Regulatory Penalties

Purpose

This helpsheet provides information to members and firms who are subject to Regulatory Penalties proposed by ICAS' Authorisation Committee.

What is the Authorisation Committee?

The Authorisation Committee is appointed by the Regulation Board to be responsible for granting, supervising, suspending, and removing the regulatory licences issued by ICAS. This includes audit registration, insolvency licences, practising certificates, AML supervision, and DPB licences.

The Committee monitors the quality and controls within firms through robust monitoring arrangements, pursuing regulatory action wherever appropriate, including Regulatory Penalties. It meets six times a year and comprises a mixture of CAs and lay members.

What is a Regulatory Penalty?

A Regulatory Penalty is a financial penalty which may be proposed to a licensed member or firm in response to a regulatory concern which has been identified.

The power to apply regulatory penalties is based in the ICAS Rules, and set out in detail in the Regulations which apply to ICAS' various licensing schemes (e.g. Audit Regulations, Public Practice Regulations). The Regulations can be accessed here.

Regulatory Penalties are different from the fines applied by the Investigation Committee and Tribunals in response to disciplinary findings under ICAS Rule 13.1.

When might a Regulatory Penalty be proposed?

Regulatory Penalties may be proposed if the Committee is satisfied that there has been a breach of the Regulations which apply to ICAS' various licensing schemes.

In each respect, the breach (etc) must be clearly established. There must also be comfort that the concern has been satisfactorily addressed by the member or firm (in line with any instructions provided by ICAS), or that a reasonable plan to do so is in place. Examples include where a firm has been consistently late in replying to letters from ICAS, has failed to respond to an information request, provided incorrect information, or has not complied with an undertaking given to ICAS.

Regulatory Penalties will not be appropriate if the concerns identified are sufficiently serious as to raise questions over the whether the member or firm should continue to be licensed. In such instances, the Authorisation Committee will consider using its additional regulatory powers, including licence restriction, suspension, withdrawal etc.

What is the process for proposing a Regulatory Penalty?

Reports are made to the Authorisation Committee which may identify breaches and other instances of non-compliance. The Committee will consider whether a Regulatory Penalty is an appropriate response, having regard to the seriousness of the non-compliance, as well as the other regulatory actions which are available.

If the Committee decides that a Regulatory Penalty is appropriate, it will be proposed to the member or firm in a letter which provides full information on the reasons and the process. The member or firm will be asked to confirm within 10 working days whether the Regulatory Penalty is accepted. If no response is received, ICAS will assume that the Regulatory Penalty is not accepted.

What if the member or firm does not accept a Regulatory Penalty?

It is important to understand that the Authorisation Committee does not have the power to impose a Regulatory Penalty on a member or firm.

In the first instance, a member or firm that disagrees with the Regulatory Penalty may choose to provide representations (in writing or by email) explaining why they do not think that the Regulatory Penalty is required or appropriate. Relevant supporting evidence should be provided at this time.

All information which is provided will be shared with the Authorisation Committee, which will reconsider the Regulatory Penalty in light of the further information provided, before deciding how to proceed.

There are then three potential outcomes: (i) the Committee decides that the Regulatory Penalty initially proposed remains appropriate, (ii) the Committee decides to vary the terms of the Regulatory Penalty (e.g. lowering the amount, or providing further time to pay), or (iii) the Committee decides that the Regulatory Penalty is no longer required. The decision will be communicated to the member or firm with supporting reasons.

If the Committee is still proposing a Regulatory Penalty, and the member or firm still does not wish to accept it, the Committee will then consider alternative regulatory actions, including a referral of the concern to ICAS' Investigation Committee, to consider whether there is a liability to disciplinary action.

What are the timescales for payment of a Regulatory Penalty?

The letter which proposes the Regulatory Penalty will confirm the timescales for payment, in accordance with the applicable Regulations.

Non-payment of an agreed Regulatory Penalty within the stated timescale will be considered in relation to ICAS Rule 6.4 and would provide grounds for withdrawal of a licence and/or exclusion from membership.

Will a Regulatory Penalty be publicised?

The default position is that all Regulatory Penalties will be published in the CA Magazine and on the ICAS website (where they remain for a period of five years). A member or firm may make submissions as to why publicity is not appropriate, or may request that the publicity notice be anonymised. While such representations will be considered by the Authorisation Committee, it is unlikely that the named publicity will be avoided unless the Committee is persuaded that this would:

- Be disproportionate.
- Jeopardise the stability of financial markets.
- Jeopardise an ongoing criminal investigation.
- Cause disproportionate damage to any institution or individual involved.

Further information

Further information in respect of Regulatory Penalties can be requested from the individual at ICAS who communicated the decision. Information may also be requested by email: regulatoryauthorisations@icas.com

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