



**BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON, D. C. 20551**

**DIVISION OF BANKING  
SUPERVISION AND REGULATION**

**SR 97-6 (ENF)  
March 24, 1997**

**TO THE OFFICER IN CHARGE OF SUPERVISION  
AT EACH FEDERAL RESERVE BANK**

**SUBJECT: Civil Money Penalty Assessment Procedures**

SR 91-13 (FIS), dated June 3, 1991, described the then recent expansion of the Federal Reserve's and the other federal financial institutions supervisory agencies' civil money penalty assessment authority and the efforts of an interagency working group of enforcement attorneys to develop uniform and consistent policies for the assessment of civil money penalties. The SR Letter outlined procedures for assessing fines, and also distributed a civil money penalty matrix that was to be used in connection with an evaluation of less serious violations warranting first-tier fines of \$5,000 per day under the Federal Deposit Insurance Act.<sup>1</sup>

**Civil Money Penalty Assessment Notification Letters**

With regard to the Board's civil money penalty assessment procedures, SR 91-13 provided the following:

Board procedures require that before the setting of any final penalty amount, the parties to be assessed be offered the opportunity to provide Board staff with any evidence, including financial factors, that would either weigh against assessment or mitigate the amount of the proposed penalty. The Board's General Counsel sends the parties letters advising them of Board staff's intent to recommend a penalty and inviting them to offer any mitigating evidence. The responses to these letters are evaluated and considered, along with the final figure from the CMP Matrix, by Federal Reserve Bank and Board staffs in determining the final penalty amount that will be presented for negotiations with the parties and their counsels.

These procedures, which were developed jointly by the Board's Legal Division and the Division of Banking Supervision and Regulation, contemplated that specific fine amounts would not be considered until a banking organization or institution-affiliated party was provided with an opportunity to respond to a notification letter sent by the Board's General Counsel by submitting information relevant, among other things, to the offense, to financial resources, and to other pertinent statutory and regulatory factors.<sup>2</sup> Because of the inclusion of the reference to the CMP Matrix in SR 91-13, there may have been some confusion as to whether the procedures set

forth in the SR Letter covered only those civil money penalty assessment cases involving less significant violations of law and regulation necessitating first-tier penalties, or to all cases involving potential fines. It was intended that the procedures apply to **all** civil money penalty assessment cases.

Accordingly, as a general rule whenever a Federal Reserve Bank recommends that a civil money penalty be assessed against an institution or an individual, the recommendation memorandum should discuss the circumstances warranting the assessment of a fine, including the applicable violations, unsafe or unsound practices, breaches of fiduciary duty, or violations of written conditions, orders, or written agreements, in sufficient detail to enable Board staff, working in conjunction with Federal Reserve Bank officials, to prepare a civil money penalty assessment notification letter for the General Counsel's signature. After the receipt of pertinent information from an offending banking organization or institution-affiliated party, then Board staff, in coordination with the Federal Reserve Bank, will establish a specific fine amount for presentation to the organization or individual or, in some cases, seek the guidance of the Committee on Supervisory and Regulatory Affairs or the Board on the amount of the penalty assessment. The amount of the proposed fine determined at this stage will be based on an evaluation of the statutory and regulatory factors.

Board staff recognize that in some special circumstances, such as where there are parallel proceedings by criminal or other enforcement authorities, it may not be practical to follow these procedures strictly. Exceptions to the procedures should, however, be discussed with the appropriate officials of the Legal Division and the Division of Banking Supervision and Regulation, and the process to be followed in these exceptional cases should be mutually developed and agreed upon by Federal Reserve Bank and Board staff.

### **The Civil Money Penalty Matrix**

In some recent enforcement matters, questions have been raised concerning the significance of the CMP Matrix in determining the final amount of any fine. The Board has addressed this question and determined that the CMP Matrix is not binding. Instead, the CMP Matrix should be used as a general guideline for routine cases, such as those involving first-tier penalties with no special circumstances attendant to the violation being addressed in the enforcement action. Special circumstances, which can include, for example, financial gain to a respondent, deceit, cover-up of a violation or practice, or unusual risk to a banking organization or the banking system, will justify computing the amount of a fine without the use of the CMP Matrix. Likewise, all second and third-tier civil money penalties, such as those involving reckless or knowing violations and practices, patterns of misconduct, substantial losses to institutions, or substantial pecuniary gains to individuals, are calculated without reference to the CMP Matrix.

In the event you have any questions regarding this matter, please contact Herbert A. Biern, Deputy Associate Director, at (202) 452-2620, or Richard M. Ashton, Associate General Counsel, at (202) 452-3750.

Richard Spillenkothen  
Director

cc: General Counsel at each  
Federal Reserve Bank

---

### **Footnotes**

1. The CMP Matrix was developed on an interagency basis. It condensed the five statutory factors required to be considered in the assessment of fines, such as the history of previous violations, the financial resources of the offender, and the good faith of the party, and the 13 regulatory factors adopted by the Federal Reserve and the other bank supervisory agencies under the auspices of the Federal Financial Institutions Examination Council in 1980.
2. Section 263.61 of the Board's Rules of Practice for Hearings generally provides that the Board's General Counsel may advise an affected institution or person that a civil money penalty assessment is being considered and provide an opportunity to respond prior to the initiation of an enforcement action.