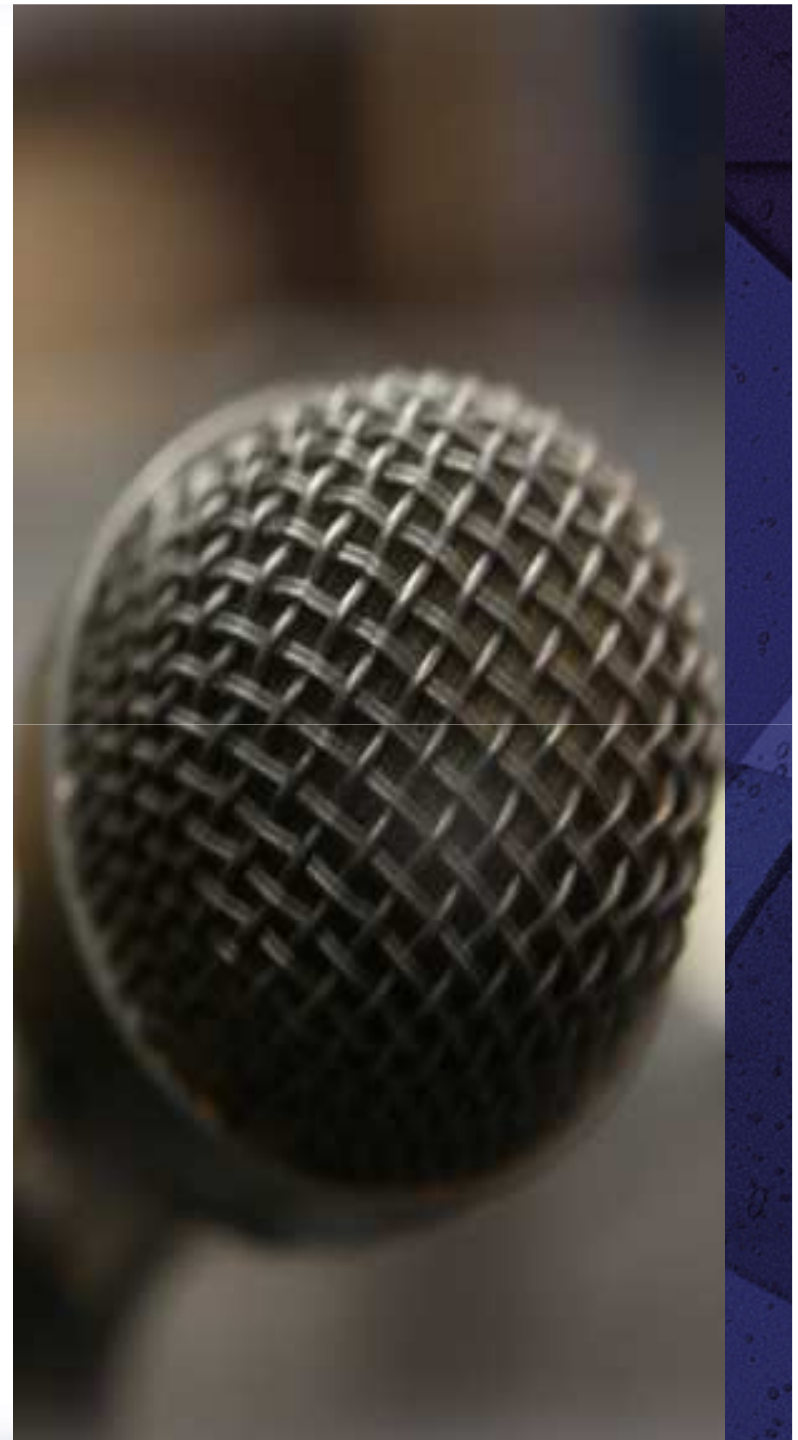




**THE ENFORCEMENT
COMMITTEE OF THE
FINANCIAL SERVICES
BOARD:**

**PRESENTATION AT
THE ANNUAL FAIS
CONFERENCE 2010**

Deva Govender





Legislation

Sections 6A to 6I of the
Financial Institutions
(Protection of Funds) Act,
2001

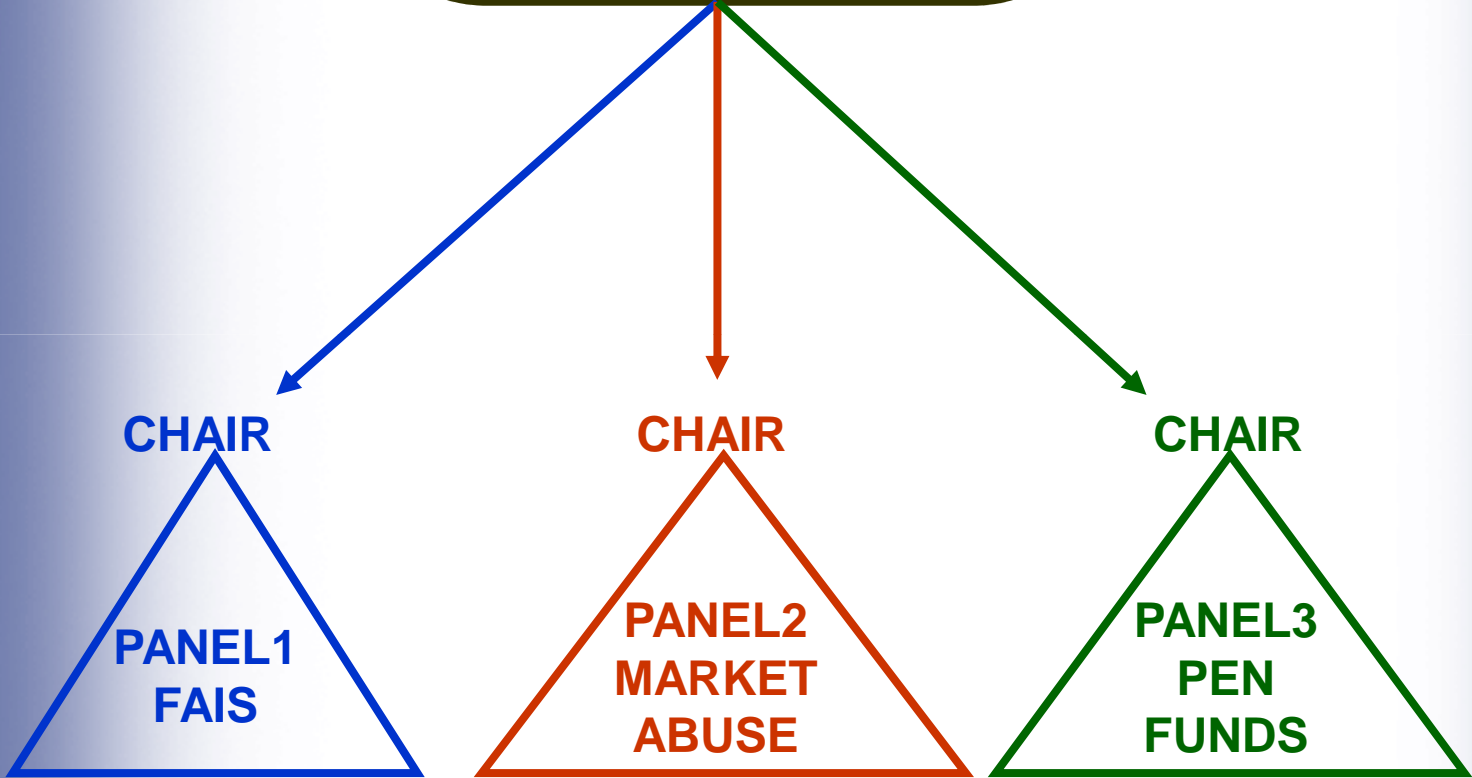


Structure and appointment of members (section 10A(1))

- Board must appoint.
- EC must have sufficient members with appropriate **knowledge and experience**, and must include **advocates and attorneys of at least ten years' standing, or judges.**



CHAIR
ENFORCEMENT COMMITTEE





Who was appointed

Retired Judge President of the Tvl,
retired judges, senior lawyers, law
professors, retired stock brokers,
asset managers, practicing
attorneys.



Conflict of Interest

“If ... [a] member has an interest in a matter referred to the Enforcement Committee, the member must immediately disclose his interest ... and withdraw from any further involvement ...”



Losing a member

“If a member of a panel is unable to complete a hearing ... the Chairperson may

- (a) Replace the member;*
- (b) Direct that the hearing proceed before the remaining members;*
- (c) Terminate the proceedings ... and constitute another panel.”*



Cases for referral

The Registrar (or the DMA) may refer **any** contravention of an FSB Law **including** subordinate legislation.

- Also in cases of contraventions of FICA.
- **If** the Registrar may not impose a penalty himself (in cases of minor contraventions of late submissions etc.), i.e. *no dual jurisdiction*.



Documents with referral

A referral must be accompanied by:

- **A section 6B** Notice setting out the **details** and **nature** of the alleged contravention, and the **administrative sanction** that, in the opinion of the applicant, should be imposed.
- **An affidavit** setting out the facts and supporting documents.



Exchange of pleadings

**FSB CASE
ON
AFFIDAVIT
& SEC 6B
NOTICE**

**RESPONDENT
ANSWER ON
AFFIDAVIT
(30 DAYS)**

**FSB REPLY
ON
AFFIDAVIT
(30 DAYS)**



Determination by the EC

The EC must determine whether a respondent has contravened a provision. If so, the EC may:

- Impose a (unlimited but specified) penalty
- Make a compensation order
- Make a section 73 insider trading order
- Make a standard cost order
- Make an extended cost order



Settlements

The applicant may, prior to the referral of a matter to the enforcement committee or during or after the enforcement committee proceedings, enter into a **written settlement** agreement with the respondent.

The agreement must be filed with the chairperson of the enforcement committee to be made an order.



Enforcing a determination

A determination of the EC has the force of law as if it was made by the High Court.

If the respondent fail to pay the penalty or compensation, a copy of the determination may be filed with the High Court and **civil execution steps** will follow.



Appeal

- The Committee may be taken on appeal to the High Court on the facts, the law and the penalty.
- An appeal is confined to the record.
(No new evidence on appeal)
- The launching of an appeal does not suspend execution, unless the chairperson directs otherwise.

The

end

