



Jersey Financial Services Commission

POLICY ON THE COMMISSION'S USE OF PUBLIC STATEMENTS

1 Introduction

- 1.1 Under each of the regulatory laws¹, the Commission has powers in certain circumstances to issue a public statement. The purpose of this document is to describe the principles that the Commission will apply to two particular aspects of issuing public statements.
- 1.2 There is a wide range of circumstances in which it will be appropriate to issue a public statement, however, the main applications may be described as follows:
 - 1.2.1 as a regulatory sanction, or part of a sanction, by promulgating the findings of the Commission and any action it has taken in relation to a failure of a business or person to comply with a requirement of any relevant law or Codes of Practice (for convenience and clarity, this is referred to in this document as a "Type 1" statement);
 - 1.2.2 to give warning of unauthorised business, or similar circumstances, where the best interests of the public could be adversely affected (referred to in this document as a "Type 2" statement); and
 - 1.2.3 to publicise a direction, or particular aspects of a direction, given by the Commission.
- 1.3 The particular aspects addressed by this policy statement are:
 - 1.3.1 a decision to issue a public statement as a sanction, or part of a sanction;
 - 1.3.2 a decision to reduce the period between serving notice to anyone named in a public statement and the issue of the public statement; and

¹ Financial Services (Jersey) Law 1998 (Articles 25 - 25C);
Banking Business (Jersey) Law 1991 (Articles 48 - 48C);
Insurance Business (Jersey) Law 1996 (Articles 43 - 43C); and
Collective Investment Funds (Jersey) Law 1988 (Articles 17 - 17C).

1.3.3 a decision to issue a public statement with respect to a direction.

1.4 This policy statement should be read in conjunction with the general guidance notes issued by the Commission on the Use of Enforcement Powers, and on the Commission's Decision Making Process.

2 Public Statement as a Regulatory Sanction

2.1 The Commission is aware of the serious detrimental effect that a public statement may have on the reputation or business of anyone named, particularly in a Type 1 statement. However, it is important that the Commission should be able to pursue its regulatory objectives² by highlighting the requirements and standards of conduct expected of firms and individuals, and demonstrating that these standards are being effectively enforced, so assisting to maintain standards in the finance industry.

2.2 In deciding whether to issue a Type 1 statement the Commission will have regard to the following considerations, which are neither cumulative nor exhaustive:

2.2.1 whether the circumstances are sufficiently serious to warrant placing them in the public domain;

2.2.2 whether the non-compliance was committed intentionally or recklessly, rather than inadvertently;

2.2.3 whether the Commission has previously issued a specific warning in relation to the type of non-compliance that has occurred;

2.2.4 whether there is a pattern of poor regulatory compliance;

2.2.5 whether there has been any attempt to conceal the non-compliance from the Commission or to mislead the Commission about it;

2.2.6 whether the person concerned has been cooperative in admitting the non-compliance and in taking remedial action;

2.2.7 whether in all the circumstances it is appropriate to draw attention to the non-compliance to demonstrate that regulatory standards are being upheld; or

2.2.8 whether it is appropriate to advise the industry of poor practice and provide education on the standards of conduct expected of registered persons.

2.3 It must be stressed that the decision to issue a public statement concerning a specific person, and which names that person, will be arrived at after taking into account all the circumstances of the case, including the Commission's regulatory objectives, the public

² See Article 7 of the Financial Services Commission (Jersey) Law 1998.

interest and the interests of the person concerned (and of his or her clients or others affected by his or her activities). The Commission will always consider whether issuing a Type 1 public statement is justified and is a fair and proportionate response. An alternative approach may sometimes be appropriate, such as issuing a press release about the case by the Commission outside the scope of the power to issue a public statement, the terms of which have been agreed with the person concerned.

- 2.4 It is unlikely that the Commission will issue a Type 1 statement concerning a registered business or principal person without having entered into dialogue with the person concerned. In addition, the Commission has a statutory obligation to provide formal written notice of a decision to issue a public statement, giving its reasons and enclosing a copy of what it proposes to issue. Without prejudice to the rights for anyone aggrieved to appeal to the Royal Court, the Commission will take into account any comments regarding the draft public statement received prior to the date of issue which, normally, may not be less than one month after the notice has been served.

3 Reduction of the Period of Notice

- 3.1 As indicated above, the regulatory laws require that, if reasonably practicable, the Commission must send a formal written notice to any person to be named in a public statement and may not issue the public statement until one month after the notice (or later if an appeal is made to the Royal Court). However, the regulatory laws also provide for the Commission to be able to decide when the statutory criteria are met that allow the notice period to be reduced, even to the extent that the public statement may be issued on the same day as the notice.

- 3.2 The Commission is very mindful of the additional consequences for anyone named in the statement if the notice period is reduced³. It therefore does not expect to exercise this power unless it is satisfied that its use is both necessary and proportionate. Each case will be considered on its own merits and the factors that the Commission will take into account include, but are not limited to:

- 3.2.1 the need for urgency in warning members of the public of unauthorised financial services business;
- 3.2.2 whether or not a delay could result in members of the public incurring financial losses;
- 3.2.3 whether or not a delay might result in significant risk of damage to the reputation of a registered financial services business or a person associated with that business.

³ If the notice period is reduced, although an appeal to the Court may still be made, the issue of the public statement is neither deferred nor suspended pending that appeal being heard, unless the Court so orders after considering a separate application: as a result, it may not be possible for the appeal to be heard before the public statement has been issued.

- 3.2.4 whether or not a delay could cause unnecessary damage to the reputation, integrity or economic interests of the Island in commercial and financial matters; or
 - 3.2.5 whether or not reducing the notice period would counter, or assist in countering, financial crime in Jersey or elsewhere.
- 3.3 It is envisaged that the power to reduce the notice period is most likely to be relevant in relation to a Type 2 public statement. Whilst the Commission does not expect that it will be necessary to apply the provision to other types of public statement, it will do so if it considers that the circumstances dictate.

4 Public Statement with respect to a direction

- 4.1 To the extent that they may be relevant, the factors described in Section 2 above will be taken into account in deciding whether or not a direction, or any particular aspect of a direction, given by the Commission should be the subject of a public statement. However, a decision whether or not to publish such a public statement is more likely to be based on the need to –
- 4.1.1 protect the interests of –
 - 4.1.1.1 any existing or potential clients or customers of the person to whom the direction was given;
 - 4.1.1.2 the general public; or
 - 4.1.1.3 other regulated businesses in the Island's financial services industry;
 - 4.1.2 protect the reputation of Jersey in commercial and financial matters; or
 - 4.1.3 counter financial crime in Jersey or elsewhere.