

NEW FSA FRAMEWORK FOR DETERMINING FINANCIAL PENALTIES

Since 6 March 2010, the UK Financial Services Authority (FSA) has changed the way it approaches the calculation of fines.

At the beginning of March 2010, the FSA published its policy statement (PS10/4) entitled "Enforcement Financial Penalties." This followed a period of consultation during the second half of 2009 as a result of the FSA's consultation paper of the same name (CP09/19).

Under the new framework, fines will now be more closely linked to income and the FSA will consider each of the following "steps" when determining the amount of any penalty:

1. Disgorgement - The value of any benefit or profit which can be said to have derived directly from the breach;
2. Discipline - The nature, impact and seriousness of the breach:
For firms this figure will be based on up to 20 percent of revenue. Whereas generally for individuals it will be up to 40 percent of salary (including benefits and bonus), more serious market abuse cases against individuals will have a minimum starting point of £100,000;
3. Mitigating/Aggravating Circumstances - Any aggravating or mitigating circumstances;
4. Deterrence - Is there a need to increase the penalty so as to act as a deterrent to further breaches, or similar breaches by others; and
5. Settlement Discount - Should a discount be applied to take account of early settlement.

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The new policy also gives the FSA the power to reduce a fine to avoid causing financial hardship and clarifies the situations in which the FSA may publicise enforcement action in criminal cases.

In announcing the changes, Margaret Cole, FSA director of enforcement and financial crime, accepted they were being implemented "[d]espite industry opposition." It can therefore be inferred that the FSA anticipates more of its rulings will become the subject of challenge as it endeavours to impose its new "step-by-step" approach.

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