



12 December 2012

NOTICE

Statement of Principles on the Use of Enforcement Powers

Recent amendments to the Insurance Act 1978, the Banks and Deposit Companies Act 1999, the Investment Business Act 2003 and the Trusts (Regulation of Trust Business) Act 2001 introduced a uniform set of enforcement powers, and associated procedures for these Acts. Similar amendments are being developed for the Investment Funds Act 2006.

The above amendments include a requirement for the Authority to issue a Statement of Principles, detailing how the statutory powers would be used. Given that the new powers augment the existing range of powers available for enforcement purposes, the Authority has taken steps to issue a comprehensive Statement dealing with the use of the powers for enforcement under all of the Acts.

The Statement of Principles addresses the following matters:

- The initial approach to issues in compliance and progressing those issues to Enforcement
- The Decision Making process in relation to the use of Enforcement Powers
- The factors affecting a choice of enforcement action
- The procedures for the use of administrative enforcement actions
- The criteria for decisions on whether to publicise Enforcement Actions



BERMUDA MONETARY AUTHORITY

STATEMENT OF PRINCIPLES

STATEMENT OF PRINCIPLES ON THE USE OF ENFORCEMENT POWERS

DECEMBER 2012

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STATEMENT OF PRINCIPLES ON THE USE OF ENFORCEMENT POWERS

1. INTRODUCTION

As a statutory body, the Bermuda Monetary Authority ('the Authority') is duty bound to pursue its principal objects as set out in section 3 of the Bermuda Monetary Act 1969; in particular to supervise, regulate and inspect any financial institution which operates in or from within Bermuda and, further, to promote the financial stability and soundness of these institutions within the jurisdiction. The ultimate objective of regulation and supervision is to ensure that all licensees operate in a sound and prudent manner in compliance with the regulatory laws, regulations, criteria and standards of Bermuda for the protection of all stakeholders.

The Authority expects licensees to be fully compliant with their regulatory obligations. Compliance issues can expose both the licensee and its stakeholders to damage or the risk of damage to their interests. Compliance issues can also expose Bermuda to risks to its reputation as an effective and well-regulated international financial centre.

Since 2008 the Authority has been reviewing the range of powers available to it and has identified additional powers which it deems desirable to improve the range of options available to the Authority to deal with compliance issues.

Over the course of 2012 the following Acts were amended to add a uniform group of enforcement powers and associated procedures:

- a) Insurance Act 1978
- b) Banks and Deposit Companies Act 1999
- c) Investment Business Act 2003
- d) Trust (Regulation of Trust Business) Act 2001

The enforcement powers contained in the above Acts are largely consistent with each other. It is further proposed that the Investment Funds Act 2006 be similarly amended. It should also be noted that a new regulatory act, the Corporate Service Provider Act, contains a suite of enforcement powers consistent with those contained the above Acts as amended.

The Authority is obliged under the following provisions of each of the regulatory Acts as amended to publish Statements of Principles in accordance with which the Authority would act, or propose to act, in exercising enforcement powers;

- a) Insurance Act 1978, s.2A
- b) Banks and Deposit Companies Act 1999, s.9
- c) Investment Business Act 2003, s.9

- d) Trust (Regulation of Trust Business) Act 2001, s.6
- e) Corporate Service Providers Act

Broadly speaking the enforcement powers are common among all of the above Acts. The Authority considers it appropriate to deal with its obligations by publishing one Statement of Principles which will outline the Authority's approach to the use of all of its enforcement powers, encompassing those that already exist and the additional powers it is anticipated will come into operation over the course of the year.

It should also be noted from the outset that, while this Statement lists various factors that the Authority may have regard to, such lists are not exhaustive and not all of the listed factors may be applicable in a particular case. There may also be other factors, not listed, that are relevant in particular cases. Further, the Authority may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not warrant intervention at enforcement level.

It ought to be noted that the Authority has published a number of Statements of Principles, Guidance and other documents which deal with its supervisory role generally. In relation to enforcement activities, where there are any differences between other Statements of Principle and this one, then the content of this Statement of Principles shall apply. However, this document does not supersede the Statement of Principles issued in respect of the Proceeds of Crime (Anti Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008.

The Authority proposes to consider the use of its enforcement powers in cases of material non-compliance. The Authority anticipates that the majority of compliance issues and concerns will be effectively addressed without the use of the powers set out below and is committed to working in co-operation with its licensees wherever that is possible.

2. INITIAL APPROACH TO COMPLIANCE ISSUES BY THE SUPERVISORY DEPARTMENTS

It should be recognised that the Authority does not intend to apply its enforcement powers to address every issue of non-compliance with any obligation. This would be counter-productive and contradict the relationship the Authority currently enjoys with its regulated entities, which it wishes to continue.

It is anticipated that most breaches will be identified through the normal supervisory process. Where a supervisory department has identified that a breach has occurred they will consider whether, in all of the circumstances, the matter should be referred for consideration of enforcement action.

In other circumstances breaches will be identified which are ongoing, or which are symptomatic of other, wider, issues. Where the supervisory department identifies such an issue it will, usually, bring the failure to the attention of senior management of the entity concerned and, as appropriate, to the board of directors.

In the event that such initial contact does not resolve the issue to the satisfaction of the relevant supervisory team then further contact may be made seeking a response or action. Contact in this second instance should include an indication (if appropriate) by the supervisory department to the effect that, unless the issue is appropriately resolved, the matter shall be referred for consideration of enforcement action.

It is recognised that in some cases the breach will be of such gravity or demonstrate action of a willful nature such that remediation of the breach will not negate the need for enforcement action. In such cases the supervisory team may refer the breach for consideration of enforcement action, notwithstanding that the position has been rectified. The licensee or individual would be informed as soon as is practicable after the decision to refer the breach has been reached by the supervisory team, even though other discussions are continuing.

Any decision to refer a matter for consideration of enforcement action will be taken by the relevant supervisory department. This decision is discretionary but will involve consideration of the gravity and culpability of the matter as well as its nature, scale and complexity. In the event that the matter is referred for consideration, the supervisory department will inform the regulated entity as soon as is practicable.

There may be grave or urgent circumstances or situations which present a high level of risk where it will be inappropriate, not in the public interest or futile to follow the process outlined above. In these circumstances the consideration of enforcement action may occur immediately the issue is identified.

When a decision is made to escalate a matter for possible enforcement action the Enforcement Unit (which is part of the Authority's Legal Services and Enforcement Department and as such is separate from the supervisory departments) will advise the licensee or individual of the referral in any correspondence on the matter.

3. THE DECISION MAKING PROCESS

The Board of the Authority has delegated to the Chief Executive Officer, (the "CEO") the capacity to exercise the various enforcement powers in the regulatory Acts. The CEO shall make the decision as to what action if any is to be taken in respect of such matters referred to him.

As set out above, the supervisory departments are to refer identified regulatory issues to the Enforcement Unit of the Authority. Upon referral of a matter from a supervisory department, the Enforcement Unit will carry out a review of the matter and determine if enforcement action may be appropriate. If enforcement action is to be considered by the CEO, the Enforcement Unit will inform the regulated entity accordingly.

The Enforcement Unit shall prepare the matter for decision by the CEO including the provision of legal advice and recommendations to him as appropriate and for review by the Enforcement Committee if necessary or appropriate.

In order to assist the CEO with this decision making function, the Authority has established an Enforcement Committee consisting of senior executive officers of the Authority. The Enforcement Committee acts as an advisory body to the CEO. The role of the Enforcement Committee is to review the cases being considered for enforcement action and provide the CEO with views on the issues arising and on the appropriate action to be taken.

The CEO is not bound to follow the recommendations of either the Enforcement Unit or the Enforcement Committee and will exercise his own discretion in making any decision.

4. THE PRINCIPLES OF ENFORCEMENT

The Authority's effective and appropriate use of its enforcement powers plays an important role in the pursuit of its regulatory objectives. The following principles will underpin the Authority's approach to the exercise of its enforcement powers;

- a) The Authority will seek to exercise its enforcement powers in a manner that is transparent, proportionate and responsive to the issue
- b) The Authority will seek to provide fair treatment when exercising its enforcement powers
- c) Whilst facts will vary from case-to-case, the Authority will seek to apply enforcement measures consistently.

5. THE DECISION TO TAKE ENFORCEMENT ACTION

Following a referral by the supervisory department, the Authority may consider some or all of the following factors in deciding whether enforcement action is appropriate;

- a) Nature of the breach (for example, the circumstances, seriousness, duration, frequency).
- b) The importance of the regulatory provision or standard of conduct breached
- c) Nature and gravity of the conduct including intention, negligence, recklessness, dishonesty and criminality
- d) The impact of the breach or conduct and risks created by it
- e) The interests of stakeholders
- f) Benefits derived
- g) Reputation of Bermuda as a reputable financial centre
- h) Systemic issues
- i) Cumulative matters, conduct, impacts and risks
- j) Previous or similar actions taken by the Authority
- k) Compliance history
- l) Complexity and concealment of breach
- m) Impact on, or relation to, action by other regulators or law enforcement agencies locally and overseas
- n) Deterrence
- o) Prevention or cure of risk or harm

In the event a decision is made not to take enforcement action, or to take action of a supervisory nature the entity concerned will be advised as soon as practicable and the matter shall revert to the supervisory department.

6. INVESTIGATIONS

In the event that the available information is not sufficient for the Authority's purposes the Authority may conclude that documentary discovery and collection or an investigation should be conducted under the provisions of the relevant regulatory Act. Such conclusion and action may be made as deemed appropriate by the Authority and may take place after a referral for consideration of enforcement action is made.

7. ENFORCEMENT OPTIONS

The enforcement options available to the Authority are;

- a) Imposition of directions, restrictions and conditions
- b) Imposition of a civil penalty
- c) Injunctions
- d) Public censure
- e) Objections to controllers
- f) Prohibition orders against individual directors and officers
- g) Revocation of licence
- h) Winding up
- i) Referral to the Police

The relevant statutory provisions are identified in the attached table.

It should be noted that some of the above options are exercisable by the Authority/supervisory departments without a referral for enforcement, namely the imposition of directions and restrictions on a licence (this is in addition to the power to impose conditions on a licence), the imposition of penalties for late lodgement and the objection to a controller. In respect of the former, it is anticipated that directions, conditions and restrictions will continue to be imposed by supervisory departments where they deem appropriate. In respect of objections to controllers, it is anticipated that this may be invoked by the supervisory departments at the time of an application for authorisation but where it involves objecting to a controller who is already in place, the objection shall be carried out through the enforcement process.

8. SELECTION OF ENFORCEMENT OPTIONS

In the event that a decision is made to proceed with enforcement action the Authority will decide which of the enforcement options to seek to impose. In this regard the Authority shall have in

mind its regulatory objectives and the principles set out in this Statement. More specifically the Authority shall consider those matters listed in Part 5 above in addition to the following:

- a) The benefits and consequences of different enforcement options
- b) Desired outcome
- c) Whether the Licensee brought the breach to the attention of the Authority

It is not possible to define with any precision the circumstances that will dictate which enforcement option will be selected. In addition to those matters listed in paragraph 5 as well as those matters listed immediately above, the Authority may also consider some or all of the matters set out below when choosing an enforcement option:

A. Licence Conditions, Directions and Restrictions

This enforcement power has the capacity to be tailored to address specific circumstances. Among the more specific factors to be considered in choosing this option, subject to specific statutory criteria, are:

- a) The effect upon the general operations of the licensee
- b) The effectiveness of the condition, direction or restriction to address the issue
- c) The likelihood of compliance and the capacity to monitor that compliance
- d) Whether possible external reporting obligations will adversely affect the operations of the licensee

B. Imposition of a Civil Penalty

There are two types of statutory provisions which deal with the imposition of civil penalties.

The first is a power to impose a civil penalty of up to \$5,000 for each week a licensee is late in the lodgment of statutory filings with the Authority. This power is in substitution for the pre-existing power to impose agreed amounts for late lodgement. It is anticipated this power will be used to address late filings generally and will be used to encourage timely provision of information to the Authority. Consideration will be given to the resources of the licensee when setting the amount of any penalty as well as any exculpatory circumstances.

In the usual course of events the decision to impose this type of civil penalty will be made by the supervisory departments and not by reference to the decision making process discussed in Part 3 above.

The second power is the power to impose a civil penalty with a maximum amount of \$500,000 for each breach of an obligation imposed on the licensee under the relevant Act. The following matters relate to the exercise of this power:

- a) Factors relevant to a decision to impose a penalty

The factors that the Authority will take into account in determining whether or not to impose a civil penalty include the following:

- i. Resources of the Licensee
- ii. The need to deter the Licensee, and others from similar conduct or practices
- iii. Action taken by the Authority in previous similar cases

b) Factors relevant to a decision on the amount of the civil penalty

Any penalty imposed by the Authority must be appropriate, which is defined as ‘effective, proportionate and dissuasive’. The Authority will consider all the relevant circumstances of a case when it determines the level of a financial penalty.

The Authority will not apply a tariff of penalties for different kinds of breach but will consider the relevant facts, circumstances and impact of the breach. This is because of the wide range of circumstances and breaches in respect of which the Authority may impose a financial penalty. However, the Authority will seek to act consistently.

Amongst the specific factors relevant to determining the appropriate level of financial penalty are;

- i. Deterrence
- ii. Resources of the entity. The purpose of a penalty is not to render an licensee insolvent or to threaten the licensee's solvency
- iii. Impact. A systemic failure in a large licensee with a high volume of business, over a protracted period may be more serious than breaches over similar periods in an licensee with a smaller volume of business
- iv. Compliance history of the entity
- v. Difficulty of detecting the breach and evidence of intent to evade detection. A licensee's incentive to commit a breach may be greater where the breach is, by its nature, harder to detect; the Authority may therefore, impose a higher penalty where it considers that a licensee committed a breach in such a way as to avoid or reduce the risk that the breach would be discovered, or that the difficulty of detection (whether actual or perceived) may have effected the behaviour in question
- vi. Conduct following the breach including efforts to rectify the breach
- vii. Whether the licensee brought the breach to the attention of the Authority
- viii. Similar action taken by the Authority in respect of other licensees

C. Injunctions

This power enables the Authority to apply to the Supreme Court for injunctive relief. Injunctions may be sought on an urgent and ex-parte basis.

The Court may make three types of order under the provisions in the various Acts: to restrain conduct or action, to compel conduct or action and to secure assets and evidence.

In deciding whether an application for an injunction is appropriate in a given case, the Authority will consider the immediate concern, threat or risk. The Authority may consider the following:

- a) Dissipation of assets
- b) Loss or preservation of evidence
- c) Likelihood or risk of repeated conduct
- d) Applicable legal standards and tests
- e) The urgency of the matter

D. Public Censure

This power enables the Authority to publish a statement which amounts to a public censure against a licensed entity and would be used in lieu of other enforcement options. It would only be in an exceptional case that the Authority would be prepared to issue a public censure rather than take alternate enforcement action if such an action would otherwise be available. However, public censure may be an acceptable alternative to other enforcement actions where other actions may create a serious risk of insolvency or create hardship disproportionate to the nature of the breach, due to the idiosyncratic circumstances of the licensee.

Some particular considerations that may be relevant when the Authority determines whether to publicly censure are:

- Whether or not deterrence may be effectively achieved by issuing such a statement. The more serious the breach the more likely that other enforcement options would be chosen
- If the licensee has brought the contravention to the attention of the Authority this may be a factor in favor of public censure,
- Whether the Licensee has co-operated with the Authority
- Compliance history
- The impact upon the licensee concerned. It would only be in an exceptional case that the Authority would be prepared to agree to issue a public censure rather than take an alternative enforcement action if such an action would otherwise be the appropriate sanction. For example, where there is verifiable evidence that the licensee would be unable to meet other regulatory requirements, particularly financial resource requirements, if the Authority imposed a financial penalty at an appropriate level.

E. Objections to Controllers

All of the regulatory Acts currently have a provision enabling the Authority to object to individuals being or becoming ‘directors’ or ‘controllers’ of regulated licensees. Whilst this power will remain available to the Authority, practically speaking, objections to directors and controllers are likely to be dealt with by the Authority via its new power of prohibition against individuals as described in part F below.

The circumstances in which objections to controllers is more appropriate is where the issue involves the conduct of persons who have or propose to have control of an entity by virtue of a significant shareholding. The Acts provide that the Authority can object to the individual

obtaining or retaining the shareholding that provides control. Broadly, this power would be used where the individual is not otherwise subject to regulatory oversight and other statutory enforcement options. The key trigger for use of this power is the failure to meet the 'fitness and propriety' criteria in the relevant Minimum Criteria.

F. Prohibition Orders Against Individuals

A prohibition order will ban an individual from roles in relation to licensees in a specific regulatory sector. The standard of conduct expected of individuals who are directors or individuals who perform functions relating to a regulated activity, is set out in the Minimum Criteria of the regulatory Acts and may be supported by sector Guidance Notes, Statements of Principle and/or Codes of Conduct.

The Authority will have the power to vary the scope of prohibition orders depending on the circumstances of each case. For example, the Authority may seek to prohibit individuals from performing any class of function in relation to the regulated activity of any licensee in the specific financial sector, or it may limit the prohibition order to specific functions in relation to that sector.

The scope of a prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to compliance by regulated licensees and/or the reputation of Bermuda as a financial centre.

The Authority may take into account some or all of the following matters when considering whether to make a prohibition order:

- a) The conduct as compared to the standards set out in the minimum criteria
- b) Whether the conduct was deliberate or reckless
- c) The impact of the conduct, including risks to the entity and stakeholders
- d) The length of time since the conduct
- e) Whether the individual was knowingly concerned in a contravention by the Licensee of a requirement imposed on the Licensee by or under the relevant Act
- f) The particular position, activity or role occupied by the individual
- g) The nature and activities of the Licensee concerned
- h) Whether the individual provided false or misleading information to the Authority or made inadequate disclosure
- i) Whether the conduct was dishonest, fraudulent or criminal
- j) Whether the conduct showed the individual lacked competence to perform the tasks required in the role

G. Revocation of License

This is one of the most serious enforcement options available to the Authority. Amongst the more specific factors to be considered in exercising this option are:

- a) The probability of future compliance with the minimum licensing criteria, including any conditions on the licence
- b) The effect on any contractual entitlements of third parties
- c) Conduct in breach of the Act, including the minimum criteria, of so serious a nature that continued licensing of the Licensee is not consistent with the Authority's responsibilities

H. Winding Up

The winding up of a licensee is deemed to be the most serious option available as it terminates all relationships and crystallises all entitlements and liabilities. It is only likely to be used when there are no viable or appropriate alternatives. Amongst the more specific factors to be considered in deciding whether to exercise this option are:

- a) Whether the licensee is insolvent
- b) Whether there is an effective operating Board of Directors that has undertaken or can be expected to undertake corrective action in a timely manner
- c) Whether there are breaches of the Act including the Minimum Criteria that are so serious that the continued existence of the entity is not in the interests of stakeholders
- d) Whether there is a risk that the ongoing operations of the entity may adversely affect the interests of stakeholders, for example where there is a risk that funds belonging to depositors or investors may be misappropriated
- e) The risk to the reputation of Bermuda as a reputable financial centre

I. Referral to Police

The various Acts contain individual provisions making certain conduct or failures the subject of criminal sanctions. Choice of this option involves the recognition that the prosecution will be a public process which may impact the reputation of the Licensee. Among the factors to be considered in choosing this option are:

- a) Availability of evidence
- b) Resources and powers of Authority and other agencies and bodies including the Police and the Courts
- c) Whether it will be effective in achieving the regulatory outcome
- d) The gravity of the conduct, particularly whether it represents a serious level of dishonesty

The regulatory Acts were amended to reduce the number of breaches which attract criminal penalties and, in lieu thereof, grant the Authority power to impose a civil penalty. It is important to note that conducting regulated activities whilst unlicensed and misleading the regulator both remain criminal offences. It should also be noted that a referral to the Police can occur in addition to other regulatory enforcement action.

9. THE WARNING AND DECISION NOTICE PROCESS

The amendments to the various regulatory Acts provide for a Warning and Decision Notice process to take place where the Authority seeks to utilise the powers to revoke licenses, impose conditions, directions and restrictions (as specified in the attached table), impose civil penalties, publicly censure, object to controllers and make prohibition orders.

Warning Notice

The purpose of issuing a Warning Notice is to give reasonable opportunity for licensees and individuals to make representations to the Authority before a final decision is made in respect of the enforcement action.

Once the Authority has determined that one of the above actions may be appropriate, it will issue a Warning Notice to the relevant licensee or individual, to alert the recipient to the fact that the Authority intends to exercise the enforcement power and to indicate that the recipient may make written representations to the Authority within a specified period, usually 14 days. The Warning Notice will:

- a) Be in writing
- b) State the proposed action
- c) Document the reasons for the action
- d) Advise of intentions in relation to publicity, if a decision is made to proceed with the action
- e) Confirm the opportunity to respond to the proposal within the specified time, including contact details for the receipt of responses

Service of the Warning Notice shall be at the registered office of the licensee unless other arrangements have been made by agreement between the parties.

If the Authority receives no response or representations within the specified period the Authority may regard the allegations and conclusions set out in the Warning Notice as undisputed.

There is statutory provision enabling the Authority to agree to extend the period of time for responding to a Warning Notice. Such applications to the Authority should be in writing, provide adequate detail and attach any supporting evidence.

The Authority will consider whether it is appropriate in all of the circumstances to defer the enforcement process to allow further time. Given the fact that the matter has warranted enforcement proceedings, extensions of time will not be granted lightly. It would only be in the most extraordinary circumstances that the Authority would consider an extension beyond a further period of 14 days. Extensions of time due to the ordinary pressures of life such as workload and overseas travel are unlikely to be granted.

Upon receiving written representations following the issue of a Warning Notice, and subject to Part 13 below, the Authority will generally have two options available to it. If the Authority is of

the view that the concerns set out in the Notice have not been satisfied by the representations, it may proceed to the issue of a Decision Notice. If the concerns have been satisfied by the representations it may decide to take no further action in relation to those concerns. In such cases the Authority will advise the relevant licensee or individual accordingly.

Decision Notice

In the event that the Authority concludes that a proposed action should be taken it will issue a Decision Notice. The Decision Notice will:

- a) Be in writing
- b) State the decision
- c) Document the reasons for the decision
- d) State the date the decision is to be effective
- e) State the decision in relation to publicity
- f) Advise of any right to appeal

It should be noted that this process will not be followed in relation to applications for injunctions, the winding up process, or referrals to the Police.

10. DIRECTIONS IN CASES OF URGENCY

The regulatory Acts provide that, in relation to the issue of Directions, where there is a matter that needs to be addressed as a matter of urgency, the procedure set out above need not be followed. In such cases the Authority can impose the Direction without a Warning Notice, such Direction to be effective immediately. In such cases the Authority must, in the Notice imposing the Direction, state the reasons for the decision and afford the licensee the opportunity to make representations as to the decision. During this process, however, the Direction will remain in force. Any representations made must be considered by the Authority and a final decision made and advised in accordance with the decision making process set out above.

11. PUBLICITY

The various regulatory Acts contains provisions authorising the Authority to publish any matter in which a Decision Notice has been issued. The Act provides that the Authority may publish 'such information about the matter as it considers appropriate'. In the event that the Authority decides to publish such a decision it is obliged to notify the licensee in question of this decision before publication.

It is currently anticipated that publication would involve making public a summary of the matter, including the nature of decision and the quantum of any penalty where applicable, on the Authority's website accompanied by a press release. The form and content of any publication will however, ultimately depend on the nature and circumstances of the matter and the nature of the action taken.

In reaching a decision on whether to publish a decision to exercise an enforcement power, the Authority will consider whether it is in the public interest not to publish its decision. The Authority will consider its regulatory objectives and have regard to the principles set out in this Statement. The Authority will also consider those facts, matters and circumstances that have led to enforcement action. More specifically the Authority may consider the following:

- a) Deterrence
- b) The protection of stakeholders
- c) The extent to which publication of the decision will assist and inform licensee's stakeholders and the public generally about the relative gravity of the conduct and the action taken
- d) The adverse effects of publication where the size and significance of the action is relatively minor

12. PROPOSALS FOR ALTERNATE RESOLUTION

In the event that the licensee/individual seeks to resolve the matter by an alternative to the enforcement action proposed, then the licensee/individual should provide details of the proposal at the time of making other representations. Such proposals need not be limited to the enforcement options contained herein but could include such matters as reorganisation, additional staffing and training, voluntary retirement and an undertaking not to reenter the regulated community by way of example.

Depending on the entire nature of the matter, the Authority will consider the proposal and act in accordance with the Authority's objectives and the principles and the matters set out herein.

It must be appreciated that any such proposals must be made prior to a decision being made by the Authority as it has no power to revisit its decisions, once made.

13. APPEALS

The following enforcement actions carry a right to appeal to Tribunal:

- a) Revocation of licence/cancelling registration
- b) Action against controllers and directors
- c) Prohibition orders against individual directors and officers
- d) Imposition of a civil penalty
- e) Imposition of conditions, limitations or restrictions on licence
- f) Public censure

Any appeal shall be conducted in the manner set out in the relevant sector specific tribunal regulations.

The Act provides that the decision of the Authority remains effective unless there is an order by a Tribunal suspending its operations. The Authority will not automatically consent to a stay of a decision pending the outcome of the appeal process.

14. CONCLUSION

These Principles are intended to set out in general terms the factors and considerations the Authority may have regard to in deciding whether to take enforcement action and, if so, which course of action to adopt. This document is not intended to be exhaustive or proscriptive and the Authority's approach to its responsibilities in this area must remain flexible to take into account the variety of circumstances under which enforcement action will be considered. As indicated in the Introduction, this document does not represent a departure from the Authority's usual co-operative approach to its regulatory responsibilities but addresses only those infrequent circumstances where that approach is inappropriate or unsuccessful.