that subsection:
- (a) the duration and frequency of the contravention;
 - (b) if the *person* is (or was) an *authorised firm*—whether the contravention happened because—
 - (i) of serious or systemic weakness in the *person's* systems, procedures or controls; or
 - (ii) the resources (including staffing) allocated to them were inadequate;
 - (c) if the *person* is (or was) an *authorised firm* and the firm's senior management were aware of the contravention or of the potential for a contravention—whether they took any steps to stop or prevent the contravention, and when the steps were taken;
 - (d) the impact or potential impact of the contravention on the following:
 - (i) efficiency, transparency and the integrity of the *QFC*;

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- (ii) confidence in the *QFC* by users and potential users of the *QFC*;
 - (iii) the financial stability of the *QFC*, including systemic risk relating to the *QFC*;
 - (iv) the reputation of the *QFC*;
 - (e) the loss or risk of loss caused to clients, customers and other affected people;
 - (f) whether the contravention had an effect on particularly vulnerable people, whether intentionally or otherwise;
 - (g) the nature and extent of any *financial crime* facilitated or occasioned by, or otherwise attributable to, the contravention;
 - (h) the scope for any potential *financial crime* to be facilitated or occasioned by, or to otherwise happen, as a result of the contravention;
 - (i) the fact that publicly available guidance or published materials had raised relevant concerns in relation to the conduct constituting the contravention.

S3.2 Deliberate or reckless

- (1) The extent to which the contravention was deliberate or reckless.

Note The *Regulatory Authority* must have regard to this factor (see s 14 (2) (General policy—deciding amounts of financial penalty for pt 3)).

- (2) Without limiting subsection (1), if the contravention was deliberate or reckless, the *Regulatory Authority* is more likely to impose a larger financial penalty on the *person* than would otherwise be the case.

S3.3 Whether the person is an individual

- (1) Whether the *person* on whom the penalty is to be imposed is an individual.

Note The *Regulatory Authority* must have regard to this factor (see s 14 (2) (General policy—deciding amounts of financial penalty for pt 3)).

- (2) Without limiting subsection (1), in determining the amount of a financial penalty to be imposed on an individual, the *Regulatory Authority* will take the following into account:
 - (a) that individuals will not always have the resources of a corporation;
 - (b) that enforcement action may have a greater impact on an individual;
 - (c) that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a corporation.
- (3) The *Regulatory Authority* will also consider whether the *person's* position or responsibilities (or both) are such as to make a contravention committed by the *person* more serious and whether a larger financial penalty should therefore be imposed.

S3.4 Effect on third parties etc

The effect on third parties, clients or customers and the best interests of the *financial system* (including those matters to which the *Financial Services Regulations* apply).

Note The *Regulatory Authority* must have regard to this factor (see s 14 (2) (General policy—deciding amounts of financial penalty for pt 3)).

S3.5 Deterrence

- (1) In determining the appropriate amount of a financial penalty, the *Regulatory Authority* will have regard to its policy that the main purpose of imposing a financial penalty or publishing a public censure is to promote high standards of conduct by—
 - (a) deterring *persons* who have committed contraventions from committing further contraventions; and
 - (b) deterring others from committing similar contraventions; and

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- (c) demonstrating generally the benefits of compliance with regulatory requirements.

Note See s 5 (Main purpose of financial penalties and public censures).

- (2) Without limiting subsection (1) and to remove any doubt, deterrence may include the imposition of punitive financial penalties.

S3.6 Difficulty of detection

- (1) The difficulty of detecting the contravention.
- (2) Without limiting subsection (1), the considerations mentioned in subsection (3) may be relevant for subsection (1).
- (3) A *person's* incentive to commit a contravention may be greater if the contravention is, by its nature, harder to detect. The *Regulatory Authority* may, therefore, impose a larger financial penalty if it considers—
 - (a) that the *person* committed the contravention in a way intended to reduce the risk that the contravention would be discovered; or
 - (b) that the difficulty of detection may have affected the *person's* readiness to commit the contravention.

S3.7 Size, financial resources and other circumstances of the person

- (1) The size, financial resources and other circumstances of the *person*.
- (2) Without limiting subsection (1), the considerations mentioned in subsections (3) to (6) may be relevant for subsection (1).
- (3) The *Regulatory Authority* may take into account whether there is verifiable evidence of serious financial hardship if the *person* were to pay the amount of financial penalty otherwise appropriate for the contravention. The authority regards the factors mentioned in subsection (1) as matters to be considered in determining the amount of the financial penalty, but not to the extent that there is a

direct correlation between those factors and the amount of the penalty.

- (4) The purpose of a financial penalty is not to render a *person* insolvent or to threaten a *person's* solvency. If this would be a material consideration, the *Regulatory Authority* will consider, having regard to all other factors, whether a smaller financial penalty would be appropriate. This is most likely to be relevant to a *person* with less financial resources; but, if a *person* reduces financial resources for the purpose of reducing the ability to pay a financial penalty (for example, by transferring assets to third parties), the authority will take that action into account in determining the amount of the penalty (for example, by disregarding the transfer of the assets).
- (5) For an *authorised firm*, the degree of seriousness of a contravention may be linked to the size of the firm. For example, a systemic failure in a large *authorised firm* could threaten to damage a much larger number of clients or customers than would be the case with a small *authorised firm*. Also, contraventions in an *authorised firm* with a high volume of business over a protracted period may be more serious than contraventions over a similar period in an *authorised firm* with a smaller volume of business.
- (6) The size and resources of a *person* may also be relevant in assessing any remedial steps taken by the *person*, in particular in deciding whether the steps the *person* took after the contravention were appropriate. The *Regulatory Authority* will take into account what it is reasonable to expect from a *person* in relation to the *person's* size and resources, and considerations such as what proportion of a *person's* resources were used to take remedial steps.

S3.8 Financial gain

- (1) The amount of any benefit gained or loss avoided by the *person* as a result of the contravention.
- (2) Without limiting subsection (1), the following considerations may be relevant for that subsection:

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- (a) the *Regulatory Authority* will impose a financial penalty that is consistent with the principle that a *person* who commits a contravention should not benefit from the contravention and, therefore, that the amount of the penalty should not be less than the amount of any financial gain made by the *person*;
 - (b) that the amount of the penalty should also act as a deterrent to the *person* (and others).

S3.9 Subsequent conduct

- (1) The conduct of the *person* after the contravention, including, for example, the following:
 - (a) the conduct of the *person* in bringing (or failing to bring) the contravention quickly, effectively and completely to the attention of the *Regulatory Authority* or, if appropriate, another relevant regulatory authority;
 - (b) the degree of cooperation the *person* showed during the investigation of the contravention;
 - (c) any remedial steps the *person* has taken in relation to the contravention, including whether they were taken on the *person's* own initiative or that of the *Regulatory Authority* or another relevant regulatory authority;

Examples of remedial steps

See examples to schedule 1, section S1.2 (c).

Note See also S3.7 (6) (Size, financial resources and other circumstances of the person).

- (d) whether the *person* has complied with any relevant requirements or rulings of the *Regulatory Authority* or another relevant regulatory authority in relation to the contravention.
- (2) If the *person* has fully cooperated in the investigation of the contravention by the *Regulatory Authority* or another relevant

regulatory authority, this will be a consideration tending to reduce the amount of the financial penalty.

S3.10 Disciplinary record and compliance history

- (1) The *person's* disciplinary record and compliance history, including, for example, the following:
 - (a) whether the *Regulatory Authority* has previously taken any disciplinary action resulting in adverse findings against the *person*;
 - (b) whether the *Regulatory Authority* has previously taken own initiative action against the *person* under the *FSR*, article 31 or article 46;
 - (c) whether the *person* has previously given an undertaking under the *FSR*, article 61;
 - (d) whether the *Regulatory Authority* has previously given the *person* a notice under the *FSR*, article 62 (Prohibitions and restrictions);
 - (e) whether an order has previously been made against the *person* under the *FSR*, article 63 (Injunctions) or article 64 (Restitution orders);
 - (f) whether the *Regulatory Authority* has previously asked the *person* to take remedial action, and the extent to which the remedial action has been taken;
 - (g) the general compliance history of the *person*, including whether the *Regulatory Authority* has previously privately warned the *person*.
- (2) Without limiting subsection (1), the following considerations may be relevant for that subsection:
 - (a) the *person's* disciplinary record could lead to the *Regulatory Authority* imposing a larger financial penalty, for example, if the *person* has committed similar contraventions in the past;

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- (b) in assessing the relevance of the *person's* disciplinary record and compliance history, the age of a particular matter will be taken into account, although an old matter may still be relevant.

S3.11 Action in similar cases

- (1) Action taken or to be taken by the *Regulatory Authority* in relation to similar cases involving others.
- (2) Without limiting subsection (1), the *Regulatory Authority* will seek to apply a consistent approach in determining the appropriate amount of a financial penalty, but does not operate a tariff system.

S3.12 Action by other regulatory authorities

- (1) Action taken or to be taken by other regulatory authorities in relation to the contravention or similar contraventions by the *person*.
- (2) Without limiting subsection (1), a relevant consideration for that subsection may be the degree to which any remedial or compensatory steps required by other regulatory authorities in relation to the contravention have been taken (and whether they were taken promptly).