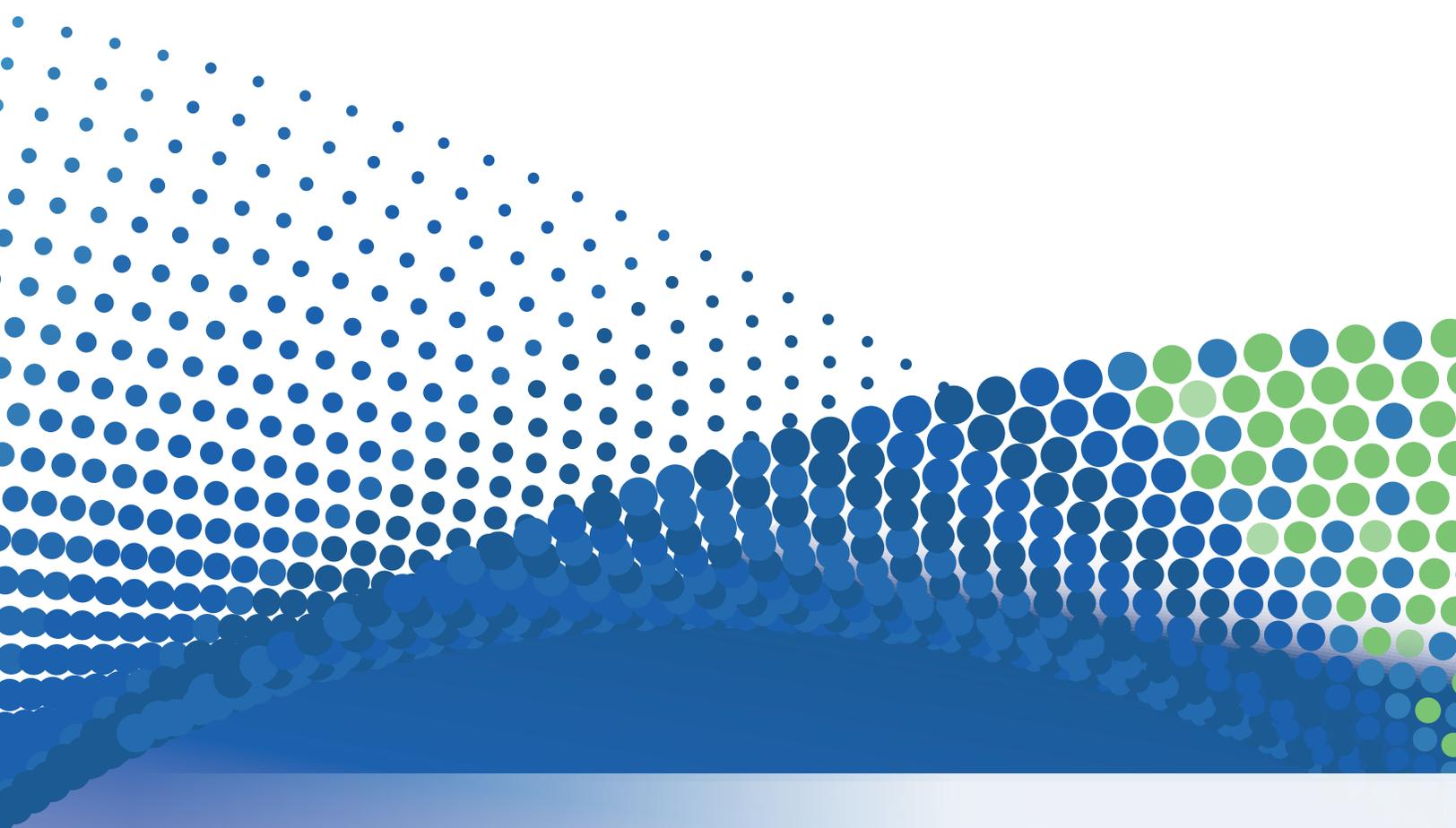




Financial Consumer
Agency of Canada

Agence de la consommation
en matière financière du Canada

SUPERVISION FRAMEWORK



Financial Consumer Agency of Canada

Final Edited Version

April 2017

Notice:

The FCAC Supervision Framework contains general information and is provided for the guidance and convenience of FCAC stakeholders. It describes a general approach to typical supervision matters. FCAC reserves the right to adjust its approach, as necessary.

April 2017

Cat. No.: 978-0-660-08274-5

ISBN: FC5-46/2017E-PDF

© Her Majesty the Queen in Right of Canada, as represented by the Financial Consumer Agency of Canada, 2017

Ce document est aussi disponible en français sous le titre ***Cadre de surveillance***.

TABLE OF CONTENTS

Preface	III
1. Introduction	1
1.1. Financial Consumer Agency of Canada	1
1.2. Regulated entities	2
2. Guiding principles	3
2.1. Transparency	3
2.2. Proactivity	3
2.3. Proportionality	3
2.4. Accountability	3
3. Supervision process	4
3.1. Classification of entities	4
3.2. Pillars of supervision	5
4. Tools for promotion	6
4.1. FCAC Decisions	6
4.2. FCAC Guidelines	6
4.3. FCAC Rulings	6
4.4. Engagement with regulated entities	7
4.5. Engagement with stakeholders	7
5. Tools for monitoring	8
5.1. Market Conduct Profiles (tier 1 regulated entities only)	8
5.2. Examinations	9
5.3. Mandatory reporting	9
5.4. Third-party intelligence	10
5.5. Industry reviews	10
6. Tools for enforcement	11
6.1. Investigations	11
6.2. Notices of Breach	13
6.3. Action Plans	13
6.4. Compliance Agreements	13
6.5. Notices of Violation	14
6.6. Notices of Non-Compliance	16
7. How to contact FCAC	17



Preface

A stable financial sector benefits all Canadians. This stability rests in part on public confidence in the financial institutions that provide Canadians with products and services. To maintain this public trust, robust and effective consumer protection is vital.

The mandate of the Financial Consumer Agency of Canada (FCAC) includes supervising federally regulated financial institutions, payment card network operators and external complaint bodies (regulated entities). FCAC has further advanced its regulatory approach to be proactive, transparent, proportionate and accountable by being open-minded, forward-thinking and clear about its expectations for the entities it regulates.

I am pleased to present this Supervision Framework. This document illustrates FCAC's vision for robust and effective oversight to ensure Canadians continue to benefit from the financial consumer protection framework put in place by the Government of Canada. It summarizes FCAC's legislative mandate as well as its supervisory roles and responsibilities. It describes the entities that FCAC regulates, their obligations and the roles of various other stakeholders. Finally, this document explains the activities and tools that FCAC leverages to fulfill its supervisory mandate.

The Supervision Framework updates and replaces FCAC's Compliance Framework. Although the core activities governing its supervisory approach remain consistent, FCAC has incorporated numerous enhancements and this document provides a clearer overview of that approach.

The Supervision Framework is not a stand-alone initiative. For example, internal FCAC processes and functions will need to be redesigned to support the core components of the modernized framework. The framework, and the underlying initiatives that will be undertaken to support it, will be phased in over time. FCAC will commence the rollout of the new Supervision Framework in 2018.

The Supervision Framework reflects the following key concepts:

- The prevention of breaches of market conduct obligations is the foundation of the framework. Regulated entities are responsible for understanding and working proactively to meet their obligations to financial consumers.
- Regulated entities must proactively identify, address and monitor risks and keep FCAC updated on their particular risks and controls.
- FCAC is increasingly proactive in its efforts to understand emerging risks before they impact consumers, and in communicating guidance and other information.
- FCAC continuously evaluates and improves its supervisory and enforcement processes in order to remain efficient and effective.

While this Supervision Framework provides a deeper understanding of how FCAC fulfills its mandate to protect financial consumers, it is neither a comprehensive guide nor a binding statement on how FCAC will proceed in specific matters. FCAC will apply discretion appropriate to each case.

Lucie M. A. Tedesco
FCAC Commissioner

1. Introduction

This Supervision Framework describes the principles and processes applied by the Financial Consumer Agency of Canada (“**FCAC**”) to supervise federally regulated entities and ensure that financial consumers and merchants continue to benefit from the applicable protections.

1.1. Financial Consumer Agency of Canada

FCAC plays a key role in financial consumer protection by supervising federally regulated entities, educating financial consumers about their rights and responsibilities, and strengthening financial literacy among Canadians. It derives its **mandate** from the *Financial Consumer Agency of Canada Act* (FCAC Act).

FCAC is led by a **Commissioner** who reports annually to Parliament through the Minister of Finance. The FCAC Supervision and Promotion Branch pursues its supervisory objectives through the activities of its three divisions: the Supervision Division, Enforcement Division and the Promotion and Policy Division.

The FCAC Act sets out the following **objects** for supervision:

- to supervise regulated entities and determine whether they are complying with **legislative obligations, voluntary codes of conduct and public commitments** that are overseen by FCAC (collectively, “**market conduct**” or “**market conduct obligations**”)
- to promote the adoption by regulated entities of policies and procedures designed to implement their market conduct obligations
- to monitor and evaluate trends and emerging issues that may have an impact on financial consumers, and to collaborate with other government agencies, regulators and stakeholders to foster an understanding of financial services and related issues

Specifically, FCAC oversees regulated entities’ compliance under the following federal legislation:

- *Bank Act*
- *Insurance Companies Act*
- *Trust and Loan Companies Act*
- *Cooperative Credit Associations Act*
- *Payment Card Networks Act*
- *Green Shield Canada Act*

1.2. Regulated entities

FCAC supervises the market conduct of the following types of federally regulated entities (collectively, “regulated entities”):

- **federally regulated financial institutions (FRFIs)**

FRFIs include banks as well as federally regulated credit unions, insurance companies, trust and loan companies, and retail associations.

- **external complaints bodies (ECBs)**

ECBs are independent organizations approved under the *Bank Act* to handle escalated consumer complaints related to products and services offered by their member banks. Every bank or federal credit union must be a member of an ECB.

- **payment card network operators (PCNOs)**

PCNOs operate or manage payment card networks by establishing standards and procedures for the acceptance, transmission or processing of payment transactions and by facilitating the electronic transfer of information and funds. PCNOs establish rules and controls that govern the participants of the credit and debit card networks.

While supervision fosters compliance, regulated entities remain fully responsible for fulfilling their market conduct obligations.

FCAC expects a regulated entity’s directors and officers to manage, or supervise the management of, the adoption of business practices, governance and independent oversight functions targeted to achieve compliance with the entity’s market conduct obligations.

Regulated entities are also expected to proactively report to FCAC any material developments that could change their market conduct risk.

2. Guiding principles

FCAC's supervisory activities and decisions are driven by its mandate and guided by the following four principles.

2.1. Transparency

Transparency provides predictability for regulated entities and enables effective collaboration among stakeholders. FCAC achieves transparency by communicating its expectations, concerns and priorities clearly, early and often.

2.2. Proactivity

FCAC strives to identify emerging issues and market trends early. It intervenes swiftly to foster sound market conduct.

2.3. Proportionality

FCAC allocates its resources proportionally to the level of market conduct risk presented by each regulated entity, and takes enforcement action that is proportionate to the circumstances of the breach.

2.4. Accountability

FCAC is accountable for the delivery of its mandate and the actions that ensue. It conducts its supervisory activities in a consistent, timely and professional manner and adheres to established service standards.

3. Supervision process

3.1. Classification of entities

In keeping with FCAC’s risk-based approach, regulated entities are classified as either tier 1 or tier 2, depending on the level of market conduct risk¹ that is present or inherent in their business activities. These classifications guide the nature and intensity of the Agency’s supervision of regulated entities.

Tier 1

Tier 1 regulated entities engage in business activities that inherently include market conduct risk. The nature of the products or services offered by tier 1 entities requires compliance with market conduct obligations overseen by FCAC.

Tier 1 includes a wide range of regulated entities with different business models: FRFIs offering retail products and services to consumers; PCNOs whose participants offer payment services to merchants; and ECBs offering dispute resolution services to their member banks.

FCAC supervises tier 1 entities proactively and assigns each entity an FCAC Senior Officer as their liaison with the Agency. The intensity of proactive supervision is influenced by the market conduct obligations applicable to the tier 1 entity, the size of the entity and the complexity of its business model. This information forms part of the entity’s Market Conduct Profile (see [subsection 5.1](#)).

FCAC’s proactive supervision of tier 1 entities varies in intensity proportionate to an entity’s inherent risks and their ability to effectively manage those risks.

Tier 2

Tier 2 includes regulated entities such as banks and trust companies that do not offer retail products and services or insurance companies that restrict their business to the sale of insurance.

Tier 2 regulated entities are supervised by FCAC because they are federally regulated entities. However, due to the nature of the products or services offered by tier 2 entities, the market conduct obligations overseen by FCAC do not typically apply to their business model. These entities engage in business activities that result in minimal risk of breaching a federal market conduct obligation.

As a result, FCAC monitors tier 2 regulated entities significantly less intensively than tier 1 regulated entities. FCAC will reclassify a tier 2 regulated entity if its business model expands into product or services that increase its federal market conduct risk.

¹ This framework defines market conduct risk as the risk of breaching a market conduct obligation that is overseen by FCAC.

3.2. Pillars of supervision

FCAC employs a variety of oversight tools that broadly support three pillars of supervision, namely:

- **promoting** responsible market conduct
- **monitoring** market conduct
- **enforcing** market conduct obligations

These pillars are meant to work together and should not be considered mutually exclusive: action in one pillar may prompt or inform action in another. For example, as FCAC engages in activities to promote or monitor compliance, it may identify a need to investigate a potential breach.

Figure 1 outlines the tools most commonly associated with each pillar. This is displayed for illustration purposes only and is not meant to limit the actions of FCAC. FCAC will select the tool(s) that it deems most appropriate for each individual circumstance. In some situations, the same tool may be used to support more than one pillar of supervision.

Unless otherwise noted, the tools listed below are used to supervise any market conduct obligations, i.e., legislative, voluntary codes of conduct or public commitments. Each tool is described in the following three sections of this document.

FCAC’s guiding principles and pillars of supervision are the core of its Supervision Framework—a comprehensive, flexible approach to achieving FCAC’s objectives.

**FIGURE 1:
Tools of supervision**

Promoting responsible market conduct	Monitoring market conduct	Enforcing market conduct obligations
FCAC Decisions FCAC Guidelines FCAC Rulings Engagement with regulated entities Engagement with stakeholders	Market Conduct Profiles Examinations Mandatory reporting Third-party intelligence Industry reviews	Investigations Notices of Breach Action Plans Compliance Agreements Notices of Violation ² Notices of Non-Compliance ³
<p><i>Enforcement action may be taken as a result of information obtained under any pillar.</i></p>		

² A Notice of Violation can be issued in case of a breach of a legislative or Compliance Agreement obligation.

³ A Notice of Non-Compliance can be issued in case of a breach of a voluntary code of conduct or public commitment obligation.

4. Tools for promotion

Compliance is facilitated when obligations are clearly identified and widely understood by regulated entities and stakeholders. FCAC promotes responsible market conduct by communicating its expectations and interpretations, early and often, using various tools.

4.1. FCAC Decisions

FCAC Decisions provide information about Notices of Violation and Notices of Decision (for breaches of legislation/regulation) or Notices of Non-Compliance (for breaches of voluntary codes or public commitments). Publishing FCAC Decisions promotes awareness about the conduct of regulated entities and allows regulated entities to review their own market conduct and take necessary action to ensure compliance. FCAC Decisions are published according to **FCAC's Publishing Principles**.

4.2. FCAC Guidelines

FCAC Guidelines set out the manner in which regulated entities are expected to comply with their market conduct obligations. Developed following consultation with stakeholders, Guidelines set broad industry standards and establish prudent practices that FCAC expects regulated entities to incorporate into their business operations.

4.3. FCAC Rulings

FCAC Rulings provide FCAC's views on the applicability of a market conduct obligation to a conduct or practice. FCAC Rulings may be issued following a request by a regulated entity or may be proactively issued to assist regulated entities in the interpretation of their market conduct obligations.

When a regulated entity formally requests a Ruling, the Ruling issued by FCAC is binding for that particular situation provided all material facts were presented accurately, remain substantially unchanged and the conduct or practice is carried out as proposed. Although Rulings apply to a particular case and its specific circumstances, publishing information about the Ruling provides direction to entities whose situations are substantially similar.

FCAC may also proactively issue an FCAC Ruling to promote responsible market conduct and provide direction to regulated entities. Rulings issued proactively do not restrict FCAC in its approach to specific cases.

4.4. Engagement with regulated entities

FCAC regularly meets with senior officials of regulated entities to share priorities, build trust and promote responsible market conduct. FCAC also engages the entities through annual Industry Sessions, which present opportunities for open discussions and information-sharing on topics such as emerging trends and issues, plans and priorities, and supervision and compliance challenges.

Tier 1 entities also benefit from proactive supervision whereby FCAC maintains on-going communication with each entity. (See Market Conduct Profile [subsection 5.1](#)).

4.5. Engagement with stakeholders

FCAC builds understanding and trust by engaging stakeholders to assist in the execution of its mandate. Venues for engagement include public consultations, round tables, speaking engagements and stakeholder surveys. FCAC engages with various consumer groups to seek their perspectives on the regulatory environment, market trends and emerging issues that may be impacting Canadians. FCAC may also publish hypothetical case studies, newsletters, press releases and other material to promote responsible market conduct.

5. Tools for monitoring

Monitoring the market conduct of regulated entities involves ongoing assessments of their levels of compliance. FCAC monitoring activities also include gathering and assessing information on current and emerging issues in the financial sector. Monitoring tools employed by FCAC are outlined below.

5.1. Market Conduct Profiles (tier 1 regulated entities only)

FCAC recognizes that business models differ substantially among the various types of tier 1 regulated entities. FCAC uses a defined and continuous process to gather information about each institution's business model and maintains a risk profile for each tier 1 regulated entity.

FCAC uses this information to differentiate tier 1 entities based on each entity's inherent market conduct risks and ability to manage those risks. This process results in a Market Conduct Profile for each tier 1 entity. The regulated entity's Market Conduct Profile determines the intensity of FCAC's supervision and helps FCAC direct its resources. The intensity of supervision varies among tier 1 entities.

This process has three stages:

Planning: FCAC Senior Officers devise annual supervision plans for each tier 1 regulated entity assigned to them. Supervision plans may also set out activities to be considered in the future.

Execution: In preparing Market Conduct Profiles, FCAC focusses on the following factors:

- business model and its inherent market conduct risks
- how the regulated entity manages risk and complies with market conduct obligations (e.g. the effectiveness of oversight functions, including compliance, risk management, internal audit, senior management and board of directors, as applicable)
- planned growth or changes in business model
- history of investigations and breaches
- trends or issues identified through ongoing monitoring
- compliance culture
- willingness and ability to comply with market conduct obligations and to proactively mitigate risks

Reporting: FCAC Senior Officers update the Market Conduct Profiles of tier 1 regulated entities based on information gathered during the execution stage. Profiles are shared individually or in aggregate with FCAC senior management and are used to determine priorities for subsequent years.

FIGURE 2:
The Market Conduct Profile cycle



5.2. Examinations

Examinations are conducted to satisfy FCAC that a specific regulated entity complies with its market conduct obligations. More specifically, information obtained as a result of an examination is used to update a regulated entity's Market Conduct Profile, to determine its level of compliance with market conduct obligations, or to follow up on corrective measures.

FCAC may review documents (e.g., policies and procedures, training or disclosure documents, audit or board reports) and interview employees to assess topics including the effectiveness of controls put in place to mitigate compliance risks (e.g. risk management or compliance management processes).

Examinations may be conducted by way of:

- **on-site examination**, which FCAC conducts at the offices of the regulated entity
- **off-site examination**, also known as a desk review, where the regulated entity provides the necessary documents for a review conducted at FCAC offices

Following an examination, FCAC prepares an Examination Report detailing its findings. This report may include recommendations on how the regulated entity can mitigate compliance risks, address deficiencies or improve control processes. FCAC may engage with the entity to establish a plan to address identified deficiencies. Regulated entities are expected to address deficiencies promptly and to inform FCAC of their progress. Unsatisfactory corrective measures can lead to enforcement action.

FCAC is required to examine each regulated entity annually to determine whether they are complying with applicable market conduct obligations.⁴ FCAC conducts annual examinations using a variety of tools described in this Supervision Framework, and reports to the Minister of Finance upon completion.

5.3. Mandatory reporting

Regulated entities must file specific information with FCAC within timeframes and formats prescribed by **statute**. This information includes complaint handling procedures, public accountability statements and notices of branch closure, all of which are reviewed to ensure compliance. Failure to meet statutory filing requirements may lead to enforcement action.

FCAC requires regulated entities to submit additional **information**, in accordance with FCAC's mandate, including aggregated complaints and compliance issues, updated statistics on specific lines of business, and responses to self-assessment questionnaires.

⁴ Section 659 of the *Bank Act*, section 520.3 of the *Trust and Loan Act*, section 694 of the *Insurance Companies Act*, section 696 of *Insurance Companies Act*, section 452.3 of the *Cooperative Credit Associations Act*, Subsection 5(2) of the *Payments Card Network Act*

5.4. Third-party intelligence

Third parties such as consumers and merchants contribute to the monitoring process by participating in consultations or by filing complaints directly with the [FCAC Consumer Services Centre](#). FCAC may initiate investigations based on information obtained from any source, including complaints, media coverage or information received from other regulators.

5.5. Industry reviews

Industry reviews are designed to gather information from multiple regulated entities or stakeholders on specific market conduct matters and on matters related to the financial services sector generally. These reviews serve to achieve any of the following objectives:

- to assess current or emerging issues on a specific topic or theme
- to identify and examine industry practices or trends
- to verify levels of compliance with market conduct obligations
- to collect information for policy discussions

Regulated entities participating in industry reviews are expected to comply with FCAC requests. Information from these reviews may be used to provide guidance, establish best practices or inform policy makers. Industry reviews may also identify compliance breaches that will lead to enforcement action.

6. Tools for enforcement

Enforcement begins with the process of investigating any potential breach of a market conduct obligation that comes to FCAC's attention. If FCAC determines that a breach has occurred, it responds with the appropriate enforcement tool(s) to ensure compliance and deter future breaches.

6.1. Investigations

Preliminary investigations: FCAC conducts preliminary investigations to determine basic information such as:

- whether a potential breach falls within its supervisory authority
- the existence, nature and duration of a potential breach
- whether the potential breach is isolated or systemic

If a preliminary investigation leads FCAC to believe that a breach has occurred, it will either proceed with a full investigation or issue a Notice of Breach (see [subsection 6.2](#)).

FCAC notifies the regulated entity of the date when FCAC has sufficient information on the subject matter of the potential breach. Violation proceedings may not be commenced on the matter more than two years after that date.⁵

Investigations: FCAC conducts an investigation when it requires additional information about a breach identified in a preliminary investigation. Entities must provide the information by the date and in the form requested.⁶ Failure to do so may result in FCAC compelling the regulated entity to provide the information.⁷

Once FCAC completes the investigation of a breach, its Supervision and Enforcement Division issues one of the following:

- a) **Notice of Breach** (see [subsection 6.2](#)), which may require the regulated entity to enter into a Compliance Agreement (see [subsection 6.4](#)) or Action Plan (see [subsection 6.3](#))
- b) **Compliance Report**, which may lead to a Notice of Violation (see [subsection 6.5](#)) or Notice of Non-Compliance (see [subsection 6.6](#)), as well as a Compliance Agreement (see [subsection 6.4](#)) or Action Plan (see [subsection 6.3](#))

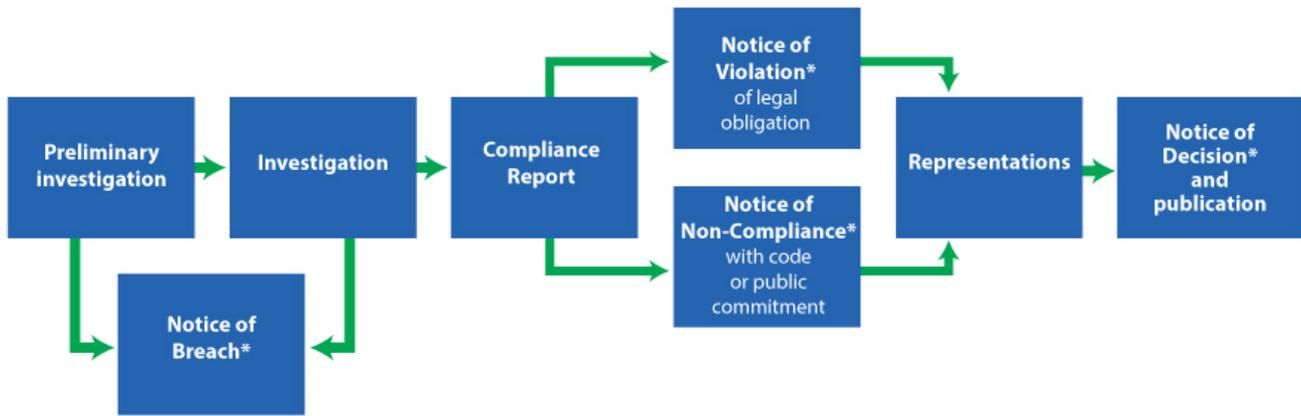
A Compliance Report captures the facts of the breach, an assessment of its severity, and recommendations for enforcement action. The regulated entity is provided 30 calendar days to review the report to validate its facts. FCAC expects the regulated entity to exercise due diligence in this regard. Any comments received from the entity form part of the record for review by the Deputy Commissioner who will decide whether there are reasonable grounds to believe a breach has been committed. This may result in the issuance of a Notice of Violation or a Notice of Non-Compliance.

⁵ Subsection 30(1) of the *Financial Consumer Agency of Canada Act*

⁶ Section 657 of the *Bank Act*, section 694 of the *Insurance Companies Act*, section 520.1 of the *Trust and Loan Act*, subsection 5(5) of the *Payment Card Network Act*, Section 452.1 of the *Cooperative Credit Associations Act*

⁷ Section 660 of the *Bank Act*, section 697 of the *Insurance Companies Act*, section 520.4 of the *Trust and Loan Companies Act*, subsection 5(3) of the *Payment Card Network Act*, section 452.4 of the *Cooperative Credit Associations Act*

FIGURE 3:
Typical flow of enforcement activity



*May include Action Plan or Compliance Agreement

Selection of enforcement tool: Section 6.2–6.6 describes the various tools available to FCAC to respond to a breach of a market conduct obligation. FCAC takes enforcement action that is proportionate to the severity and circumstances of the breach by considering factors such as:

- compliance record of the regulated entity (including all breaches, Action Plans or Compliance Agreements)
- degree of negligence or intent
- strength of internal controls
- risk of recurrence
- length of time taken to identify and correct the breach
- how the breach was identified
- degree of direct or indirect harm to consumers or merchants
- remediation plans and associated timeframes
- level of co-operation with FCAC (including whether the issue was self-reported)
- subject matter of the breach and FCAC or government priorities

6.2. Notices of Breach

Based on the severity of the breach, FCAC may proceed by issuing a Notice of Breach level 1, 2 or 3.

A **level 1 Notice of Breach** may be issued if the breach is isolated or minor. A level 1 notice may also be issued when a systemic breach has been promptly identified, corrected and remediated, harm or impact was minimal and the regulated entity has shown there is a low risk of recurrence.

A **level 2 Notice of Breach** may be issued when the severity of the breach is elevated (see [subsection 6.1](#) for factors).

A **level 3 Notice of Breach** may be issued when the severity of the breach is further elevated or when there is a specific need to escalate concerns within the regulated entity. Examples include instances such as:

- the entity has demonstrated a low level of cooperation with FCAC on voluntary compliance
- there is a heightened sense of urgency to complete corrective actions
- the breach is a symptom of a broader compliance deficiency or concern that needs to be addressed

In addition to issuing a Notice of Breach, FCAC may require the regulated entity to enter into an Action Plan (see [subsection 6.3](#)) or a Compliance Agreement specifying corrective measures (see [subsection 6.4](#)).

Upon receipt of a Notice of Breach, regulated entities are expected to assess their policies and processes to ensure that risks are identified and mitigated and the chance of recurrence is minimized. Failure to undertake satisfactory corrective action or recurrence of the breach may lead to stronger enforcement action.

6.3. Action Plans

An Action Plan details the corrective measures required to address a breach of a market conduct obligation or prevent recurrence, and the timeframes for action. FCAC works with regulated entities to establish parameters and timeframes. Regulated entities may be required to provide FCAC with regular updates throughout the duration of the Action Plan, followed by a full report once all actions have been completed.

6.4. Compliance Agreements

A Compliance Agreement specifies the corrective measures required to address a breach of a market conduct obligation, to prevent recurrence of the breach, or to implement any measure designed to further compliance with market conduct obligations.

FCAC works with regulated entities to establish parameters and timeframes. Regulated entities may be required to provide FCAC with regular updates throughout the duration of the Compliance Agreement and a full report once all actions have been completed to FCAC's satisfaction.

For legislative or regulatory obligations, breaching a Compliance Agreement may result in a Notice of Violation.⁸ For non-legislative obligations, breaching a Compliance Agreement may result in a Notice of Non-Compliance.

⁸ Section 2 of the Financial Consumer Agency of Canada Designated Violations Regulations

6.5. Notices of Violation

Depending on the circumstances and severity of a breach of a legislative obligation, FCAC may proceed by issuing a Notice of Violation when there are reasonable grounds to believe that a regulated entity has breached a legislative obligation, called a consumer provision,⁹ or when a regulated entity failed to comply with a Compliance Agreement.

A Notice of Violation specifies the name of the regulated entity, the nature of the violation(s), and any proposed administrative monetary penalty (AMP).¹⁰

Upon being served with a Notice of Violation, a regulated entity can pay the AMP, make representations to the Commissioner within 30 days, or do nothing.

A regulated entity that pays the AMP or does nothing is deemed to have committed the violation.¹¹ In such cases, the Notice of Violation is subject to [Publishing Principles for FCAC Decisions](#).

Administrative monetary penalties (AMP): The maximum AMP per violation is \$50,000 for a natural person and \$500,000 for all other persons, including regulated entities.¹² AMPs are payable to the Receiver General for Canada.¹³ An unpaid AMP is a debt due to Her Majesty in right of Canada and may be recovered as such in Federal Court.¹⁴

The AMP amount is determined taking into account the following criteria,¹⁵ applied with regard to the overall purpose of the FCAC Act:

- *Degree of intent or negligence:* FCAC considers factors such as the type and severity of the breach; whether it is isolated or recurring; whether there was a wrongful purpose on the part of the entity; the overall profile of the entity, including its size and the complexity of its business; the quality of its internal controls; and its commitment to ensuring compliance generally.

Administrative monetary penalties (AMPs) are imposed to:

- ***promote the protection of financial consumers and merchants***
- ***maintain the integrity of the financial products and services market***
- ***support public confidence in the federally regulated financial sector***
- ***deter non-compliance with market conduct obligations***

⁹ Section 2 of the FCAC Act.

¹⁰ Subsection 22(3) of the FCAC Act.

¹¹ Paragraph 23(3)(b) of the FCAC Act.

¹² Subsection 19(2) of the FCAC Act.

¹³ Subsection 25(3) of the FCAC Act.

¹⁴ Subsection 25(1) of the FCAC Act.

¹⁵ Section 20 of the FCAC Act.

- *Harm done by the violation:* FCAC considers factors such as direct financial loss to consumers; consumers' inability to make informed decisions due to a lack of information or information that is unclear or misleading; how that harm impacted consumers, the public and the federally regulated financial sector; and the nature and number of consumers affected.
- *Compliance history:* FCAC considers the violations or convictions committed by the regulated entity in the previous five years.

Representations: A regulated entity may make representations to the Commissioner within 30 calendar days of being served with a Notice of Violation. This is the sole opportunity for a regulated entity to make representations to the Commissioner on the Notice of Violation, on any proposed AMP(s), and on the publication of the name of the regulated entity who committed the violation. Representations are written statements that set out the regulated entity's position and evidence with respect to the Notice of Violation, any proposed AMP(s), publication of the name of the regulated entity who committed the violation, and any other matter the entity wishes the Commissioner to consider in rendering a decision.¹⁶ The Commissioner may request additional information as needed.

Notices of Decision: Where a violation has been committed, the Commissioner's decision on the violation, the AMP, or whether to make public the regulated entity's name is communicated by way of Notice of Decision, which includes the Reasons for Decision.¹⁷ The Reasons for Decision provide the facts and rationale in support of the Commissioner's decision. If representations are made, the Commissioner reviews them along with the Compliance Report and decides, on a balance of probabilities, whether a violation has occurred. Upon deciding that a violation has occurred, the Commissioner may impose the AMP proposed, a lesser AMP or no AMP.¹⁸ A regulated entity may appeal the Commissioner's decision to the Federal Court.¹⁹

Publication: The Commissioner has the discretion to make public the nature of a violation, the name of the regulated entity, and the amount of any AMP.²⁰ FCAC always publishes the nature of the violation and the AMP by issuing an **FCAC Decision**. In exercising the legislated discretion to also name an entity, the Commissioner considers factors such as:

- promoting consumer awareness
- promoting compliance among regulated entities
- the egregiousness of the entity's actions or inactions
- the entity's willingness to assume responsibility for the violation
- the degree of collaboration shown throughout the investigative process
- the impact of the violation on consumers and consumer confidence
- deterrence

FCAC publishes information about violations according to its **Publishing Principles for FCAC Decisions**.

¹⁶ Subsection 23(2) of the FCAC Act.

¹⁷ Subsection 23(4) of the FCAC Act.

¹⁸ Subsection 23(2) of the FCAC Act.

¹⁹ Subsection 24(1) of the FCAC Act.

²⁰ Section 31 of the FCAC Act.

6.6. Notices of Non-Compliance

FCAC may issue a Notice of Non-Compliance when an investigation reveals that a regulated entity is in breach of its obligations under a voluntary code of conduct or public commitment. A Notice of Non-Compliance specifies the nature of the breach.

Representations: The regulated entity may make representations to the Commissioner within 30 calendar days of being served with a Notice of Non-Compliance. Representations are written statements setting out the entity's position on the Notice of Non-Compliance and must be submitted in accordance with instructions given in the Notice. The Commissioner may request additional information as needed. If a regulated entity chooses not to make representations, it is deemed to have breached the provision of the applicable voluntary code of conduct or public commitment. In such cases, the Notice of Non-Compliance stands and is noted in the entity's compliance record.

Notices of Decision: If representations are made, the Commissioner reviews them along with the Compliance Report and decides, on a balance of probabilities, whether a breach has occurred. The Commissioner's decision is communicated by way of Notice of Decision, which includes the Reasons for Decision. The Reasons for Decision provide the facts and rationale in support of the Commissioner's decision.

Publication: When it is determined that a regulated entity is in breach of its obligations under a voluntary code of conduct or public commitment, FCAC will make public the nature of the breach through a [FCAC Decision](#). Publication will proceed according to FCAC's [Publishing Principles for FCAC Decisions](#).

7. How to contact FCAC

FCAC welcomes inquiries and feedback from regulated entities and other stakeholders. Tier 1 regulated entities should contact their assigned FCAC Senior Officers directly. For all other inquiries or feedback, FCAC can be contacted by email, mail, fax or telephone.

Email: info@fcac-acfc.gc.ca

Phone:

For services in English: 1-866-461-FCAC (3222)

For services in French: 1-866-461-ACFC (2232)

For calls from the Ottawa area or from outside Canada: 613-960-4666

*Information officers are available Monday to Friday, 8:30 a.m.–5:00 p.m. (Eastern Time)

Teletypewriter (TTY): 1-866-914-6097 / 613-947-7771

Fax: 1-866-814-2224 / 613-941-1436

Mailing Address:

Financial Consumer Agency of Canada

427 Laurier Avenue West, 6th Floor

Ottawa ON K1R 1B9

