

**FREQUENTLY-ASKED-QUESTIONS (FAQ) ON
THE GUIDANCE NOTE ON CO-OPERATION AND SELF-REPORTING**
(Revised: 22 September 2021)

1. Is self-reporting different from whistleblowing?

While self-reporting and whistleblowing involves 'reporting' to the SC, there are also differences between the two. Self-reporting is reporting by the regulatee itself that has committed the breach and self-reporting of the breach must be prompt and reliable. The person who self-reports the breach to the SC may not seek anonymity.

Whistleblowers on the other hand, are usually third parties who discloses wrongdoings to the SC and are seeking anonymity.

2. What does the SC mean by 'co-operation'?

'Co-operation' for the purposes of the Guidance Note can take various forms including promptly reporting the breach to the SC, providing evidence in a form that can be used in court, providing useful intelligence to the SC, accepting liability and willingness to take responsibility for breach, taking proactive steps to assist the SC in its investigation at the earliest opportunity; or taking appropriate rectification measures (for example: taking early and active steps to contain the breach or failing, making full and prompt compensation to the affected investors for their losses and instituting enhancements to internal controls and processes).

For instance, the act of a person who took remedial actions on gaps and weaknesses in its internal controls throughout engagement with the SC's supervisors will be considered as co-operation as illustrated below.

Illustration

Intermediary Kay Elle has been issued a show cause by the SC for several breaches of the SC's Anti-Money Laundering Guidelines (AML Guidelines) including failures to conduct due diligence of its customers' accounts. After the issuance of the show cause, Intermediary Kay Elle immediately admitted to their breaches including the weaknesses of its internal controls, policies and procedures, which has resulted in several breaches and a significant amount of unlawful deposits. The breaches during the material period are also related to some area, which were identified as weaknesses by SC's supervisors separately in a previous audit examination.

Intermediary Kay Elle also shared with the SC the remedial actions taken by the firm to address the weaknesses that it has undertaken prior to the receipt of the show cause. Although the breaches of the AML Guidelines have occurred during the material period where the weaknesses in its internal controls were present, the SC will still consider Intermediary Kay Elle's admission and remedial actions as a form of co-operation with the SC. Some Credits will be granted to Intermediary Kay Elle in acknowledgement of its efforts and cooperation. Credits will also be considered for its admission to the breaches.

3. Self-reporting of breaches by licensed persons is mandated under securities laws. Would a licensed person therefore be able to obtain credit if he/she self-reports the breach?

The SC's initiative in giving credit for cooperation is to achieve the timely resolution of securities laws breaches. Co-operation with the SC promotes public's trust and confidence in our regulatees and in the capital market. It also allows SC to optimise the use of its investigation and enforcement resources.

Self-reporting is a form of co-operation. However, in instances where, self-reporting is mandated under the securities laws such as under section 74 of the *Capital Markets and Services Act 2007* (CMSA) or Chapter 7 of the *Licensing Handbook*, the reporting of the breach by a licensed person in itself may not qualify for credit, as the licensed person is required by the securities laws to report the breach.

Nevertheless, credit may still be given for the reporting in exceptional cases depending on the facts of the case. There will be a holistic assessment of the report's timeliness and reliability and the contribution of that report towards a timely resolution of the breach.

In addition, credit may also be given to the licensed person who reports the breach as the licensed person may go beyond the act of just reporting the breach to the SC. The licensed person may also take steps to contain the breach, limiting the level of harm caused to investors/stakeholders in which case it may be said that the licensed person is co-operating with the SC and such co-operation may be taken into account by the SC for the purposes of credit.

4. Would co-operation with the SC result in no enforcement action taken against the party in breach?

The cooperation and self-reporting framework as set out in the Guidance Note is about incentivising the party in breach to work with the SC to contain the effects of the breach and to bring about an early resolution of the breach in question.

Co-operation with the SC benefits all parties, as early resolution of the breach saves time and cost.

Any decision made by the SC with regards to an enforcement action takes into consideration many factors which includes, among others, the SC giving due regard to the severity of breach, harm caused and the extent of co-operation provided by the party in breach to the SC with the view to bring about early resolution of the breach.

The credit given by the SC for the co-operation provided by the party in breach is at the SC's discretion. Credit can take the form of reducing the financial penalty that is to be imposed on the party in breach or to mitigate other forms of sanctions that may be imposed. Ultimately the credit to be given is dependent on the facts of the case and the extent of co-operation provided to the SC.

However, it should be pointed out that co-operation with the SC does not mean that no enforcement action will be taken against the party in breach.

5. When should I self-report a breach?

Unless otherwise prescribed under securities laws, the SC does not have a set timeframe on when should a breach be reported to the SC. However, it is expected that the breach should be reported to the SC *as soon as possible* and more importantly, before the SC discovers the breach or will come to know of the breach through carrying out of its regulatory functions.

6. How do I report a breach?

Breach reporting can be done through an email/in writing to the respective SC department that regulatees usually have been liaising with. For example, if you are a licensed person and want to report a breach you may contact the SC's Supervision Department (IFS).

7. How will the SC assess whether a report is reliable or not?

The SC expects that the report submitted should be reliable – which means that to the best of the knowledge of the regulatee reporting, the report should be as accurate and as complete as possible. The report should therefore state who, when, how the breach occurred and the steps, if any, taken in respect of the breach reported such as any mitigation measures taken in respect of the breach or any further inquiries conducted in respect of the breach.