

Statutory Document No. 2015/0243 (as amended)

C

Financial Services Act 2008

FINANCIAL SERVICES (CIVIL PENALTIES) REGULATIONS 2015

Approved by Tynwald: 22 July 2015 (amendments 17 January 2017)

Coming into Operation: 1 August 2015 (amendments 20 January 2017)

The **Isle of Man Financial Services Authority** makes the following Regulations under section 16(5) of the Financial Services Act 2008, after carrying out the consultation required by section 44(5) of that Act.

1 Title

These Regulations are the Financial Services (Civil Penalties) Regulations 2015.

2 Commencement

If approved by Tynwald, these Regulations come into operation on 1 August 2015 (amendments on 20 January 2017).

3 Interpretation

(1) In these Regulations —

“**the Act**” means the Financial Services Act 2008 and “**section**” means a section of the Act;

“**Authority**” means the Isle of Man Financial Services Authority;

“**business day**” means any day other than —

- (a) Saturday;
- (b) Sunday;
- (c) a bank holiday under the *Bank Holidays Act 1989*;
- (d) a day declared by Treasury order, which has effect in the Isle of Man by virtue of the provisions of section 1(1) of the *Banking and Financial Dealings (Isle of Man) Act 1973*, to be a non-business day;

“**direction**” means a direction issued by the Authority under section 14;

"licence condition" means a condition imposed by the Authority under section 7;

"licenceholder" includes all current and former licenceholders;

"regulated activity" has the meaning given by the Regulated Activities Order 2011¹;

"serious regulatory failing" means a serious contravention of the Act or any prohibition or requirement imposed under the Act;

"relevant business line(s)" means the class or classes of regulated activity to which the serious regulatory failing is attributable, but does not mean individual subclasses;

"relevant income" means —

- (a) for a licenceholder incorporated in the Island —
 - (i) for a Class 1 licenceholder, the net interest income plus net income from banking fees, charges and commissions of the Class 1 regulated activity plus, where appropriate, the annual turnover of all other regulated activities carried on by that licenceholder;
 - (ii) for any other licenceholder, the annual turnover of all regulated activities carried on by that licenceholder.
- (b) for a licenceholder incorporated outside the Island —
 - (i) for a Class 1(1) or 1(2) licenceholder, the net interest income plus net income from banking fees, charges and commissions of the Class 1 regulated activity carried on in or from the Island plus, where appropriate, the annual turnover of all other regulated activities carried on in or from the Island by that licenceholder;
 - (ii) for any other licenceholder, the annual turnover of all regulated activities carried on in or from the Island by that licenceholder.

The relevant income will be based on the licenceholder's financial statements for the financial year end immediately prior to the licenceholder's notification of, or the Authority's identification of, a serious regulatory failing and may, where appropriate and where such information is available, be limited to the turnover of the relevant business line(s) for that period;

"return" means any document required to be submitted under —

- (c) rules 2.8(1), (2) and (3), 2.13(1)(a), 2.20, 2.23, 2.33 and 2.36;
- (d) rules 5.8, 5.13, 5.14 and 5.15;

¹ SD 0884/2011 as amended by SD 0373/2013, SD2016/0099 and SD2016/0188

- (e) rule 8.31 and rule 9.16; or
- (f) a direction or licence condition imposed by the Authority,

but neither a document required to be submitted under rule 2.10 nor a document containing information required to be furnished under rule 5.8(1)(b) is a return;

“**Rule Book**” means Financial Services Rule Book 2016² and “**rule**” without more means a rule contained in the Rule Book;

“**specified period**” means the period by the end of which a return is required to be submitted or otherwise provided to the Authority.

- (2) References in these Regulations to —
 - (a) a class of regulated activity is to regulated activity of a class specified in Schedule 1 to the Regulated Activities Order 2011;
 - (b) a numbered class, or to a numbered paragraph of such a class (“**subclass**”), is to the class of regulated activity so numbered in Schedule 1 to that Order, or to the paragraph so numbered of that class, as the case may be.

4 Application

These Regulations apply to all current and former licenceholders, **except that regulation 6 does not apply to Class 1(3) or Class 6 licenceholders.**

5 Discretionary civil penalties

- (1) The Authority may require a licenceholder to pay a penalty in respect of a serious regulatory failing in accordance with Table 1 of the Schedule.
- (2) But, the Authority may reduce a penalty by 30% of the calculated amount if the licenceholder has —
 - (a) cooperated with the Authority in respect of any proceedings or investigation into the serious regulatory failing; and
 - (b) taken appropriate steps to remedy the serious regulatory failing to the Authority’s satisfaction.
- (3) In determining whether to impose a penalty under (1) the Authority will have regard to factors such as —
 - (a) whether or not the licenceholder reported the serious regulatory failing to the Authority;
 - (b) whether or not the licenceholder was aware, or should have been aware, of the serious regulatory failing;

² SD 2016/0264 [subject to Tynwald approval]

- (c) the potential financial consequences to the licenceholder, and to any third parties including customers and creditors of the licenceholder, of imposing such a penalty; and
 - (d) penalties imposed by the Authority in other cases.
- (4) Any penalty calculated under this regulation must be rounded up to the nearest pound sterling.
- (5) The Authority shall give written notice to the licenceholder concerned of any decision to require a penalty to be paid under this regulation together with a statement of the reasons for the decision.
- (6) Where a notice has been given under subsection (5), the penalty must be paid to the Authority within 90 business days of —
- (a) if no appeal under section 32 of the Act is made within the period prescribed for the purposes of such an appeal, the expiry of that period; or
 - (b) if there is an appeal under section 32 of the Act —
 - (i) where the appellant abandons the appeal, the date of abandonment; or
 - (ii) where the decision of the Authority is confirmed, the date of confirmation; or
 - (iii) where the decision of the Authority is varied, such date as the Tribunal constituted under section 32 of the Act directs, or by a later date as specified by the Authority in writing.

6 Administrative civil penalties

- (1) A licenceholder must pay a penalty for each contravention of a requirement to submit or otherwise provide a return within a specified period in accordance with Table 2 of the Schedule.
- (2) But, the Authority may mitigate a penalty or provide that no penalty is payable if it considers that the circumstances are so exceptional that it would be unfair to require the licenceholder to pay the full penalty.
- (3) Any penalty due under this regulation must be paid to the Authority within 21 business days of the penalty being imposed.
- (4) For the purposes of (1) a return is only to be deemed submitted or otherwise provided to the Authority once it is received by the Authority duly completed.

MADE 23 JUNE 2015 (AMENDMENTS 24 NOVEMBER 2016)

J.R. ASPDEN (AMENDMENTS K. BADGEROW)

Chief Executive

G.F. KARRAN

Chairman

SCHEDULE

DISCRETIONARY CIVIL PENALTIES

Regulation 5

Table 1

DISCRETIONARY CIVIL PENALTY	Percentage of the licenceholder’s relevant income
<p>Level 1</p> <p>A penalty may be imposed at this level in cases where there has been a serious regulatory failing where any of the following factors are present but none of the factors in Level 2 are present –</p> <ul style="list-style-type: none"> (a) the serious regulatory failing has resulted in a risk of significant loss to any of the licenceholder’s customers; (b) the serious regulatory failing has resulted in a significant risk of financial crime; or (c) the serious regulatory failing is attributable to serious negligence by any of the licenceholder’s directors, controllers or key persons. 	<p>Up to 5%</p>
<p>Level 2</p> <p>A penalty may be imposed at this level in cases where there has been a serious regulatory failing where any of the following factors are present –</p> <ul style="list-style-type: none"> (a) the serious regulatory failing has resulted in a significant loss to any of the licenceholder’s customers; (b) the serious regulatory failing has resulted in financial crime; (c) the serious regulatory failing was incurred deliberately by any of the licenceholder’s directors, controllers or key persons in order to obtain a benefit or mitigate a loss; (d) any of the licenceholder’s directors, controllers or key persons have attempted to conceal the serious regulatory failing from the Authority; or (e) the serious regulatory failing is attributable to serious deficiencies in any of – <ul style="list-style-type: none"> (i) the licenceholder’s corporate governance (if applicable); (ii) the licenceholder’s systems and internal controls; or (iii) the fitness and propriety of any of the licenceholder’s directors, controllers or key persons. 	<p>Up to 8%</p>

ADMINISTRATIVE CIVIL PENALTIES

Regulation 6

Table 2

ADMINISTRATIVE CIVIL PENALTY	All classes of licenceholders except Class 1	Class 1(1) and 1(2) licenceholders
Return submitted/provided from 1 to 4 business days after end of specified period	£100	£100
Return submitted/provided from 5 to 20 business days after end of specified period	£500	£1,000
Return submitted/provided more than 20 business days after end of specified period	£2,000	£5,000

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify the formulae for the calculation of discretionary civil penalties that may be imposed upon current and former licenceholders for serious contraventions of the Financial Services Act 2008 or any prohibition or requirement imposed under the Act. These Regulations also specify the administrative civil penalties payable by current and former licenceholders in the event that returns are not submitted or provided to the **Isle of Man Financial Services Authority** within certain specified periods.