



May 31, 2023

Financial Services Regulatory Authority of Ontario (FSRA)
25 Sheppard St. W., Suite 100
Toronto ON M2N 6S6

Submitted via the FSRA website

Subject: Consultation on FSRA Proposed Guidance: Administrative Monetary Penalties

Independent Financial Brokers of Canada (IFB) appreciates the opportunity to comment on FSRA's [Proposed Guidance on the Administrative Monetary Penalties \(AMP\) regime](#).

About IFB

Independent Financial Brokers of Canada (IFB) is a national, not for profit association representing approximately 3,000+ licensed financial professionals across Canada. IFB members must agree to adhere to IFB's Code of Ethics and Standards of Professional Conduct¹ as a condition of membership.

Most IFB members are life/health insurance licensees and/or mutual fund registrants. Many have earned additional licenses or accreditations which permit them to address the breadth of financial advice that is often needed by today's client. This can include advice related to securities/investments, mortgages, P&C insurance, deposit instruments, estate/tax services, and financial planning. The majority of IFB members are regulated by FSRA under one or more of its Sector Statutes.

Although the AMP guidance is relevant to all entities regulated by FSRA, IFB's comments focus on the life/health insurance sector, under Ontario's *Insurance Act*.

General comments

IFB supports the publication of guidance documents to assist the public and its regulated entities so they can better understand FSRA's expectations and the approach it will take when exercising its authority.

The use of administrative monetary penalties (AMPs) is generally recognized as being beneficial in helping to deter non-compliance, and an appropriate, cost-effective alternative to pursuing contraventions of a lesser nature in the court system. As with any regulatory or legal enforcement tool, its use must be exercised in a fair, transparent, and impartial manner.

FSRA has the ability to impose General AMPs and Summary AMPs. FSRA notes that it has considerable discretion in the amount of a General AMP, while Summary AMPs are generally prescribed amounts. An advantage of an AMP regime administered by a regulator, such as FSRA, is the specialized knowledge that FSRA has about its regulated Sectors, and that can guide it in exercising its discretion. Despite this, FSRA should have a mechanism to evaluate, on an ongoing basis, that these decisions meet FSRA's 4 principles of objectivity, transparency, fairness and consistency.

¹ Independent Financial Brokers of Canada: <https://ifbc.ca/code-ethics/>

FSRA states at the outset of the Proposed Guidance that *“the Guidance aims to assist stakeholders in understanding how FSRA’s CEO and his/her delegates exercise discretion when imposing Administrative Monetary Penalties (AMP or AMPs) and determining AMP amounts.”* And, further that *“this will support transparency, fairness, consistency, as well as better decision-making by persons/entities on whom AMPs are imposed.”*

To be effective as a deterrent and promote compliance amongst the entire sector, FSRA needs to ensure that its regulated sectors are aware of the enforcement activity that has resulted in penalties, which can include AMPs, licence suspension/revocation, and/or terms and conditions on a licence. As an example, although FSRA publishes individual life insurance agent penalties on its website, IFB suggests that it would increase awareness amongst all life insurance licensees, if FSRA developed summary communications on the penalties imposed and the reasons leading to the penalty. This would also reinforce that AMPs should not be viewed as a “cost of doing business”, and act as a general deterrent for the sector.

We note that in some sections, FSRA refers to regulated “entities and persons” and in others to a “person”. We believe the intent is to apply equally to both entities and persons throughout the document.

Specific comments

Ability to enforce AMP payments: One of the objectives of an AMP regime is to prevent a person or entity from deriving an economic benefit from their contravention or failure to comply with their statutory requirements. If the AMP is not paid, this undermines this objective. Legislation may provide that notice can be filed and civil court processes used to enforce payment. It is unclear to us if FSRA has recourse other than licence suspension/revocation in the event the person or entity does not pay any, or all, of the AMP within the 30-day period following the Notice of Proposal or outcome of a Hearing.

In other examples, if an entity or person does not pay a FINTRAC AMP, it becomes an outstanding payment to the Crown. IIROC (now part of Canadian Investment Regulatory Organization) gained the ability to collect payments in most provincial jurisdictions due to changes in their Securities Acts. This greatly improved its ability to recover funds intended to disgorge the benefits of non-compliant behaviour. Without the ability to collect these payments, unscrupulous actors can simply leave the business, and set up shop elsewhere, with their illicit funds intact.

Notice to those subject to AMP: It has come to our attention over the years that licensees do not always realize the impact that being subject to disciplinary action will have on their career. In particular, they may be unaware that their case will remain in the public domain forever.

While issuing an AMP affords a regulator a more flexible tool than the option to revoke or suspend a licence, in cases where that would be overly severe, nevertheless the regulated community should be made aware that penalties will be publicly disclosed and remain available to the public, industry, etc. in perpetuity.



Forgiveness option: FSRA may want to consider whether the lifetime public availability of the licensee's contravention is consistent with risk-based principles and appropriate when no threat to the public interest is at stake. For example, an action taken against a licensee may have occurred many years ago, the penalty was paid, and they have continued to conduct business in a compliant manner. For cases of non-compliance arising from less severe contraventions, licensees could see this as a possible outcome and satisfy the regulatory objective of promoting voluntary compliance.

Paid/Unpaid AMPs: IFB suggests that FSRA disclose whether the individual or entity has paid the penalty, or it remains outstanding. It is not possible to see this on FSRA's enforcement page.

Ontario's Title Protection legislation

Unlike the other sectors FSRA regulates, the *Financial Professionals Title Protection Act, 2019* does not enable FSRA to impose AMPs. Under the FPTP Act, FSRA's disciplinary actions are limited to warning/cautionary letters, remediation plans, compliance orders and revocation of approval.

The inability of FSRA to impose monetary penalties has been the subject of much criticism from some industry stakeholders and investor advocates. Therefore, it is not our intent to rehash it here. However, we encourage FSRA to engage with the Ministry of Finance on this matter, as we see it as inconsistent with FSRA's consumer protection mandate and its risk-based approach to regulation, as well as its treatment of those in its other regulated sectors.

IFB appreciates the opportunity to comment. Please contact the undersigned, or Susan Allemang, Director of Policy & Regulatory Affairs (sallemang@ifbc.ca) if you have any questions or wish to discuss our comments.

Yours truly,

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