

NOTICE NO. 349**Montserrat****FINANCIAL SERVICES COMMISSION****The Enforcement Manual****April 2019****CONTENTS**

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Montserrat Financial Services Commission Enforcement Manual

1. Statement of Objectives

To describe the policies and procedures for the exercise of the enforcement actions available to the Financial Services Commission (“the Commission”) in the event of non-compliance with regulatory and supervisory laws by financial entities regulated by the Commission.

2. Approach to Enforcement

- 2.1 The Commission’s effective and proportionate use of its powers to enforce the requirements of the regulatory laws and other relevant legislation (for example, the Anti-Money Laundering and Combating Terrorist Financing Regulations) will play an important role in pursuit of its objectives.
- 2.2 The Commission has a range of tools available to help it meet its regulatory objectives. Where a licensee has failed to comply with the legislative requirements, it will often be appropriate to address these without further requirements for formal disciplinary or other enforcement measures set out in the Financial Services Commission Act, Cap.11.2. (“The FSC Act”).
- 2.3 In those circumstances where the Commission does not take disciplinary action in respect of the contravention of the regulations, the effective use of the enforcement powers under the regulatory laws, where necessary, will play an important role in supporting the Commission’s pursuit of its objectives.
- 2.4 There are a number of principles underlying the Commission’s approach to the exercise of its enforcement powers:
 - 2.4.1 The effectiveness of the regulatory regime depends to a significant extent on the maintenance of an open and co-operative relationship between the Commission and those whom it regulates;
 - 2.4.2 The Commission will seek to exercise its enforcement power in a manner that is transparent, proportionate, and consistent with the provisions in the relevant legislation;
 - 2.4.3 The Commission will seek to ensure the fair treatment of those who are subject to the exercise of its enforcement powers as set out in the section 35 of the FSC Act.

3 Compliance and Enforcement

3.1 Compliance

Section 33 of the Financial Services Commission Act (FSC Act) provides that financial institutions shall appoint or designate a fit and proper individual approved by the Commission as its Compliance Officer. The requirements of fit and proper may be found in the regulatory enactments. The Act also states that the Commission may, by notice in writing to a financial institution, revoke its approval of an individual as the financial institution’s Compliance Officer.

3.2 Enforcement Action available under the FSC Act

Section 35 of the FSC Act provides that the Commission may take enforcement action against a financial institution if -

3.2.1 In the opinion of the Commission, the financial institution—

- (i) has contravened or is in contravention of this Act, a regulatory enactment or a Regulatory Code;
- (ii) has contravened or is in contravention of a provision of the Anti-Money Laundering and Terrorist Financing Regulations, a provision of an Anti-money Laundering and Terrorist

- Financing Code or a provision of any other Act, regulations or code relating to money laundering or the financing of terrorism prescribed for the purposes of section 4(1)(c);
- (iii) is carrying on, or is likely to carry on, business in a manner detrimental to the public interest or to the interest of any of its customers or creditors;
 - (iv) is or is likely to become insolvent;
 - (v) has failed to comply with a directive given to it by the Commission;
 - (vi) is in breach of any term or condition of its license;
 - (vii) is not a fit and proper person to hold a license; or
 - (viii) has provided the Commission with any false, inaccurate or misleading information, whether on making application for a license or subsequent to the issue of the license;
- 3.2.2 It is compulsorily wound up, passes a resolution for voluntary winding up or is dissolved;
- 3.2.3 A receiver has been appointed in respect of the financial services business carried on by the financial institution or possession has been taken of any of its property by or on behalf of the holder of a debenture secured by a registered charge;
- 3.2.4 In the opinion of the Commission—
- (i) a person having a share or interest in the financial institution, whether equitable or legal, or any director, officer or key employee of the financial institution is not a fit and proper person to have an interest in or be concerned with the management of a financial institution, as the case may be; or
 - (ii) the financial institution, or its subsidiary or holding company, has refused or failed to co-operate with the Commission on a compliance visit conducted by the Commission under section 34; or
- i. The Commission is entitled to take enforcement action under a provision in a regulatory enactment.
 - ii.

3.3 Enforcement Powers

The Commission has a range of enforcement powers and in any particular enforcement situation the Commission may need to consider the powers to use and whether to use one or more of the powers. These include -

- (i) Suspension of the license of a licensee and preservation of its records;
- (ii) Revocation of the license of a licensee;
- (iii) Requiring the substitution of a director, operator, senior officer, general partner, promoter, insurance manager or shareholder of the licensee (as applicable);
- (iv) Appointing a person to assume control of the affairs of the licensee;
- (v) Appointing a person to advise the licensee on the proper conduct of its affairs;
- (vi) Applying to the High Court of Montserrat for an Order directing that:
 - The company be wound up in accordance with the Companies Act;
 The trustee wind up the trust; or
 - The partnership be dissolved;
- (vi) Prosecution of offences and the assessment of fines and penalties.

4. Matters to be considered

- 4.1 The ultimate objective is to ensure that licensees comply with all the requirements in relevant regulatory enactments and regulations but it is recognized that a clear process through which enforcement measures may be taken against defaulting licensees is necessary.
- 4.2 Licensees are expected to comply with the provisions in the regulatory and supervisory laws and regulations of Montserrat. Licensees that fail to comply with the requirements run the risk of harming the reputation of Montserrat as a well regulated financial services centre and negatively impact on the interest of stakeholders.
- 4.3 The broad areas of concern which may result in the Commission taking enforcement measures include when a licensee or registrant:
 - 4.3.1 Is unable to, or appears to become unable to, meet its obligations as they fall due;
 - 4.3.2 Is carrying on business that is, or is likely to be, detrimental to the public interest, the interests of stakeholders, or any other third party;
 - 4.3.3 Contravenes regulatory laws or regulations of Montserrat;
 - 4.3.4 Fails to comply with a condition of its licence or registry requirements; or
 - 4.3.4 Breaches a rule of law.
- 4.4 In considering what action to take in the event of a concern arising, the Commission will take into account, the following:
 - 4.4.1 The impact on stakeholders' interest, third parties and market confidence;
 - 4.4.2 The nature and extent of the contravention;
 - 4.4.3 The ability and extent to which remedial action will rectify the situation;
 - 4.4.4 The willingness and ability of the licensee to co-operate with and assist the Commission in terms of its investigations and recommendations. This includes: -
 - (i) how, effectively the licensee or registrant brought the contravention to the attention of the Commission;
 - (ii) the degree and timeliness of co-operation in meeting the requests of the Commission for information, documents, etc;
 - (iii) any remedial actions the licensee has already taken or intends to take in rectifying the situation; and
 - (iv) any action that has been taken to ensure that such a contravention does not arise in the future;
- 4.4.5 The compliance history of the licensee. This includes –
 - (i) whether the Commission or any other regulator has taken any previous action against the licensee;
 - (ii) whether the licensee has previously failed to comply with condition of its licence or registry requirements or directions or rules of the Commission; and
 - (iii) the general compliance history of the licensee in terms of any other correspondence considered relevant by the Commission.

- 4.4.6 The amount of the loss incurred or any benefit that will be lost as a result of the contravention;
- 4.4.7 The nature and extent of any crime facilitated, occasioned or otherwise attributable to the contravention;
- 4.4.8 The nature and extent of civil and/or criminal proceedings that have been or are expected to be commenced against the licensee or any of its directors and/or shareholders;
- 4.4.9 The extent to which the directors and officers have acted in a fit and proper manner;
- 4.4.10 Whether there are a number of issues which, when considered individually may not justify disciplinary action, or when considered collectively, indicate a pattern of unfit and improper behaviour;
- 4.4.11 Whether any rules or guidance have been issued in respect of the contravention and, if so, the extent to which the licensee has followed the relevant rules or guidance; and,
- 4.4.12 Action taken by the Commission or other regulatory authorities in previous similar cases.

5 Compliance Ladder

- 5.1 The Commission will notify the licensee of the action that will be taken, according to the nature of the contravention and upon consideration of the factors listed in section 4:

- 5.1.1 Stage 1 - Preliminary Findings

The Commission will promptly provide the licensee with details of the contravention by letter and request remedial action. In the case of more serious contraventions, or where time is of the essence, the Board and Management of the licensee may be required to attend a “preliminary findings” meeting in person or by conference call. The licensee must notify the Commission in writing within 14 days of any remedial action taken or to be taken in respect of the identified contravention.

- 5.1.2 Stage 2 – Recommendations for Remedial Action

Where considered appropriate the Commission will make recommendations to the licensee for corrective action within a prescribed period. Failure by the institution to respond to the recommendations will lead to further action as set out at Stage 3. (In exceptional circumstances Stages 1 and 2 may be effected simultaneously).

- 5.1.3 Stage 3 – Non-Compliance with Recommendations

In the event that the licensee does not comply with the recommendations for remedial action and there are no mitigating circumstances, the Commission will take appropriate action with or without further notice to the licensee. In the event of a valid mitigating circumstance the Commission may extend the period for the implementation of remedial action or amend the nature of the proposed remedial action.

- 5.2 In relation to the above stages, the Commission may take the following steps:

- 5.2.1 *Step 1*

The Commission will promptly address contraventions with the licensee and/or its directors. The preliminary findings letter will set out detail(s) of the contravention and request that the licensee and/or directors provide, on a timely basis, proposals for remedial action and a timetable for completion. No further action will be taken if the matter is satisfactorily rectified.

- 5.2.2 *Step 2*

Where Stage 2 is reached, in addition to the recommendations, the Commission may also implement, any of the following actions:

- (i) Place the licensee on the regulatory watch list;
- (ii) Request the Board of Directors of the licensee/registrant to provide a letter of commitment, signed by each director, acknowledging the recommendations of the Commission. A letter of

commitment should state that the Board of Directors of the licensee are aware of the recommendations for remedial action and has approved the steps necessary for the licensee to comply with such recommendations;

- (iii) Where appropriate, an external auditor may be required to perform an audit or investigation in relation to the specific issue and report to the Commission. This will be at the expense of the licensee.
- (iv) In the case of licensee undertaking regulated insurance business, the requirement is for an actuarial report be prepared at the expense of the licensee;
- (v) Increase and/or enlarge the scope and/or frequency of the on-site inspection programme;
- (vi) Increase the level of reporting by the licensee.

5.2.3 *Step 3*

In the event that the recommendations for remedial action are not complied with in a satisfactory manner, the Commission may take the following actions:

- (i) Issue specific directives;
- (ii) Require that a special audit or investigation is conducted by an external auditor at the cost of the licensee;
- (iii) In the case of a licensee undertaking insurance regulated insurance business, require that an actuarial report be prepared at the expense of the licensee;
- (iv) Impose business restrictions;
- (v) Expand existing restrictions.

5.3 There may be circumstances where the Commission will not notify the licensee of the action that it intends to take and will make regulatory decisions that fall outside the above procedure. These will include the exercise of statutory powers in order to protect the interest of stakeholders or depositors and the decision is expected to be for a specified period of time (e.g., appointment of a examiner/investigator/controller, advisor, or actuary; the suspension of a license), where the affected persons have the right to be heard in court (e.g., appointment of liquidators or the assessment of penalties/fines), or where it is in the public interest to do so.

5.4 In the event that a licensee does not comply with the recommendations for remedial action given in stage 3 of the Ladder of Compliance in a satisfactory manner and there are no valid mitigating circumstances, the Commission will investigate and collect any further information it deems necessary to determine an appropriate action. This may include obtaining legal advice regarding the appropriateness of the proposed course of action.

6 Enforcement Actions - Suspension and Revocation of Licence and Preservation of Records

6.1 *Suspension of a Licence and Preservation of Records*

6.1.1 *Application*

This enforcement action applies to institutions subject to the Commission's regulatory enactments as prescribed.

6.1.2 *Purpose*

The suspension of licence and, if appropriate preservation of records, is used by the Commission to fulfill its regulatory objectives. It is employed when the licensee's business has severe problems that require its operations to be suspended for a specified period of time, (usually short term), with the intent that the licensee will restructure its business or management to bring it into compliance with the regulatory requirements.

6.1.3 *Criteria*

The Commission will consider the relevant circumstances of each case when deciding whether it is appropriate to suspend a licensee's licence and, if appropriate, preserve the records of the financial institution.

The general factors that the Commission should consider before deciding whether to exercise this enforcement measure are set out in the s.35 of the FSC Act and outlined 3.2.1 above. In addition, the following factors should be considered:

- (i) The seriousness of any suspected breach of the regulatory enactments and the steps required to be taken to correct the breach;
- (ii) The extent of any loss, or risk of loss or other adverse effect on stakeholders;
- (iii) The extent to which the stakeholders' assets appear to be at risk;
- (iv) The financial resources of the licensee;
- (v) Management's approach and attitude to resolving problems;

The decision to suspend the licence and, if appropriate, preserve the records, should be taken –

- If the breach can be corrected in the short term, (the greater the financial resources, the more likely that the problem can be rectified in the short term);
- Where the extent of loss is minimal, the suspension of the licence will not adversely affect the position;
- If it is necessary to freeze any further payments out of the licensee's operations;
- If management or the directors have had an open and co-operative attitude to resolving the problem.

6.1.4 *Implementation*

Once the Commission has decided and has received the necessary Board Resolution to suspend a licensee's licence and/or, preserve the records of the licensee, the Commission will take the following steps:

- (i) Communicate the suspension to the persons or entities responsible for managing the licensee;
- (ii) Publish notice of the suspension in the Montserrat Gazette; and
- (iv) If necessary apply to the High Court for an ex parte order that the assets, books or papers of the licensee be preserved,

6.2 *Revocation of Licence*

6.2.1 *Application*

This enforcement action applies to all licensees, except registered and administered mutual funds, building societies and cooperative societies.

6.2.2 *Purpose*

The revocation of a licence is employed when the licensee is in serious contravention of the provisions in a regulatory enactment and regulations. The revocation does not automatically cause the entity to cease to operate and as such, steps will be required to have the entity struck from the Companies Register.

Where third party stakeholders' interests are at risk, the Commission may consider taking other enforcement action, (for example the appointment of an administrator), before resorting to revocation.

6.2.3 *Criteria*

The Commission will consider the relevant circumstances of each case when deciding whether it is appropriate to revoke a licensee's licence. The general factors that the Commission will consider before deciding to exercise this enforcement power may include, but are not limited to, the following:

- (i) The seriousness of any suspected breach of the relevant regulatory enactment/regulations and the steps required to be taken to correct the breach;
- (ii) The extent of any loss, or risk of loss or other adverse effect on stakeholders;
- (iii) The extent to which the stakeholder's assets appear to be at risk;
- (iv) The financial resources of the licensee;
- (v) The availability of possible solutions.

Revocation is appropriate –

- when third parties have no or minimal assets at risk;
- Where there are limited options available to rectify the problem;
- The lack of liquid assets, particularly locally, would suggest that revocation is appropriate.

6.2.4 *Implementation*

Once the Commission has decided and has received the necessary Board Resolution to revoke a licensee's licence, the Commission will take the following steps to implement the revocation.

- (i) Communicate the revocation to the persons or entities responsible for managing the licensee;
- (ii) Publish notice of the revocation in the Montserrat Gazette.

7 **Issuing Warning Notices**

- 7.1 Further to or in accordance with sub-section 36 (4) of the FSC Act, before suspending or revoking a licence the Commission shall give written notice to the financial institution stating—
 - (i) the grounds upon which it intends to suspend or revoke the licence; and
 - (ii) that unless the financial institution, by written notice filed with the Commission, shows good reason why its licence should not be suspended or revoked, the licence will be suspended or revoked on a date not less than fourteen days after the date of the notice.
- 7.2 The purpose of issuing Warning Notices is to give the licensee a reasonable opportunity to make representation to the Commission. The Commission should make every reasonable attempt to resolve any issues or concerns prior to issuing Warning Notices and publishing Notices of Decision.
- 7.3 The issue of a Warning Notice is relevant to the following regulatory decisions:
 - (i) Substitution or removal of a director, manager, senior officer and controller of a licensed or registered entity;
 - (ii) Suspension or revocation of an entity's licence;
 - (iii) Imposition of conditions, or further conditions, upon a licensee or registrant.;
 - (iv) Requirements to take action or to cease carrying on certain activities or conduct.

- 7.4 There may be exceptional circumstances when the Commission is unable to or determines it is inappropriate to disclose the reasons for the proposed decision. Such situations would include:
- (i) Privileged information between the Commission and its professional legal advisor;
 - (ii) information which a Court has directed should not be disclosed;
 - (iii) information indicating knowledge or suspicion that the Applicant or another person is engaged in money laundering or terrorist financing activity;
 - (iv) Information received from a regulatory or law enforcement authority;
 - (v) Information received on a confidential basis;
 - (vi) Where the disclosure of information could adversely affect the national interest, including the national security, of Montserrat; or
 - (vii) Circumstances where it is in the public interest to do so.

In these circumstances, the decision not to disclose the reasons must be approved by the Board of the Commission.

- 7.5 The Commission will send a written Warning Notice to all interested parties, including the person/licensee affected by the decision;

8. The Representation Process

- 8.1 An affected party may apply in writing to the Commission within 14 days of receipt of the notice for an extension of time.

The commission will, within one day of receiving this request, notify the party in writing (by letter or email) whether or not the request was granted.

Any extension of time must not exceed 14 days.

- 8.2 Any written representations should be addressed to the Commissioner at the address specified in the Notice.

- 8.3 Upon receiving written representation in relation to a Warning Notice that has been issued, the Commission may either:

- i. Issue a Notice of Decision (see section 9); OR
- ii. Notify all affected/interested parties of its decision not to proceed with issuing the Warning Notice and the reason(s) for this decision.

- 8.4 If the Commission receives no response or representations within the period specified within the Notice, the Commission may regard as undisputed the allegations or matters detailed in the Notice and issue a Decision Notice.

9 Issuing a Notice of Decision

- 9.1 Once the Commission has determined that a Notice of Decision is to be issued, such notice will:

- i) Be in writing
- ii) State the decision taken by the Commission;
- iii) State the Commission's reasons for the Decision

iv) State the effective date the Decision is effective.

- 9.2 There may be circumstances in which the Commission is unable to or determines it is inappropriate to disclose the reasons for the decisions. These include:
- Information between the Commission and its professional legal adviser;
 - Information which a Court has directed is not to be disclosed;
 - Information indicating knowledge or suspicion that the Applicant or another person is engaged in money laundering or terrorist financing activity;
 - Information received from a regulatory or law enforcement authority;
 - Information received on a confidential basis;
 - Where the disclosure of information could adversely affect the national interest, including the national security, of Montserrat; or
 - Where it is in the public interest to do so.

In these exceptional circumstances, the decision not to disclose the reasons must be approved by the Board of the Commission.

9.3 The Commission will send a Notice of Decision to all interested parties, including:

- i) The person/licensee affected by the decision;
- ii) The person acting for or managing the licensee.

9.4 The Notice of Decision is final, subject to any statutory right to apply for reconsideration or appeal.

10 No Notice Procedure

The Commission may make regulatory decisions that fall outside these procedural guidelines.

11 The Commission's Approach in Urgent Situations

11.1 It is not possible to provide an exhaustive list of the situations that will give rise to the Commission to take urgent action; however, they are likely to include one or more of the following characteristics:

- (i) Information indicating a significant loss, risk of loss, or other adverse effects for stakeholders, where action is necessary to protect their interests;
- (ii) Information indicating that a licensee's conduct has put it at risk of being used for the purposes of financial crime, or of being involved in such crime;
- (iii) Evidence that the licensee has submitted to the Commission inaccurate or misleading information so that the Commission becomes seriously concerned about the licensee's ability to meet its regulatory obligations; and
- (iv) Circumstances suggesting serious problems within a licensee or with the licensee's management of the financial institution, which calls into question the licensee's ability to continue to meet the regulatory requirements.

12 Issues to be Considered in Urgent Situations

12.1 Whether the urgent exercise of powers is an appropriate response to serious concerns will depend of factors, which include but are not limited to:

- (i) The seriousness of any suspected breach of the regulations and the steps required to be taken to correct the breach;

- (ii) The financial resources of the licensee;
- (iii) The risk that the licensee's business may be used or has been used to facilitate financial crime or to launder the proceeds of crime;
- (iv) The risk that the licensee's conduct or business presents to the financial system and to confidence in the financial system;
- (v) The licensee's conduct;
- (vi) The extent of any loss, or risk of loss or other adverse effect on stakeholders;
- (vii) The extent to which the stakeholder's assets appear to be at risk;
- (viii) The nature and extent of any false or inaccurate information provided by the licensee; and
- (ix) The impact that use of the Commission's powers will have on the licensee and on its stakeholders.

13 Other Enforcement Measures

13.1 *Protection Order*

Section 37 of the FSC Act states that the Commission, where it is entitled to take enforcement action against an institution it may make application to the court for an order to -

- (i) Protect or preserve the business/property of the financial institution, its creditors or the interest of its customers, the public;
- (ii) Prevent the financial institution or any other person from transferring/disposing of or otherwise dealing with property belonging to him or her in his custody/control;
- (iii) Appoint an administrator to take over the management of the institution before the suspension or revocation of a licence;
- (iv) Require the company to be wound up under the Companies Act;
- (v) Grant the Commission a search warrant.

13.2 *Directives*

Section 38 of the FSC Act provides that where the Commission is entitled to take enforcement action against a financial institution, it may issue a directive to -

- (i) impose a prohibition, restriction or limitation on the financial services business including a directive that the institution shall cease to engage in any class or type of business or to prohibit the institution from entering into new contracts for any class or type of business;
- (ii) Require a director; key employee or person having/performing any function in relation to a institution be removed and replaced by another person acceptable to the Commission;
- (iii) Require the financial institution to take such other action as the Commission considers may be necessary to protect the property of, or in custody, possession or control of the financial institution or to protect current or potential customers/creditors of the financial institution.

13.3 *Appointment of Examiner*

Section 39 (1) of the FSC Act provides that the Commission may appoint one or more competent persons as examiners to conduct an investigation on its behalf with respect to a financial institution, a regulated person that is not a financial institution or a person carrying on unauthorized financial services business where—

- (a) in the case of a financial institution—

- (i) the Commission is entitled to take enforcement action against the financial institution under section 35 of the FSC Act, or
- (ii) it has suspended or revoked the licence of the financial institution;
- (b) in the case of a regulated person, not being a financial institution, it appears to the Commission that the regulated person is in breach of his obligations under the Anti-Money Laundering Regulations and such other Acts, regulations, guidelines or codes relating to money laundering or the financing of terrorism as may be prescribed for the purposes of section 4 (1) (c) of the FSC Act; or
- (c) in the case of a financial institution, any other regulated person or a person carrying on unlicensed financial services business, the Commission is of the opinion that it is desirable to appoint an examiner—
 - (i) in the interests of the customers or potential customers of the person,
 - (ii) in the public interest, or
 - (iii) to safeguard the reputation of Montserrat.

13.4 *Appointment of a Qualified Person*

Section 40 of the FSC Act provides in matter concerning –

- (a) financial institution; or
- (b) a subsidiary or a holding company of a financial institution

that the Commission may, by notice in writing, require a person with appropriate professional skills to make a report on any aspect of the person's business/affairs as specified in the relevant notice.

13.5 *Issue of Public Statement*

Section 41 of the FSC Act provides –

- 1) that where the Commission is entitled to take enforcement action, it may issue a public statement, in such a manner as it considers fit setting out the reasons for the enforcement action and the enforcement action that it intends to take, or has taken against the financial institution.
- 2) Where it considers it in the public interest to do so, the Commission may issue a public statement in such manner as it considers fit relating to a person who is carrying on, or who in the opinion of the Commission is likely to carry on, unlicensed financial services business.
- 3) Where a public statement is to be issued under this section in relation to a financial institution, the Commission shall give that person seven days written notice of its intention to issue the public statement and the reasons for the issue of the statement.
- 4) If, on the application of the Commission, the Court is satisfied that it is in the public interest or in the interests of any of the customers or creditors of a financial institution or former financial institution that subsection (3) should not have effect or that the period referred to in that subsection should be reduced, it may so order.
- 5) An application under subsection (4) may be made on an ex parte basis or upon such notice as the Court may require.

14 **Powers to Take Disciplinary Action**

- 14.1 Section 43 (1) of the FSC Act provides that the Commission may take disciplinary action against a financial institution if it is satisfied that the financial institution has committed a disciplinary violation. Subsection 43 (2)

provides that the Commission takes disciplinary action against a financial institution by imposing an administrative penalty on it.

15 Notice of Intention to Take Disciplinary Action

15.1 Section 44 of the FSC Act provides that, if the Commission intends to take disciplinary action against a financial institution, it shall send a notice of its intention to the financial institution (Appendix 3) which—

- (i) sets out the alleged disciplinary violation and the relevant facts surrounding the violation;
- (ii) sets out the amount of the penalty that it intends to impose for the violation; and
- (iii) advises the financial institution of its right to make written representations to the Commission.

15.2 Where a financial institution receives a notice of intended disciplinary action, it may, within twenty-eight days of the date upon which he receives the notice, send written representations to the Commission disputing the facts of the alleged disciplinary violation; the amount of the administrative penalty or both.

15.3 After the expiration of twenty-eight days from the date that the disciplinary notice was sent to the financial institution, the Commission may take disciplinary action against that financial institution by sending it a penalty notice (Appendix 4) stating—

- (i) the disciplinary violation in respect of which the notice is issued;
- (ii) the date on which notice of intention to take disciplinary action in respect of that violation was sent to the financial institution;
- (iii) the amount of the administrative penalty for the violation, which shall not exceed the amount specified in the notice;
- (iv) a date, not less than twenty-eight days after the date of the penalty notice, by which the financial institution must pay the penalty to the Commission; and
- (v) that if the financial institution does not pay the penalty or exercise its rights of appeal it will be considered to have committed the violation and accordingly liable for the penalty as set out in the notice.

15.4 Before taking disciplinary action against a financial institution the Commission shall consider any written representations that it has received from the financial institution and, where it receives such representations, it must provide reasons for the action that it takes.

16 Imposition of Administrative Penalty

Where an administrative penalty is imposed by the Commission on a financial institution, the Commission shall, after the imposition of the penalty has become final, advertise the imposition of the penalty by publication in the Gazette.

The administrative penalty constitutes a debt to the Commission and in the instances where said penalty is unpaid; the Commission may commence recovery action in the court.

17 Glossary of Terms

The preceding document makes use of various terms that have the meanings set out below.

Adviser	A person appointed at the expense of the licensee to advise on the proper conduct of its affairs
Behaviour	Any kind of conduct, including action or inaction
Board of the Commission	Means the board of directors established under the Financial Services Commission
Commission	The Financial Services Commission established under the Financial Services Commission Act Cap 11.02
Commissioner	The Commissioner of the Commission appointed under the Financial Services Commission Act
Company	A body corporate, wherever incorporated, registered or formed and includes a foundation.
Controller	A person appointed at the expense of the licensee to assume control of the affairs of the licensee
Controllership	A licensee in which a controller has been appointed
Criminal conduct	Conduct which constitutes an offence or would constitute an offence if it had occurred in Montserrat
Disciplinary violation	<p>A contravention of -</p> <ul style="list-style-type: none"> (i) a provision of the FSC Act, or of a regulatory enactment, prescribed as a disciplinary violation; (ii) a provision of a Regulatory Code specified in the relevant Regulatory Code as a disciplinary violation; (iii) a provision of the Anti-money Laundering and Terrorist Financing Regulations specified in those Regulations as a disciplinary violation; (iv) a provision of an Anti-money Laundering and Terrorist Financing Code specified in the relevant Code as a disciplinary violation; or (v) a provision of any other Act, regulations or code relating to money laundering or the financing of terrorism prescribed for the purposes of section 4(1)(c), specified in that Act.
Financial crime	Any kind of criminal conduct relating to money or to financial services or markets, including any offence involving:

	<p>(a) fraud or dishonesty;</p> <p>(b) misconduct in, or misuse of information relating to, a financial market; or,</p> <p>(c) handling the proceeds of crime.</p>
Insurance Manager	A company operating from within Montserrat which provides insurance expertise and which has in its bona fide employment a person who is qualified or in good standing, as defined in the Insurance Act
Licensee	A person holding a license under the regulatory laws, and includes a building society, a credit union, and administered or registered mutual funds.
Liquidator	A person appointed by the High Court or the Supreme Court of the Eastern Caribbean to wind up the company or unit trust.
Money Laundering	The process by which the direct or indirect benefit of criminal conduct is channeled through financial institutions to conceal the true origin and ownership of the proceeds of criminal activities, and means doing any act which constitutes an offence under sections, 118, 119, 120 or 121 the Proceeds of Crime Act Cap.04.04 or, in the case of an act done otherwise than in Montserrat, would constitute such an offence if done in Montserrat.
Officer	In relation to a body corporate, a director, a member of the committee of management, chief executive (however described), manager, secretary, operator or other similar officer of the body, or a person purporting to act in that capacity.
Operator	A director of a company, a trustee of a trust, or a general partner of a partnership
Promoter	In respect of a mutual fund or proposed mutual fund, any person whether within or without Montserrat who causes the preparation or distribution or an offering document in respect of the mutual fund or proposed mutual fund but does not include a professional advisor acting for or on behalf of such a person.
Registry enactment	A financial services enactment prescribed as a registry enactment together with any subsidiary legislation made under that enactment.
Regulatory functions	The function of the Commission, or functions corresponding to such functions, and any other similar functions relating to the companies or financial services as may be specified in the regulations.
Regulatory laws or regulations	Any one or more of the:

	<p>(a) International Banking and Trust Companies Act (Cap 11.04)</p> <p>(b) International Business Companies Act (Cap 11.13)</p> <p>(c) Buildings Societies Act (Cap 11.22)</p> <p>(d) Company Management Act (Cap 11.26)</p> <p>(e) Cooperative Societies Act (Cap 11.21)</p> <p>(f) Insurance Act (Cap 11.20)</p> <p>(g) Money Services Businesses Act (Cap 11.30)</p> <p>(h) Mutual Funds Act (Cap 11.17)</p> <p>(i) Securities Act and any other laws that may be prescribed by the Governor in Cabinet by regulations made under the Financial Services Commission Act. This also includes any rules, statements of principle or guidance issued in accordance with the Financial Services Commission.</p>
Regulatory enactment	A financial services enactment prescribed as a regulatory enactment together with any subsidiary legislation made under that enactment
Regulatory objectives	The objectives of the Commission, in performing its regulatory functions
Stakeholder	A depositor, investor, policyholder, client, customer, creditor and member of, or a company or mutual fund managed by a Licensee.
Unit Trust	A trust established by a trustee and issues trust units, as defined in the Mutual Funds Law

Date:

To: [Firm or other person] of: [Address]

WARNING NOTICE

TAKE NOTICE:

The Financial Services Commission of Valley View, P.O. Box 188, Brades, Montserrat, (the “Commission”) proposes to take the following action.

PROPOSED ACTION:

[Details of proposed action]

REASONS

[Reasons for proposed action]

NOTICE OF REPRESENTATION

You may make written representations to the Commission. If you wish to make such representations you must do so within (...) days of receiving this Warning Notice, or such longer period as requested of, and approved by the Commission. Written representations should be made to the Commissioner of the Commission, at the above address.

Please contact [contact name and details] at the Commission for more information.

Commissioner
Financial Services Commission

Date:

To: [Firm or other person] of: [Address]

DECISION NOTICE

TAKE NOTICE:

The Financial Services Commission of Valley View, P.O. Box 188, Brades, Montserrat (“the Commission”) has decided to take the following action.

ACTION

[Details of action]

REASONS

[Reasons for the Commission’s decision to take the action]

EFFECTIVE DATE OF DECISION

The Commission’s decision regarding the above action is effective [date].

Commissioner
Financial Services Commission

Date:

To: [Firm or other person] of: [Address]

WARNING NOTICE – Disciplinary Violation

TAKE NOTICE:

The Financial Services Commission of Valley View, P.O. Box 188, Brades, Montserrat, (the “Commission”) proposes to take the following action.

PROPOSED ACTION:

[Details of proposed action]

- (i) sets out the alleged disciplinary violation and the relevant facts surrounding the violation;
- (ii) sets out the amount of the penalty that it intends to impose for the violation

NOTICE OF REPRESENTATION

You may make written representations to the Commission. If you wish to make such representations you must do so within 28 days of receiving this Warning Notice, or such longer period as requested of, and approved by the Commission. Written representations should be made to the Commissioner of the Commission, at the above address.

Please contact [contact name and details] at the Commission for more information.

Commissioner
Financial Services Commission

Date:

To: [Firm or other person] of: [Address]

PENALTY NOTICE – Disciplinary Violation

TAKE NOTICE:

The Financial Services Commission of Valley View, P.O. Box 188, Brades, Montserrat (“the Commission”) has decided to take the following action.

[Reasons for the Commission’s decision to impose Administrative Penalty]

- (i) The disciplinary violation in respect of which the notice is issued;
- (ii) the date on which notice of intention to take disciplinary action in respect of that violation was sent to the financial institution;
- (iii) the amount of the administrative penalty for the violation;
- (iv) a date, not less than twenty-eight days after the date of the penalty notice, by which the financial institution must pay the penalty to the Commission
- (v) that if the financial institution does not pay the penalty or exercise its rights of appeal under section 50 of the FSC Act, it will be considered to have committed the violation and accordingly liable for the penalty set out in the notice.

EFFECTIVE DATE OF DECISION

A date, not less than twenty eight days after the date of the penalty notice, by which the financial institution must pay the penalty to the Commission

Commissioner
Financial Services Commission

Minimum criteria for determining whether a person is fit and proper

- (1) Every person who is, or is likely to be a director, significant shareholder, or officer of a licensed financial institution or licensed financial holding company must be a fit and proper person to hold the particular position which he holds or is likely to hold.
- (2) In determining whether a person is a fit and proper person to hold any particular position, the Commission shall have regard to—
 - (a) the person's probity, competence and soundness of judgment for fulfilling the responsibilities of that position;
 - (b) the academic or professional qualifications or effective experience in banking, finance, business or administration or any other relevant discipline of the person concerned;
 - (c) the diligence with which the person is fulfilling or likely to fulfill the responsibilities of the position;
 - (d) whether the interests of depositors or potential depositors of the licensed financial institution are, or are likely to be, in any way threatened by the person holding the position;
 - (e) whether the person is a significant shareholder, director or officer or holds any position of authority in any licensed financial institution locally or elsewhere whose licence has been suspended, or revoked otherwise than as a result of an amalgamation or voluntary liquidation or which has been or is being wound up or compulsorily liquidated;
 - (f) whether the person has failed to satisfy any judgment or order of a court locally or abroad including the repayment of a debt;
 - (g) whether the person is an un-discharged bankrupt or has been declared a bankrupt locally or abroad; and (h) whether the person has been removed or suspended by a regulatory authority from serving as a director or officer in a licensed financial institution or anybody corporate locally or abroad.
- (3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that the person has—
 - (a) committed an offence involving fraud or other dishonesty or violence;
 - (b) contravened any provision made by or under an enactment designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of a discharged or undischarged bankrupt;
 - (c) engaged in any business practices appearing to the board to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on the person's method of conducting business;
 - (d) an employment record which leads the board to believe that the person carried out an act of impropriety in the handling of his employer's business; or
 - (e) engaged in or been associated with any other business practices or otherwise conducted himself in a manner as to cast doubt on his competence and soundness of judgment.

Criteria for determining whether a person is fit and proper to be a significant shareholder

In determining whether a company or person is a fit and proper person to be a significant shareholder, regard shall be had to, but not limited by, the following criteria:

- (a) whether the directors of the company or person have satisfied the fit and proper criteria above;

- (b) whether the company or person has been found guilty of insider trading or fraud involving trading in securities by local or foreign authorities;
- (c) whether the company or person has been convicted of an offence under any regulatory or registry enactment in force in Montserrat;
- (d) whether in the opinion of the Financial Services Commission the company or person has failed to carry on its business or business affairs in a prudent manner;
- (e) whether in the opinion of the Financial Services Commission the company is insolvent or is likely to become insolvent;
- (f) whether the company or person has suspended or is about to suspend payment in respect of, or is unable to meet their obligations, as they fall due;
- (g) whether in the opinion of the Financial Services Commission the affairs of the company or person are being conducted in a manner prejudicial to the soundness of the licensed financial institution in question;
- (h) any other matter which the Financial Services Commission Bank may determine.

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Montserrat Financial Services Commission