PAYMENTS CANADA

Guideline: By-Law No. 6

Guideline for the assessment of penalties

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Introduction

The *Canadian Payments Association By-law No. 6 — Compliance* (the "**Compliance By-law**") sets out processes for investigating and addressing alleged contraventions of Payments Canada's by-laws and rules. The purpose of this guideline is to set out the framework used by the President or a compliance panel to determine a penalty of up to $1,000,000 if an investigation concludes that a contravention has occurred.

Application

This guideline applies where, pursuant to paragraph 16(1) of the Compliance By-law, the President or a compliance panel decides, after an investigation, that a member is in contravention and orders the member to pay a penalty.[1]

While this guideline is an objective and practical resource, it is not applied rigidly. Determinations as to the quantum of the penalty by the President or the compliance panel are made on a case-by-case basis, in consideration of the factors outlined in the framework below and any other relevant information. This guideline is intended to provide a flexible framework to assist the President and compliance panel in determining the penalty and in making consistent decisions across different contraventions with similar facts.

Payments Canada is committed to promoting member compliance with its by-laws and rules, which includes promoting member education on Payments Canada's requirements and supporting participants' remediation of compliance issues. Compliance is critical to promoting the safety, soundness and efficiency of Payments Canada's clearing and settlement systems. The purpose of the compliance regime, including the issuing of a penalty, is to promote compliance, not to punish non-compliance.

Background

Payments Canada members and participants must comply with the requirements set out in the CP Act, by-laws and rules. The Compliance By-law outlines how alleged contraventions of Payments Canada's by-laws and rules are investigated and the sanctions that may follow if a contravention has been committed.[2]

[1] Paragraph 16(1)(f) of the Compliance By-law grants the President or the Compliance Panel the authority to order the member to pay a penalty not to exceed $1,000,000 for each contravention.
[2] Alleged contraventions may be in the form of complaints by other members or matters that are discovered by the President.

A member commits a contravention when the member fails to comply with a provision of the by-laws or rules that imposes a duty on the member. A non-member commits a contravention when the non-member fails to comply with a provision in the by-laws or rules in respect of which a clearing member is responsible for ensuring compliance by the non-member.

Penalties are one type of sanction that could be imposed under the Compliance By-law if an investigation concludes that a contravention occurred[3]. This guideline is not intended to cover the application of the other sanctions allowed under the Compliance By-law.

Framework for determining penalties

In determining the amount of the penalty, the President and compliance panel will consider a variety of factors depending on the nature and circumstances of a particular contravention. The list below are examples of factors the President or the compliance panel may consider. This is not an exhaustive list, and the specific factors considered will be based on the unique circumstances of the contravention in question. In all cases, the maximum penalty per contravention cannot exceed $1,000,000, as set out in the Compliance By-law.

Criteria	Level 1	Level 2	Level 3
Impact Refers to the real or potential impact(s) of the contravention.	Some impact $0 to $125,000	Moderate impact $125,001 to $250,000	Significant impact $250,001 to $500,000
Intent/Negligence Intent or negligence refers to the extent (if any) to which the contravention was intentional and/or reflects a lack of diligence.	Some intent/negligence $0 to $75,000	Moderate intent/negligence $75,001 to $150,000	Significant Intent/negligence $150,001 to $300,000
Compliance History Refers to the history of contraventions within the five years prior to the contravention	Some history $0 to $50,000	Moderate history $50,001 to $100,000	Significant history $100,001 to $200,000

[3] Subsection 16(1) of the Compliance By-law outlines the sanctions available if an investigation concludes that a contravention occurred.

Impact

Impact refers to the real or potential impact(s) of the contravention.

Factors considered may include:

- The duration of the contravention
- The system(s) impacted
- The real or potential impact on other members
- The real or potential impact on the safety, soundness and efficiency of Payments Canada's systems
- The extent to which users are impacted by the contravention
- Whether the contravention has or could undermine confidence in national payments systems and other arrangements for the making or exchange of payments
- Volume and/or value of transactions impacted by the contravention
- Length of time to remediate the contravention

Intent or Negligence

Intent or negligence refers to the extent (if any) to which the contravention was intentional and/or reflects a lack of diligence.

Factors considered may include:

- Whether the member knew they had committed a contravention
- Whether the member was subject to previous compliance escalations related to this contravention
- Whether the member knowingly concealed the contravention
- Whether the member acted reasonably and timely to address the contravention
- Implementation of controls to prevent, detect and correct the contravention (for example, policies, procedures, testing, audits, training)

Compliance History

Refers to the history of contraventions within the five years prior to the contravention.

Factors considered may include:

- Number of contraventions over the past five years for the same provision of the by-law or rule
- Number of contraventions over the past five years for related provisions or rules
- Number of contraventions over the past five years for any provision of the by-law or rule

Other Relevant Factors

Other relevant factors that can also inform the President or compliance panel on the determination of the penalty may include: other sanctions that the President or compliance panel will be imposing as part of the contravention, the risk of recurrence, the means through which the contravention was identified, or the level of cooperation with Payments Canada. As noted above, this is not an exhaustive list, and the specific factors to be considered will be based on the unique circumstances of the contravention in question.