

**VIRGIN ISLANDS**

**FINANCIAL SERVICES COMMISSION ACT, 2001**

**FINANCIAL SERVICES**

**(ADMINISTRATIVE PENALTIES) REGULATIONS, 2006**

**ARRANGEMENT OF REGULATIONS**

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**VIRGIN ISLANDS**

**STATUTORY INSTRUMENT 2006 NO. 86**

**FINANCIAL SERVICES COMMISSION ACT, 2001**

**(No. 12 of 2001)**

**Financial Services (Administrative Penalties) Regulations, 2006**

[Gazetted 14<sup>th</sup> December, 2006]

The Executive Council, acting on the advice of the Commission and in exercise of the powers conferred by section 62 of the Financial Services Commission Act, 2001 (No. 12 of 2001) makes the following regulations:

Citation and  
Commencement.

**1.** These regulations may be cited as the Financial Services (Administrative Penalties) Regulations, 2006 and shall come into effect on 15<sup>th</sup> January, 2007.

Interpretation.  
No. 12 of 2001

**2.** (1) In these Regulations, “the Act” means the Financial Services Commission Act, 2001.

(2) Any reference in these Regulations and the Schedule to a “contravention”, means a contravention of the Act, any regulatory legislation, the Regulatory Code or any directive issued by the Commission, and references to failures, requirements and obligations shall be construed accordingly.

(3) Where the Commission, in accordance with a power granted under the Act, any regulatory legislation, the Regulatory Code or any directive issued by the Commission, extends the time for the filing of any document or the notifying of any matter, the last day of the final extension given by the Commission shall be regarded as the last date for the filing of the document or the making of the notification.

(4) For the purposes of the Schedule, “filing” includes “submitting”, “delivering”, “giving” or any similar word describing the provision of a document to the Commission.

3. (1) If the Commission considers that a licensee has contravened a provision of the Act, any regulatory legislation, the Regulatory Code or any directive issued by the Commission, it may impose an administrative penalty on the licensee, with respect to the contravention, as provided for in these regulations.

Power of Commission to impose administrative penalties.

(2) Where the Commission decides to impose an administrative penalty on a licensee under subregulation (1), it shall, after taking into account the matters specified in regulation 5, fix the amount of the administrative penalty within the range specified for the contravention as provided in the Schedule.

Schedule

(3) Where a licensee has, by reason of committing more than one contravention, become liable to more than one penalty, the Commission may compound the penalties.

(4) An administrative penalty imposed by virtue of this regulation shall be paid into the Commission's bank account for the use of the Commission.

4. (1) Where the Commission proposes to impose an administrative penalty on a licensee, it shall send a notice of proposed penalty to the licensee stating

Procedure to be followed by Commission.

- (a) the contravention in respect of which it proposes to impose the penalty;
- (b) the amount of the proposed penalty; and
- (c) the entitlement of the licensee to make representation to the Commission in accordance with subregulation (2).

(2) Where a licensee receives a proposed penalty notice, it may, within twenty-one days of the date of the notice, make representation to the Commission as to why it should not be required to pay the administrative penalty or as to why the proposed penalty should be reduced.

(3) The Commission may at any time prior to the issuing of a penalty notice under subregulation (4), withdraw a notice of proposed penalty and substitute a new notice of proposed penalty for a different amount.

(4) Subject to subregulation (5), following the expiration of twenty-one days from the date of the proposed penalty notice, the Commission may, by written penalty notice, impose an administrative penalty on the licensee in an amount not exceeding the amount stated in the proposed penalty notice.

(5) Before imposing an administrative penalty on a licensee, the Commission shall consider any representations received under subregulation (2).

(6) Subject to subsection (7), a licensee that receives a penalty notice shall pay the penalty stated in the notice to the Commission within fourteen days of receipt of the notice.

(7) The Commission may agree to the payment of an administrative penalty in instalments over such period of time as it considers appropriate.

Determination of appropriate penalty.

**5.** In determining the administrative penalty to be imposed on a licensee, the Commission

- (a) shall take into account the following matters:
  - (i) the nature and seriousness of the contravention;
  - (ii) whether the licensee has previously contravened the Act or any regulatory legislation;
  - (iii) whether the contravention was deliberate or reckless or caused by the negligence of the licensee;
  - (iv) whether any loss or damage has been sustained by third parties as a result of the contravention; and
  - (v) the ability of the licensee to pay the penalty, including any gain resulting to the licensee as a result of the contravention; and
- (b) may take into account such other matters as it considers appropriate.

Appeal against an administrative penalty.

**6.** (1) Where a licensee is aggrieved by a decision of the Commission to impose an administrative penalty on it, or by the amount of such administrative penalty, the licensee may, within fourteen days of receiving the penalty notice, appeal to the Appeals Board.

(2) An appeal of a decision of the Commission to impose an administrative penalty does not operate as a stay on the obligation of the licensee to pay the penalty.

Limitation period.

**7.** (1) The Commission may not issue a proposed penalty notice to a licensee with respect to a contravention after the end of the period of two years commencing on the date that the Commission first knew of the contravention.

(2) For the purposes of subregulation (1), the Commission is deemed to know of a contravention if it has information from which the contravention can reasonably be inferred.

8. (1) The imposition by the Commission of an administrative penalty on a licensee with respect to a contravention does not limit the power of the Commission to take any other enforcement action against the licensee with respect to that contravention, except that where the Commission imposes an administrative penalty, it shall not revoke the licensee's licence in reliance on the same contravention.

Miscellaneous provisions concerning administrative penalties.

(2) Where the Act or any regulatory legislation provides for the payment of a penalty by a licensee with respect to a contravention, the Commission

- (a) may, in its discretion, determine whether to impose a penalty under these regulations or under the Act or the regulatory legislation, but
- (b) shall not impose more than one administrative penalty on a licensee in respect of the same contravention..

(3) Where a contravention committed by a licensee falls into more than one of the categories specified in the Schedule, the Commission

Schedule

- (a) may, in its discretion, determine into which category the contravention will fall, but
- (b) shall not impose an administrative penalty under more than one category.

**SCHEDULE**

**[Regulation 3 (2)]**

**ADMINISTRATIVE PENALTIES**

Categories of contravention and description	Penalty range
<p><b>1. Licensing contravention</b></p> <p>Licensee:</p> <ul style="list-style-type: none"> <li>(a) carrying on financial services business not authorised by its licence; or</li> <li>(b) carrying on business in breach of a condition of its licence or contrary to a directive issued by the Commission.</li> </ul>	<p>\$2,000 to \$20,000</p>
<p><b>2. Contravention of financial resource requirement</b></p> <p>Licensee failing to comply with any financial resource requirement, including, where applicable to the licensee, any failure:</p> <ul style="list-style-type: none"> <li>(a) to maintain the required level of capital;</li> <li>(b) to maintain the required solvency margin;</li> <li>(c) to comply with any reserving requirements;</li> <li>(d) to maintain any deposit required to be maintained.</li> </ul>	<p>\$2,000 to \$20,000</p>
<p><b>3. Late filing/notification</b></p> <p>Licensee filing any document required to be filed or notifying the Commission of any matter required to be notified after last date on which the document is to be filed or the matter is to be notified to the Commission:</p> <ul style="list-style-type: none"> <li>1 to 30 business days late</li> <li>31 to 60 business days late</li> <li>61 to 90 business days late</li> <li>91 to 120 business days late</li> <li>121 to 150 business days late</li> <li>151 or more business days late</li> </ul>	<ul style="list-style-type: none"> <li>\$100 to \$500</li> <li>\$500 to \$2,000</li> <li>\$750 to \$3,000</li> <li>\$1,000 to \$4,000</li> <li>\$2500 to \$6,000</li> <li>\$3,000 to \$10,000</li> </ul>

<p><b>4. Failure to obtain approval</b></p> <p>Licensee taking any action for which the approval of the Commission is required without having obtained the necessary approval.</p>	<p>\$1,000 to \$5,000</p>
<p><b>5. Record keeping contravention</b></p> <p>Licensee failing to maintain any records required to be maintained or failing to maintain records in the manner or at the place required.</p>	<p>\$500 to \$5,000</p>
<p><b>6. Compliance contravention</b></p> <p>Licensee failing to establish or maintain adequate systems and controls for ensuring compliance with the requirements of, and its obligations under, the Act, the regulatory legislation, the Regulatory Code or directives issued by the Commission as required by section 34 of the Act, including</p> <ul style="list-style-type: none"> <li>(a) failure to appoint a compliance officer;</li> <li>(b) failure to establish and maintain a compliance procedures manual;</li> <li>(c) failure to comply with any requirement of a regulatory code with respect to compliance.</li> </ul>	<p>\$2,000 to \$10,000</p>
<p><b>7. Late payment of fee or penalty</b></p> <p>Late payment of any fee required to be paid under any regulatory legislation or any penalty required to be paid under these Regulations.</p>	<p>5% of the total fee or penalty payable for each month or part thereof that the fee or penalty (or any part of the fee or penalty) is outstanding, up to a maximum of 60% of the total fee or penalty.</p>
<p><b>8. Other contravention</b></p> <p>Licensee committing any other contravention not falling within a category specified above.</p>	<p>\$100 to \$5,000</p>

Made by the Executive Council this 1<sup>st</sup> day of December, 2006.

(Sgd.) SUZETTE VANTERPOOL,  
Clerk of the Executive Council.