

## DISCIPLINARY PROCEDURE

This document expands and supplements clause 6 ("Disciplinary Procedure") of the Banking Code Rules (the "Rules"). In this Disciplinary Procedure defined terms shall have the meanings and definitions as set out in the Rules.

### 1. INITIAL INVESTIGATION

- 1.1 The Executive or its duly appointed agents may carry out an initial investigation into any Breach which is alleged or suspected of having been committed or which is alleged or suspected of being committed by a Subscriber.
- 1.2 The BCSB may, at its reasonable discretion, request the appointment by the Subscriber, or itself appoint, accountants or other relevant professionals to assist in an investigation, for example in analysing the extent of any customer detriment resulting from a systemic Breach. Any fee in respect of such appointment shall be paid for by the Subscriber.

### 2. SOURCES OF INFORMATION

- 2.1 Information may reach the Executive (or its duly appointed agents) from formal compliance monitoring activities e.g. Annual Statement of Compliance, compliance visits, mystery shopping, or from informal intelligence gathering e.g. press reports, customer complaints, employee 'whistle blowing'.
- 2.2 The Executive (or its duly appointed agents) may choose in exceptional circumstances to keep confidential, if so requested, the identity of any person who refers a matter for investigation to the Executive (or its duly appointed agents).
- 2.3 The Executive (or its duly appointed agents) shall not be obliged to investigate any allegation of a Breach which it considers to be fictitious, vexatious or frivolous.

### 3. ACTION BY THE EXECUTIVE

- 3.1 The Executive (or its duly appointed agents) may make enquiries, seeking clarification if necessary from the Code Compliance Officer of the Subscriber concerned or in the absence of a Code Compliance Officer the Chief Executive for the time being of that Subscriber and from any other persons it considers necessary.
- 3.2 The Executive (or its duly appointed agents) shall present the evidence and a prima facie recommendation as to the gravity of the alleged Breach in the form of a *statement of facts and recommendation* to the next meeting of the Board.
- 3.3 A draft of the *statement of facts and recommendation* shall be disclosed to and if possible agreed with the Subscriber concerned, prior to the first meeting of the Board at which it is to be considered. The Subscriber shall be expected to respond to the draft *statement of facts and recommendation* within 20 Business

Days, or such lesser period as may be specified in exceptional circumstances. This consultation is intended to ensure that all parties are agreed on the relevant facts or, if not, to clarify where the disagreement lies. The Subscriber shall be able to state any mitigating circumstances which in its view are relevant to the case.

- 3.4 When drafting the *statement of facts and recommendation* the Executive (or its duly appointed agents) shall have regard to the Compliance Policy and to this Disciplinary Procedure.

#### 4. ACTION BY THE BOARD

- 4.1 If a member of the Executive (or its duly appointed agents) is also a member of the Board then he shall not sit as a member of the Board or take part in any discussions (other than in his capacity as a member of the Executive) or decisions of the Board in connection with the investigation.
- 4.2 The Executive (or its duly appointed agents) shall present the *statement of facts and recommendation* to the Board.
- 4.3 The Executive (or its duly appointed agents) shall answer any questions by the Board relating to the *statement of facts and recommendation*.
- 4.4 The Executive (or its duly appointed agents) shall then withdraw from the Board meeting whilst further Board discussions take place and resulting decisions are made.
- 4.5 The Board shall make a decision as regards the gravity of the Breach under consideration and the proposed sanction in accordance with the Compliance Policy.
- 4.6 The evidential test shall be that of civil law (the balance of probabilities) rather than that of criminal law (beyond reasonable doubt). However, the more serious the allegation the stronger the evidence needed to prove it.
- 4.7 If the Board decides that *no* Breach has occurred, the Executive (or its duly appointed agents) shall be asked to inform the Subscriber within five Business Days and thereafter no further action shall be taken.
- 4.8 If the Board decides that a Breach has occurred (as defined in the Compliance Policy), the Executive (or its duly appointed agents) shall be asked by the Board to inform the Subscriber of this decision and to provide sufficient details to enable the Subscriber to make written representations to the Board. Such representations must be made within 20 Business Days of the date of the letter advising the Subscriber of the Board's decision.
- 4.9 Upon receipt of these written representations, the Board shall, at its next meeting, decide whether it is still of the opinion that a Breach has occurred and, if so, what sanction it wishes to impose (in accordance with the Compliance Policy). The Subscriber shall be notified of the Board's final decision by the Executive (or its duly appointed agents) within five Business Days of the Board meeting at which that decision is made. If public censure or notification to any of the Associations is a proposed sanction in accordance

with clause 3.2 (f) of the Compliance Policy, the wording of any press release or other written communication shall be included in the notification to the Subscriber of the Board's decision.

4.10 A decision that there has been a *material* Breach will imply that one or more sanctions are likely to be imposed.

4.11 The Board shall not be bound by considerations concerning the admissibility of evidence that would apply in a court of law, but will be bound by the rules of natural justice and the principles embodied in Article 6 of the European Convention on Human Rights and Fundamental Freedoms.

## 5. RIGHT OF REFERRAL TO THE REVIEW COMMITTEE

The Subscriber may within 20 Business Days of receiving notice of the Board's final decision request that the matter be referred to the Review Committee for further consideration.

## 6. COSTS

Each party shall bear their own costs incurred during the Disciplinary Procedure except that the Subscriber shall bear the cost of any appointments made under clause 1.2 of this Disciplinary Procedure.

## 7. PRECEDENCE AND VARIATION

7.1 In the event of this document being at variance with the Rules, the Rules shall take precedence.

7.2 The Board shall have the power to make rules for any procedures which are not provided for by this Disciplinary Procedure, following consultation with the Subscribers through the Associations.