

AQSE Consultation Response

Changes to the Disciplinary and Appeals Procedures

Introduction

In October 2022, Aquis Stock Exchange (the “Exchange”) launched a consultation on changes to its Disciplinary and Appeals Procedures.

This paper sets out a summary of the responses and the Exchange’s conclusions.

Response to Consultation

One respondent suggested that investigations by the Exchange should be initiated on the condition that the Exchange believes, on the balance of probabilities, there has been a rule breach. The Exchange, however, is of the view that on the initiation of an investigation, there is often insufficient information to make an assessment as to whether a breach occurred (or not) on the basis of a balance of probabilities.

A respondent also suggested that, in assessing the nature, seriousness and impact of the breach, the assessment should include a qualification with a statement that “the regulation department believes” or similar. The Exchange is of the view that this qualification is implicit given the department is making this assessment, accordingly, the additional language is not required.

One respondent was concerned that the procedures suggested the Exchange will take into account actions of unrelated third parties when assessing the conduct of the party in breach (clause 3.2.2(d) of the consultation mark-up). The Exchange agrees and has amended clause 3.2.2(d) to remove this reference.

There was also some confusion with the Exchange’s recognition that it will not ordinarily undertake action if the behaviour under investigation is considered acceptable under FCA-recognised industry codes. The Exchange agrees this can add a confusion and uncertainty, and has therefore removed reference to FAC-recognised industry codes from the rules (clause 3.2.5 of the consultation mark-up).

One respondent questioned whether the Exchange was equitable with the addition at clause 3.2.7 of the mark-up, in which it considers the impact a sanction may have on the financial markets and interest of investors. The Exchange disagrees with this view. As stated in the rules, a penalty may show that a high standard of market conduct is being enforced by the Exchange, resulting in greater market confidence and deterring future non-compliance.

There was a query as to whether the rules only allow for the Exchange to have legal representation on any disciplinary appeal. The Exchange wishes to clarify that this isn’t the intention of the rules, and that appellants may have legal representation.



A respondent also noted that the rules allowed the disciplinary committee to take into account hearsay as evidence. The Exchange recognises that hearsay should be given different weighting as evidence, and the rules have been amended to explicitly flag any hearsay that is taken into account.

It was also noted that on a disciplinary appeal, costs may be awarded to the Exchange, and will not be awarded against the Exchange unless the respondent can demonstrate bad faith. This, however, is the long-standing position of the Exchange, and is not under review as part of this consultation.

On non-disciplinary appeals, it was noted by a respondent that the scope of non-disciplinary matters was defined to include matters that a better considered disciplinary. The Exchange agrees with this respondent, and accordingly has amended the scope of non-disciplinary appeals (see clause 6.1.1 of the consultation mark-up).

Next Steps

The final rulebook is published today with immediate effect.