

Company Monitoring and Intelligence in the Investigative Process

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Outline

- Review of 2009 statistics.
- Functions of Commission.
- Intelligence gathering.
- Intelligence sources and analysis.
- Investigative process.
- Investigative tools.
- Commission's observations.
- Summary and Review



Annual statistics 2009 – Enforcement cases – Quarter 1

2009	Jan	Feb	Mar
Enforcement Cases Before EC**	14	14	12
Administrative Penalty:			
- Initial Notice	-	4	1
- Final Notice	-	3	-
- Late Payment Penalty	-	-	-
- Waived Penalty	-	-	3
Advisory Warning	-	1	1
Appoint Administrator	1	-	-
Appoint Examiner	-	-	-
Appoint Liquidator	-	-	-
Directive	1	2	-
No Action Warranted	-	-	-
Noted for Information	10	10	9
Public Statement	2	-	2
Referral to Director of Public Prosecutions	-	-	-
Referral to Licensing & Supervisory Committee	-	-	-
Revoke Certificate or Licence	-	-	-
Warning Letter	4	4	5
Withdraw Approval of Director/Senior Officer	1	-	-
Total Enforcement Action	19	24	21

**NB:- Each case before the Enforcement Committee may result in more than one enforcement action.



Quarterly statistics 2009 – Enforcement cases - Quarter 2

2009	Apr	May	Jun
Enforcement Cases Before EC**	16	27	18
Administrative Penalty:			
- Initial Notice	1	1	2
- Final Notice	-	1	1
- Late Payment Penalty	4	-	3
- Waived Penalty	-	-	-
Advisory Warning	-	7	4
Appoint Administrator	3	-	-
Appoint Examiner	-	-	-
Appoint Liquidator	-	3	-
Directive	-	1	-
No Action Warranted	-	4	2
Noted for Information	10	9	5
Public Statement	-	-	1
Referral to Director of Public Prosecutions	-	-	-
Referral to Licensing & Supervisory Committee	1	-	-
Revoke Certificate or Licence	1	-	-
Warning Letter	3	3	3
Withdraw Approval of Director/Senior Officer	-	-	-
Total Enforcement Action	23	29	21

**NB:- Each case before the Enforcement Committee may result in more than one enforcement action.



Quarterly statistics 2009 – Enforcement cases - Quarter 3

2009	Jul	Aug	Sep
Enforcement Cases Before EC**	18	8	13
Administrative Penalty:			
- Initial Notice	2	-	23
- Final Notice	-	-	4
- Late Payment Penalty	-	-	-
- Waived Penalty	-	-	-
Advisory Warning	5	2	4
Appoint Administrator	-	-	-
Appoint Examiner	1	-	-
Appoint Liquidator	-	-	-
Directive	-	-	1
No Action Warranted	-	-	-
Noted for Information	8	5	2
Public Statement	-	-	-
Referral to Director of Public Prosecutions	1	-	-
Referral to Licensing & Supervisory Committee	-	-	1
Revoke Certificate or Licence	-	-	-
Warning Letter	2	1	-
Withdraw Approval of Director/Senior Officer	-	-	-
Total Enforcement Action	19	8	35

**NB:- Each case before the Enforcement Committee may result in more than one enforcement action.



Quarterly statistics 2009 – Enforcement cases - Quarter 4

2009	Oct	Nov	Dec
Enforcement Cases Before EC**	19	25	11
Administrative Penalty:			
- Initial Notice	2	-	5
- Final Notice	-	20	1
- Late Payment Penalty	-	-	-
- Waived Penalty	1	3	-
Advisory Warning	-	-	-
Appoint Administrator	-	-	-
Appoint Examiner	-	-	-
Appoint Liquidator	-	-	-
Directive	-	1	-
No Action Warranted	2	-	-
Noted for Information	13	17	7
Public Statement	1	-	-
Referral to Director of Public Prosecutions	-	-	-
Referral to Licensing & Supervisory Committee	-	-	-
Revoke Certificate or Licence	-	-	-
Warning Letter	2	1	-
Withdraw Approval of Director/Senior Officer	-	-	-
Total Enforcement Action	21	42	13

**NB:- Each case before the Enforcement Committee may result in more than one enforcement action.



Total Enforcement Cases - 2009

2009	Total
Enforcement Cases Before EC**	195
Administrative Penalty:	
- Initial Notice	41
- Final Notice	30
- Late Payment Penalty	7
- Waived Penalty	7
Advisory Warning	24
Appoint Administrator	4
Appoint Examiner	1
Appoint Liquidator	3
Directive	6
No Action Warranted	8
Noted for Information	105
Public Statement	6
Referral to Director of Public Prosecutions	
	1
Referral to Licensing & Supervisory Committee	
	2
Revoke Certificate or Licence	
	1
Warning Letter	28
Withdraw Approval of Director/Senior Officer	
	1
Total Enforcement Action	275

**NB:- Each case before the Enforcement Committee may result in more than one enforcement action.



Quarterly statistics 2009 – Enforcement cases – Quarter 1

2009	Quarter 1		
	Jan	Feb	Mar
Enforcement Cases Before EC**	40		
Administrative Penalty:			
- Initial Notice	5		
- Final Notice	3		
- Late Payment Penalty	-		
- Waived Penalty	3		
Advisory Warning	2		
Appoint Administrator	1		
Appoint Examiner	-		
Appoint Liquidator	-		
Directive	3		
No Action Warranted	-		
Noted for Information	29		
Public Statement	4		
Referral to Director of Public Prosecutions	-		
Referral to Licensing & Supervisory Committee	-		
Revoke Certificate or Licence	-		
Warning Letter	13		
Withdraw Approval of Director/Senior Officer	1		
Total Enforcement Action	64		



Quarterly statistics 2009 – Enforcement cases – Quarter 2

2009	Quarter 2		
	Apr	May	Jun
Enforcement Cases Before EC**	61		
Administrative Penalty:			
- Initial Notice	4		
- Final Notice	2		
- Late Payment Penalty	7		
- Waived Penalty	-		
Advisory Warning	11		
Appoint Administrator	3		
Appoint Examiner	-		
Appoint Liquidator	3		
Directive	1		
No Action Warranted	6		
Noted for Information	24		
Public Statement	1		
Referral to Director of Public Prosecutions	-		
Referral to Licensing & Supervisory Committee	1		
Revoke Certificate or Licence	1		
Warning Letter	9		
Withdraw Approval of Director/Senior Officer	-		
Total Enforcement Action	73		



Quarterly statistics 2009 – Enforcement cases – Quarter 3

2009	Quarter 3		
	Jul	Aug	Sep
Enforcement Cases Before EC**	39		
Administrative Penalty:			
- Initial Notice	25		
- Final Notice	4		
- Late Payment Penalty	-		
- Waived Penalty	-		
Advisory Warning	11		
Appoint Administrator	-		
Appoint Examiner	1		
Appoint Liquidator	-		
Directive	1		
No Action Warranted	-		
Noted for Information	15		
Public Statement	-		
Referral to Director of Public Prosecutions	1		
Referral to Licensing & Supervisory Committee	1		
Revoke Certificate or Licence	-		
Warning Letter	3		
Withdraw Approval of Director/Senior Officer	-		
Total Enforcement Action	62		



Quarterly statistics 2009 – Enforcement cases – Quarter 4

2009	Quarter 4		
	Oct	Nov	Dec
Enforcement Cases Before EC**	55		
Administrative Penalty:			
- Initial Notice	7		
- Final Notice	21		
- Late Payment Penalty	-		
- Waived Penalty	4		
Advisory Warning	-		
Appoint Administrator	-		
Appoint Examiner	-		
Appoint Liquidator	-		
Directive	1		
No Action Warranted	2		
Noted for Information	37		
Public Statement	1		
Referral to Director of Public Prosecutions	-		
Referral to Licensing & Supervisory Committee	-		
Revoke Certificate or Licence	-		
Warning Letter	3		
Withdraw Approval of Director/Senior Officer	-		
Total Enforcement Action	76		



Total Enforcement Cases – 2009

	Total
2009	
Enforcement Cases Before EC**	195
Administrative Penalty:	
- Initial Notice	41
- Final Notice	30
- Late Payment Penalty	7
- Waived Penalty	7
Advisory Warning	24
Appoint Administrator	4
Appoint Examiner	1
Appoint Liquidator	3
Directive	6
No Action Warranted	8
Noted for Information	105
Public Statement	6
Referral to Director of Public Prosecutions	1
Referral to Licensing & Supervisory Committee	2
Revoke Certificate or Licence	1
Warning Letter	28
Withdraw Approval of Director/Senior Officer	1
Total Enforcement Action	275



Annual statistics 2009 – Compliance cases – Quarter 1

2009	Jan	Feb	Mar
On Site Inspection - Compliance Cases Before EC	1	3	1
Administrative Penalty:			
- Initial Notice	-	-	-
- Final Notice	-	-	-
- Late Payment Penalty	-	-	-
- Waived Penalty	-	-	-
Annual/Biannual Review	-	-	-
Corrective Action Plan	-	1	-
Directive	-	-	-
No Action Warranted	-	-	-
Noted for Information	1	2	-
Referral to Licensing & Supervisory Committee	-	-	-
Warning Letter	-	-	1
Total Compliance Actions	1	3	1



Annual statistics 2009 – Compliance cases – Quarter 2

2009	Apr	May	Jun
On Site Inspection - Compliance Cases Before EC	4	-	1
Administrative Penalty:			
- Initial Notice	-	-	-
- Final Notice	-	-	-
- Late Payment Penalty	-	-	-
- Waived Penalty	-	-	-
Annual/Biannual Review	-	-	-
Corrective Action Plan	2	-	-
Directive	-	-	-
No Action Warranted	-	-	-
Noted for Information	2	-	-
Referral to Licensing & Supervisory Committee	-	-	-
Warning Letter	-	-	1
Total Compliance Actions	4	-	1



Annual statistics 2009 – Compliance cases – Quarter 3

2009	Jul	Aug	Sep
On Site Inspection - Compliance Cases Before EC	2	1	-
Administrative Penalty:			
- Initial Notice	-	-	-
- Final Notice	-	-	-
- Late Payment Penalty	-	-	-
- Waived Penalty	-	-	-
Annual/Biannual Review	-	1	-
Corrective Action Plan	-	-	-
Directive	-	-	-
No Action Warranted	-	-	-
Noted for Information	2	-	-
Referral to Licensing & Supervisory Committee	-	-	-
Warning Letter	-	-	-
Total Compliance Actions	2	1	-



Annual statistics 2009 – Compliance cases – Quarter 4

2009	Oct	Nov	Dec
On Site Inspection - Compliance Cases Before EC	4	2	4
Administrative Penalty:			
- Initial Notice	1	-	-
- Final Notice	-	-	1
- Late Payment Penalty	-	-	-
- Waived Penalty	-	-	-
Annual/Biannual Review	-	-	-
Corrective Action Plan	-	1	2
Directive	-	-	1
No Action Warranted	-	-	-
Noted for Information	2	-	-
Referral to Licensing & Supervisory Committee	1	-	-
Warning Letter	-	1	-
Total Compliance Actions	4	2	4



Total Compliance Cases – 2009

2009	Total
On Site Inspection - Compliance Cases Before EC	23
Administrative Penalty:	
- Initial Notice	1
- Final Notice	1
- Late Payment Penalty	-
- Waived Penalty	-
Annual/Biannual Review	1
Corrective Action Plan	6
Directive	1
No Action Warranted	-
Noted for Information	9
Referral to Licensing & Supervisory Committee	1
Warning Letter	3
Total Compliance Actions	23



Quarterly statistics 2009 – Compliance cases – Quarter 1

2009	Quarter 1		
	Jan	Feb	Mar
On Site Inspection – Compliance Cases Before EC	5		
Administrative Penalty			
- Initial Notice	0		
- Final Notice	0		
- Late Payment Penalty	0		
- Waived Penalty	0		
Annual/Biannual Review	0		
Corrective Action Plan	1		
Directive	0		
No Action Warranted	0		
Noted for Information	3		
Referral to Licensing & Supervisory Committee	0		
Warning Letter	1		
Total Compliance Actions	5		



Quarterly statistics 2009 – Compliance cases – Quarter 2

2009	Quarter 2		
	Apr	May	Jun
On Site Inspection – Compliance Cases Before EC	5		
Administrative Penalty			
- Initial Notice	0		
- Final Notice	0		
- Late Payment Penalty	0		
- Waived Penalty	0		
Annual/Biannual Review	0		
Corrective Action Plan	2		
Directive	0		
No Action Warranted	0		
Noted for Information	2		
Referral to Licensing & Supervisory Committee	0		
Warning Letter	1		
Total Compliance Actions	5		



Quarterly statistics 2009 – Compliance cases – Quarter 3

2009	Quarter 3		
	Jul	Aug	Sep
On Site Inspection – Compliance Cases Before EC	3		
Administrative Penalty			
- Initial Notice	0		
- Final Notice	0		
- Late Payment Penalty	0		
- Waived Penalty	0		
Annual/Biannual Review	1		
Corrective Action Plan	0		
Directive	0		
No Action Warranted	0		
Noted for Information	2		
Referral to Licensing & Supervisory Committee	0		
Warning Letter	0		
Total Compliance Actions	3		



Quarterly statistics 2009 – Compliance cases – Quarter 4

2009	Quarter 4		
	Oct	Nov	Dec
On Site Inspection – Compliance Cases Before EC	10		
Administrative Penalty			
- Initial Notice	1		
- Final Notice	1		
- Late Payment Penalty	0		
- Waived Penalty	0		
Annual/Biannual Review	0		
Corrective Action Plan	3		
Directive	1		
No Action Warranted	0		
Noted for Information	2		
Referral to Licensing & Supervisory Committee	1		
Warning Letter	1		
Total Compliance Actions	10		



Total Compliance Cases – 2009

	Total
2009	
On Site Inspection – Compliance Cases Before EC	23
Administrative Penalty	
- Initial Notice	1
- Final Notice	1
- Late Payment Penalty	0
- Waived Penalty	0
Annual/Biannual Review	1
Corrective Action Plan	6
Directive	1
No Action Warranted	0
Noted for Information	9
Referral to Licensing & Supervisory Committee	1
Warning Letter	3
Total Compliance Actions	23



Functions of Commission

- Section 4 FSCA provides number of functions.
- One function is to issue advisories to investors, licensees, and general public as appropriate.
- Annual statistics show sharp rise in issue of advisories.
- Consideration given to false or misleading representations made by entities in local and international media.
- Consideration given to questionable marketing activities of entities.
- Consideration given to claims of legal status by entities.
- Importance of intelligence gathering and analysis.



Functions of Commission cont.

- Other functions of the Commission include:
 - Monitor compliance by licensees,
 - Monitor effectiveness of financial services legislation,
 - Monitor in the public interest all promotional advertisements relating to financial services business,
 - Promote a safe and sound financial services environment.
- Again, intelligence gathering and analysis is key.



Intelligence sources

- Open source (public) – news media, internet.
- Closed source (private) – database, informant, complainant.
- Regulator to regulator – under an MOU.
- Law enforcement / FIA information exchange.
- Regulatory oversight.

Any of the above may trigger an investigation



Intelligence analysis

- **Maintain company monitoring and intelligence data.**
- **Prepare risk based matrix of negative news.**
- **Assists in preparation of on-site compliance inspection schedules.**
- **Develop leads for further investigation.**
- **Intelligence and information sharing – law enforcement, FIA, regulatory counterparts.**
- **Build cases for consideration by Enforcement Committee.**
- **General advisory warnings and industry circulars.**
- **Build cases for prosecution.**



Investigative process

- Interrogate public records, database, registries, etc.
- Interview informants, complainants, witnesses.
- Liaise with law enforcement, FIA, Regulators and regulatory counterparts.
- Use of investigative tools – Section 32 FSCA Notice, Section 33 FSCA search warrant.
- Formal requests for information and material – MLAT and cooperation with foreign regulatory authorities.



Investigative tools – S.32 Notices

- Issued to obtain specified information and/or specified documents.
- May be issued to:
 - Licensee,
 - Former licensee,
 - Person whom Commission believes to be carrying on, or to have at any time carried on, unauthorised financial services business,
 - A person connected with any person above,
 - A person reasonably believed to have the required information or documents.



Investigative tools – S.32 Notices

- Offence to fail to comply with S.32 Notice. (S.54 FSCA)
- Other avenues available such as search warrant, or compel witness to be examined. (S.33 FSCA)
- In 2009, some 52 separate Notices issued.
- In first 6 weeks of 2010, some 26 Notices have been issued.
- Over 400% increase in use of Section 32 Notices expected for this year.



Investigative tools – observations

- Adherence to deadlines for submission.
- Timeliness - unnecessary delays in investigation.
- Records not held at registered office, and not easily accessible.
- Records not kept up to date.
- Failure to know client and nature of client's business.
- Specifics of investigation may not be divulged.
(S.49 & 49A FSCA)



Summary & Review

- Company monitoring and intelligence gathering protects integrity and reputation of the jurisdiction.
- Enforcement actions and statistics are end product of effective intelligence gathering and analysis.
- On-site compliance inspection schedules result from effective intelligence gathering and analysis.
- Adherence to deadlines set out in Section 32 Notices.
- Prevent unnecessary delays.
- Know your clients and client's business.
- Monitor client operations more closely to identify possible nefarious activities.



Questions?

