



ENFORCEMENT GUIDE

September 2018

STATEMENT OF PRINCIPLES & GUIDANCE ON THE EXERCISE OF ENFORCEMENT POWERS

GLOSSARY OF TERMS

'AML/ATF'	Anti-Money Laundering & Anti-Terrorist Financing
The 'AML/ATF Regulations'	The Proceeds of Crime (Anti-Money Laundering & Anti-Terrorist Financing) Regulations 2008
The 'Authority'	The Bermuda Monetary Authority
'Customer'	A policyholder, depositor, investor, or client
The 'BMA Act'	The Bermuda Monetary Authority Act 1969
'The Court'	The Supreme Court
'Enforcement'	The Enforcement Department of the Authority. Part of the Authority's Legal Services, Policy & Enforcement Department and separate from the Authority's supervisory departments
The 'Regulatory Acts'	The Insurance Act 1978 The Banks & Deposit Companies Act 1999 The Trusts (Regulation of Trust Business) Act 2001 The Investment Business Act 2003 The Investment Funds Act 2006 The Credit Unions Act 2010 The Corporate Service Provider Business Act 2012 The Money Service Business Act 2016 The Digital Asset Business Act 2018
'NLP'	A non-licensed AML/ATF regulated financial institution
'RFI'	Regulated Financial Institution (including NLPs)
'SEA' or "the 2008 Act"	The Proceeds of Crime (Anti-Money Laundering & Anti-Terrorist Financing Supervision and Enforcement) Act 2008

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PREFACE

The purpose of this Enforcement Guide is to:

- Satisfy the requirement of the Regulatory Acts¹ to publish a statement of principles in accordance with which the Authority will exercise its formal enforcement powers
- Explain when and in what circumstances the Authority will consider taking enforcement action
- Explain how enforcement action is taken by the Authority
- Encourage effective alignment and coordination of regulatory processes within the Authority
- Ensure consistent, proportionate, effective and dissuasive enforcement outcomes

This Guide constitutes a single, unified Statement of Principles on the Authority's exercise of its enforcement powers. It replaces the following documents, which no longer have effect:

- The 2010 'Statement of Principles on the Use of Enforcement Powers – Proceeds of Crime (Anti-Money Laundering & Anti-Terrorist Financing Supervision and Enforcement) Act 2008', and
- The 2012 Statement of Principles on the Use of Enforcement Powers.

The Regulatory Acts and SEA require that the Authority publishes a Statement of Principles explaining how it will exercise its enforcement function. Part 1 of the Guide sets out the principles on the use of enforcement powers. Parts 2-7 constitute guidance on the use of enforcement powers. As each of the Acts broadly contains a uniform suite of enforcement powers, this Guide is of general applicability and its contents will be taken into consideration by the Authority at all stages when it is considering enforcement action. The Authority's use of its enforcement powers and the Principles will be applied in a flexible manner in any given instance, taking into account legal and factual context. This Guide will not apply where provisions of a Regulatory Act address matters other than enforcement.

This Guide takes effect from the date of publication.

¹ Section 2A(1) Insurance Act 1978, section 9(1) Banks & Deposit Companies Act 1999, section 9(1) Investment Business Act 2003, section 2B Investment Funds Act 2006, section 6(1) Trusts (Regulation of Trust Business) Act 2001, section 6(1) Corporate Service Provider Business Act 2012, section 6(1) Money Service Business Act 2016, section 7(1) Proceeds of Crime (Anti-Money Laundering & Anti-Terrorist Financing, Supervision, & Enforcement) Act 2008, section 5(1) Credit Unions Act 2010, and section 5(1) Digital Business Act 2018

1. THE PRINCIPLES OF ENFORCEMENT

‘Enforcement’ is the use of formal powers to compel compliance or to penalise non-compliance with statutory or regulatory requirements. Enforcement action that is proportionate, effective, and dissuasive enhances the international reputation of Bermuda and thereby contributes to making Bermuda a desirable location in which to do business.

Formal enforcement powers are provided for by the Regulatory Acts and the SEA. The Authority will exercise those formal enforcement powers in accordance with the principles set out in Figure 1, below. The overriding considerations are the protection of all customers of an RFI, and the protection of the reputation of Bermuda as a well-regulated jurisdiction. The Authority will always take enforcement action where it is necessary to do so in order to protect those interests. In addition to the formal powers, the Authority will seek to protect members of the public from unauthorised activity by proactively policing the perimeter and by maintaining a warning list of unauthorised firms and individuals on the Authority’s website.

The Authority will exercise its enforcement powers in service to its principal objects and duties: to supervise, regulate and inspect any financial institution which operates in or from within Bermuda; to promote the financial stability and soundness of financial institutions; to assist with the detection and prevention of financial crime; to assist foreign regulatory authorities in the discharge of their duties; and to supervise and monitor compliance with all AML/ATF requirements².

The Authority strives to continuously strengthen and improve its enforcement policies and procedures. Enforcement priorities will usually be set out each year in the Authority’s Business Plan.

The Authority expects that all RFI’s will be compliant with all of their regulatory obligations, including the Minimum Criteria for Registration/Licensing. Non-compliance creates risk to customers, and may threaten the long term sustainability of the RFI. Further, the cost of compliance will usually be less than the costs of non-compliance. Typical post-enforcement action costs for an RFI will include increased headcount; consultancy fees; increased technological budget; reputational damage; potential loss of customers and partners; possible attention from other regulators; and long periods of regulatory oversight.

The Regulatory Acts and SEA contain provisions empowering the Authority to publish any matter that is the subject of enforcement action, and it is the policy of the Authority to publish all enforcement actions, including the name of the RFI, unless there are exceptional reasons not to do so. By publicising enforcement outcomes, the Authority can raise

² The principal objects of the BMA are set out in section 3(1) of the Bermuda Monetary Authority Act 1969. The duties of the BMA with respect to AML/ATF compliance are set out in section 5 of the SEA.

awareness of regulatory standards, and demonstrate its commitment to regulation in accordance with agreed international standards, thereby helping its licensees to access third country markets which require adherence to such standards.

Figure 1: The Principles of Enforcement

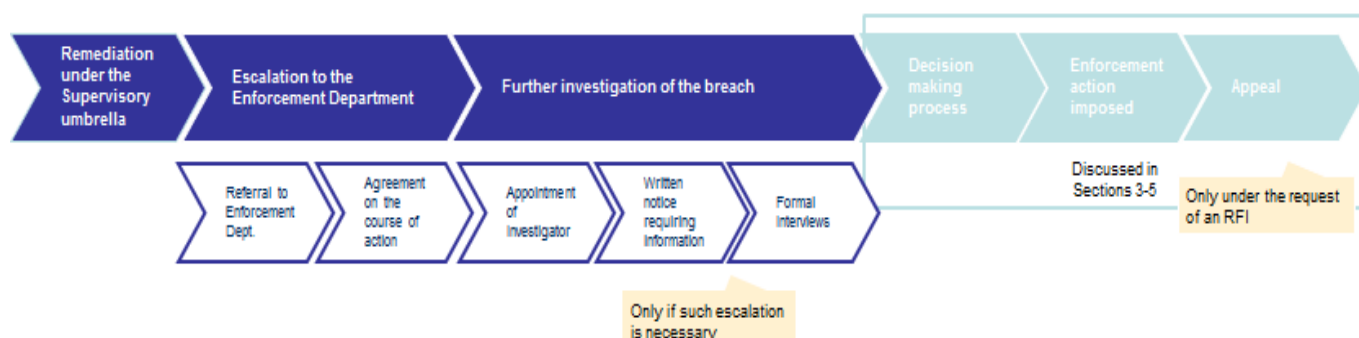
PRINCIPLES OF ENFORCEMENT

- Enforcement action will be taken to protect customers from harm
- Enforcement action will be taken to protect the reputation of Bermuda as a well-regulated financial centre
- The Authority will exercise its enforcement powers on a risk based approach prioritising conduct that poses the biggest threat to the best interests of consumers or to the reputation of Bermuda
- The Authority will exercise its enforcement powers in service to its statutory objectives and supervisory priorities
- Enforcement action will always be considered where there is a breach of the Minimum Criteria for Registration/Licensing
- Enforcement action will be taken to prevent unauthorised activity
- Enforcement action will be taken where it is necessary to prevent fraud, money laundering, terrorist financing, or other criminal activity
- The Authority will exercise its enforcement powers in a manner which is proportionate to the breach
- The Authority will exercise its enforcement powers in a manner that is responsive to the breach
- The Authority will exercise its enforcement powers using processes that are transparent, efficient, and fair
- The Authority will exercise its enforcement powers in a consistent manner
- The Authority will exercise its enforcement powers in order to effect change in behaviour, encourage future compliance, and to remedy harm.

2. WHEN WILL ENFORCEMENT ACTION BE CONSIDERED?

The Authority will not apply its enforcement powers to address every issue of non-compliance with a regulatory obligation. Most issues that arise will be addressed as part of the normal supervisory relationship that exists between the Authority and the RFI. Where a firm or individual has failed to comply with a statutory requirement, it may be appropriate to respond without the need for formal enforcement action. The proactive supervision and monitoring of RFIs and the open, cooperative relationship that exists between them and the Authority will often result in a positive outcome without the need to invoke the more formal use of enforcement powers. However, in those cases, the Authority will expect the RFI to act promptly in taking the necessary remedial action agreed with the supervisors to deal with the Authority's concerns. In the event that the RFI fails adequately to do this, the supervisor will refer the matter to Enforcement. See Figure 2 for a high-level overview of the Enforcement process explained in further detail throughout the next sections.

Figure 2: Overview of the Enforcement process



Remediation by Supervision

Supervisors also have certain statutory powers that they may exercise without the need for formal referral to Enforcement. For example, a supervisor may add, vary, or delete any condition imposed upon the Certificate of Registration of an insurer. Furthermore, a supervisor may impose default civil penalties for a failure on the part of an RFI to file statutory statements or returns. Such powers do not require the use of the Warning & Decision Notice procedure described later in this Guide. Although these powers do not require a formal referral to Enforcement, it is common for supervisors and enforcement officers to work closely when they are being used. The use of such powers with respect to a particular entity is jointly monitored by Supervision and Enforcement as any such recurring problems may be indicative of a more serious underlying issue with the entity which may require either enhanced supervision or the use of more formal enforcement intervention, or both.

Referral to Enforcement by Supervision

If the issue is potentially serious, the supervisor will refer the matter to Enforcement for consideration of formal enforcement action. A matter will be potentially serious if it creates a risk of harm to customers or to the reputation of Bermuda as a well-regulated financial centre. A breach of AML/ATF requirements will always be potentially serious. In cases of uncertainty, the supervisor will discuss the issue with the relevant Managing Director of Supervision and the Chief Enforcement Officer. If the matter is referred to Enforcement, the supervision team and enforcement officers will work collaboratively and agree upon the most appropriate course of action. Matters which are typically referred to Enforcement include:

- breaches of the Minimum Criteria for Registration/Licensing;
- breaches of minimum solvency/liquidity requirements;
- issues touching upon a person's fitness and propriety;
- significant failures in corporate governance that pose a risk to the effective operation of the business and/or a risk to customers;
- failures to comply with AML/ATF obligations;
- failure to implement an agreed remediation plan adequately;
- possible fraud, misrepresentation, or other financial crime;
- repeated failures to submit statutory financial information/statements;
- conducting unauthorised business;
- non-compliance with international sanctions obligations;
- insolvency or where circumstances may require the winding up of the entity on just and equitable grounds; and
- circumstances where a formal investigation or the appointment of a reporting inspector may be necessary.

There may be grave or urgent circumstances which present a high level of risk where it will be necessary to refer a matter to Enforcement immediately after the issue has been identified.

A referral to Enforcement does not operate to suspend on-going supervision and remediation. Enforcement action and supervision/remediation serve different purposes and operate independently of each other. Supervision looks at the current and future conduct of the RFI and will expect to see that all non-compliance will be remediated within a reasonable time period³, irrespective of any formal enforcement action that may be taken. Enforcement action, however, is designed to address the specific failures and to mark them with effective and dissuasive action. Effective remediation by an RFI does not preclude the Authority from taking enforcement action with respect to the original failures. Proactive and

³ What is 'reasonable' will depend on all of the circumstances. Some remedial actions are straightforward and can be completed within a matter of weeks. Others may require significant systemic changes and will require a much longer time to complete.

effective remediation, however, may be a mitigating factor to be taken into account as part of the enforcement process.

The Authority must take into account any failure on the part of the RFI to comply with the law relating to AML/ATF when determining whether or not the RFI is conducting business in a prudent manner. In this way, a breach of AML/ATF requirements is both a breach of the SEA and constitutes a possible breach of the Minimum Criteria for Registration/Licensing, depending on the circumstances of the case. There may be cases where the AML/ATF breach is considered to give rise to prudential concerns and a breach of the Minimum Criteria. For example, a failure in AML compliance may give rise to the question of the fitness of one or more individuals within the RFI or raise wider corporate governance concerns. Where such issues arise, the Authority may choose to use the powers under the relevant Regulatory Act to more appropriately address the problem.

The Regulatory Acts also provide that compliance with international sanctions is a matter which the Authority will take into account in determining whether an RFI is conducting business in a prudent manner. If a breach of the targeted financial sanctions regime in Bermuda is identified during an on-site review, the matter will be viewed as being serious by the Authority and will almost certainly be referred to Enforcement⁴. Under SEA, the Authority may issue a directive to an AML/ATF regulated financial institution if it fails to comply with international sanctions obligations. Such a failure may in certain circumstances also result in a referral to the Bermuda Police Service.

⁴ For more information on this, see the Authority's published 'Guidance Notes on Sanctions' (June 2016)

3. THE ENFORCEMENT DECISION-MAKING PROCESS

Action following a Referral to Enforcement

As set out above, the supervisory departments will refer identified regulatory issues to the Enforcement Department, a stand-alone group of lawyers and investigators which manages enforcement actions. Although the majority of issues will be identified as part of the usual supervisory process, matters can also come to light as a result of a referral from outside of the Authority, such as from the Financial Intelligence Agency or from the police.

Following a referral to the Enforcement Department, the Chief Enforcement Officer will review the available material and consider

1. whether there is a 'prima facie' failure to comply with a regulatory requirement taking into account relevant statutory obligations & requirements, as well as any associated Guidance and Codes of Practice;
2. the materiality (gravity) of the breach and its actual or potential impact; and
3. whether the matter fits within the enforcement and strategic priorities of the Authority.

When a decision has been made to escalate a matter for possible enforcement action, the Enforcement Department will usually advise the RFI of the referral in any correspondence on the matter. If, after referral to Enforcement, a decision is made not to take enforcement action, this will also be communicated to the RFI. Once an issue has been referred to Enforcement and before a final decision is made as to whether enforcement action will be taken, the Authority will usually maintain communication with the RFI. This allows continuous cooperation, which can lead to proactive resolution or reduction of the proposed enforcement actions.

Where there is evidence of criminal conduct, the matter will be referred to the Bermuda Police Service for action. Care is taken in such circumstances to ensure that any action taken by the Authority does not prejudice any criminal investigation.

Information Gathering & Formal Investigations

In some instances there may be a need to conduct further enquiries before determining the appropriate response to a suspected breach. In the event that the available information is insufficient for the Authority's purposes, there are various information gathering powers available that can be used either before or after a referral has been made to Enforcement. This process will usually be managed by the Enforcement Unit.

There are formal powers in the Regulatory Acts, SEA, and in the BMA Act for the Authority to require by written notice such information as it may reasonably require for the

performance of its functions, to produce documents, and for the officers of an RFI to attend before the Authority to answer questions. The Authority also has formal powers to enter the business premises of institutions for the purpose of inspecting the premises, observing the carrying on of business, inspecting, and taking copies of any recorded information, and for requiring any person on the premises to provide an explanation of any recorded information. These powers enable the Authority to conduct spot checks on premises of institutions that are conducting business in high risk areas such as wire transmission of funds. Failure to comply with these provisions without reasonable excuse constitutes a criminal offence.

Some of the Authority's powers to require information extend beyond the regulated community to non-regulated persons.

The Authority has the power to apply to a Magistrate for a warrant to enter premises where documents or information are held where it has reasonable grounds for believing that if an RFI was required to provide information to produce documents, that it would fail to comply with such a request; or where it believes that if such a request was made that information or documentation would be destroyed.

The use of these powers is infrequent as the Authority is generally able to rely upon the willingness of RFIs to provide information voluntarily. In particular circumstances, however, the Authority will consider whether to use the powers, for example, where it has material concerns about the accuracy or completeness of information provided to it. Where representations by a RFI in response to a Warning Notice (see below) challenges the accuracy of the Authority's preliminary view of the facts, the Authority can defer the enforcement process pending the outcome of a further enquiry into the issue. The Authority will use the information derived from such an investigation in reaching a decision on whether to proceed further with the enforcement proceedings.

In addition to the powers referred to above, the Authority may conduct a formal investigation by appointing one or more competent persons to investigate on its behalf and report back to the Authority on the nature, conduct or state of the RFI's business or any aspect of it, or on the ownership or control of the RFI. If an investigator is appointed, written notice of such appointment will be given to the entity concerned. Unless the Authority directs otherwise, the entity under investigation shall pay to the Authority all expenses of, and incidental to, the investigation. There are additional powers to require a RFI to conduct an investigation, or to engage an external independent party to conduct an investigation, and to provide a report to the Authority.

The powers outlined above can be exercised against an RFI, a parent, subsidiary, or related company. Obstruction⁵ of an investigation and misleading the Authority are also criminal offences, and such conduct may also attract regulatory consequences.

The Decision to take Enforcement Action

The Authority will consider all the relevant facts and circumstances of a matter referred for consideration of an enforcement action. An assessment will be made on a case-by-case basis, but will also take into account the wider context. Figure 3 sets out a non-exhaustive list of the factors that will be taken into consideration by the Authority in determining whether to take enforcement action and in selecting the appropriate outcome. Not all of the factors listed will be relevant to every case and there may be other considerations which are not mentioned in the list but which may be relevant to a particular case. The Authority's assessment will include consideration of whether using alternative tools is more appropriate taking into account the overall circumstances of the RFI itself, the conduct under review, and the wider context.

⁵ This will include falsification, concealment, or destruction of documents knowing or suspecting that such documents would be relevant to the investigation

Figure 3: Examples of factors taken into consideration by the Authority in determining whether to take enforcement action

1. THE NATURE, SERIOUSNESS, AND IMPACT OF THE BREACH

- The importance of the regulatory provision or standard of conduct breached and the extent to which the conduct under review breached the provision or fell below the standard
- Whether there is a breach of the Minimum Criteria for Registration/Licensing. The Authority views these as being fundamental requirements and it will generally intervene by taking enforcement action where there is a breach that cannot be resolved through the supervisory process. Where the problem is intractable, the Authority will consider restricting or revoking authorisation to conduct business
- Whether there is a risk of money laundering, terrorist financing, or financial crime
- Where there is unauthorised business in circumstances that create a risk and where the entity refuses to voluntarily cease operations
- Whether the breach was deliberate, dishonest, reckless, negligent, or inadvertent
- Whether the breach is symptomatic of serious or systemic weaknesses in management systems or internal controls relating to all or part of an institutions' business
- The duration, complexity, and frequency of the breach, and whether the entity has enjoyed any consequential benefit
- The impact of the breach or conduct and risks created by it, including the impact on customers or stakeholders and on the reputation of Bermuda as a sound financial centre
- A number of smaller issues which taken individually may not warrant enforcement action but which taken collectively may warrant action

2. THE CONDUCT OF THE INSTITUTION FOLLOWING THE BREACH

- Whether the breach was self-reported
- The degree of cooperation of the institution during the investigation
- Any remedial steps taken in respect of the breach
- The likelihood that the same type of breach (whether on the part of the institution or others) will recur if no action is taken
- Whether the institution concerned has complied with any requirements of the Authority
- The nature and extent of any false or inaccurate information provided by the institution and whether the information appears to have been provided in an attempt to knowingly mislead the Authority

3. THE COMPLIANCE HISTORY OF THE INSTITUTION

- Whether the Authority has taken previous action resulting in adverse findings against the institution
- Whether the Authority has previously requested the institution to take remedial action, and the extent to which such action has been taken;
- The general supervisory record of the entity may be relevant, especially how often the Authority has had to correspond, advise, direct, or otherwise intervene in the activities of the entity

4. ACTION TAKEN BY THE AUTHORITY IN SIMILAR CASES

The Authority will consider what action it has taken against institutions in comparable cases. If there are none, the Authority will consider what other regulators have done in similar cases.

5. GUIDANCE

The Authority will not take action against an institution for conduct that it considers to be consistent with guidance or other material published by the Authority which was current at the time of the conduct under review. Conversely, a failure to adhere to published guidance may weigh in favour of taking action.

6. PREVENTION & DETERRENCE

When determining whether to take enforcement action, or the appropriate action to take (including level of civil penalty, if appropriate), the Authority will have regard to the principal purpose for which it takes enforcement action, namely to encourage a high degree of compliance with the relevant legislation and deterring persons from committing breaches.

7. ACTION TAKEN BY OTHER REGULATORY OR LAW ENFORCEMENT AUTHORITIES

Where other regulatory authorities propose to take action in respect of a breach which is under review by the Authority, the Authority will consider whether the other authority's action would adequately address the Authority's concerns, or whether it would be appropriate for the Authority to take its' own action.

Delegation of Powers

Under the BMA Act, the functions of the Board of Directors are to manage the affairs and business of the Authority and to determine the policy objectives and strategy of the Authority. The current position is that the Board has delegated to the Chief Executive Officer (“CEO”) the power to exercise the various enforcement powers in the Regulatory Acts and SEA. The CEO makes the decision as to what action, if any, is to be taken in respect of such matters that are referred to him.

If enforcement action is to be considered, Enforcement will prepare the matter for decision by the CEO. This will include a summary of the facts and matters under review; the views of the relevant supervision department; legal advice and analysis; and setting out the various options with a recommendation as to the most appropriate outcome.

In order to assist the CEO with the decision making, the Authority has established an Enforcement Committee with specified terms of reference to act as an advisory body. This Committee is comprised of senior executive officers of the Authority representing each of the supervisory departments. The Chief Enforcement Officer attends every Enforcement Committee meeting and participates in the discussions but does not play any role in making the final determination. The supervisor responsible for supervising the RFI under review may participate in the discussions but will not participate in any decision making. The role of the Committee is to review the cases considered for enforcement action and provide the CEO with views on the issues arising and on the appropriate action to be taken. The CEO is not bound to follow the recommendations of either the Enforcement Department or the Enforcement Committee and will exercise his or her own discretion in making the final decision. In the event that either the Committee or the CEO requires further information, the matter can be deferred to a future meeting. In particularly serious cases which may impact upon issues of financial stability, the matter may be referred to the Board.

If the CEO determines that enforcement action is warranted, the enforcement procedures are commenced and a Warning Notice will be issued to the RFI concerned.

Notice to the RFI

Whilst some enforcement actions require no prior notice, most are subject to specific written notifications to the RFI concerned. The Regulatory Acts and SEA provide for a Warning Notice and Decision Notice procedure to be adopted in cases where the Authority is exercising its formal enforcement powers. This process will always be used in cases where the Authority is proposing to revoke or restrict a licence, issue formal directions, impose civil penalties, publicly censure, object to controllers and make prohibition orders. The process does not apply, however, to actions before the Courts, including where the Authority makes application for an injunction or for the winding-up of a RFI (where other forms of notification are prescribed). Similarly, referrals to the police fall outside of this process.

The purpose of issuing a Warning Notice is to afford a reasonable opportunity to RFIs and individuals to make written representations to the Authority before a final decision is made in respect to the proposed enforcement action. When the Authority has determined that one of the above actions is appropriate, it will issue a Warning Notice to alert the recipient to the intention of the Authority to exercise the enforcement power and to inform them of their right to make written representations to the Authority within a specified period (not less than 14 days under the Regulatory Acts and not less than 28 days under SEA). These periods can be extended with the agreement of the Authority. Such applications should be made in writing, state the reasons, and attach any supporting material. Given that the matter has warranted enforcement proceedings, only in exceptional circumstances will the Authority consider an extension. Extensions of time due to the ordinary pressures of life, such as workload and overseas travel, are unlikely to be granted.

The Warning Notice will be in writing; state the proposed action and provide reasons; advise of intentions in relation to publicity (assuming a subsequent decision is made to proceed with the action); and confirm the opportunity to respond to the proposal within the specified time. It will include contact details for the receipt of responses.

Service of the Warning Notice shall be at the registered office of the RFI unless other arrangements have been made between the parties.

If the Authority receives no response or representations within the specified period, the Authority may regard the allegations and conclusions set out in the Warning Notice as undisputed.

RFI's are advised that the content of written representations is a vital part of the process and great care should be given to their preparation. If the RFI accepts a factual assertion, it should state that clearly in the representations. If it disagrees with the Authority's findings, the RFI will need to explain in detail why it disagrees, addressing each and every factual assertion contained in the Warning Notice. A failure to address any aspect of the facts and circumstances set out in the Warning Notice may result in the Authority concluding that there is no challenge thereto and it will proceed accordingly. If there is a factual challenge, the RFI should provide any evidence in support of its' position, or risk the Authority concluding that no such material exists.

If it agrees with the findings but considers that an alternative and lesser outcome is appropriate, it must state the proposed alternative and explain the reasons why it is considered a more appropriate outcome. For example, if the RFI considers that the amount of a proposed civil penalty is wrong in principle or considers that it would struggle to pay the proposed amount, it should provide persuasive material in support of such contentions. The written representations should address all parts of the Warning Notice, including the proposed action regarding publicity. If it challenges proposed publication, the RFI should set out why the Authority's usual policy of publicising enforcement actions should not be followed in the particular case.

Although it is the policy of the Authority not to accept oral submissions, it is open to the RFI to propose that discussions take place with the Enforcement Department lawyers. Such discussions are routine and can assist with clarifying issues before the written representations are submitted. In the event that the RFI is legally represented, the Authority is open to such discussions taking place between lawyers on a 'without prejudice' basis, which in the context of regulatory action will mean that anything said during the course of such discussions will not be used against the RFI subsequently by the Authority in the process and will not be referred to during any appeal hearings without the express consent of both parties.

Upon receipt of written representations in response to a Warning Notice, the Authority will review them carefully. If the Authority is of the view that the concerns set out in the Warning Notice have not been satisfied by the representations, it may proceed to issue a Decision Notice. If the concerns have been satisfied by the representations, it may decide to take no further action in relation to those concerns and in such cases, the Authority will advise the RFI or individual accordingly by way of service of a Notice of Discontinuance.

From time to time the Authority in considering the matter after receipt of the written representations may choose a different outcome than that which was originally proposed in the Warning Notice. In such circumstances, the new outcome will not represent an increase in the nature or severity of the enforcement action proposed. If the Authority is of the view that the RFI has not been afforded an adequate opportunity of addressing the new and lesser outcome, it will afford it an opportunity to do so by way of further written representations.

Once the CEO has directed what action is to be taken, it is the responsibility of Enforcement to implement that decision. Typically, further references to the CEO and the Enforcement Committee will be necessary during the course of enforcement proceedings. For example, a decision to issue a Warning Notice will require a further report on receipt of the written representations and a further analysis and advice on the issues. Enforcement also has the responsibility of conducting any correspondence and discussions between the parties, but acts at all times on the direction of the CEO.

In the event that the Authority concludes that despite the written representations made in response to the Warning Notice, it will proceed to take the proposed enforcement action, it will issue a Decision Notice. As with the Warning Notice procedure, this decision will be made by the CEO acting on the advice of the Enforcement Committee.

The Decision Notice will be in writing; state the decision; document the reasons for the decision; state the date the decision is to be effective; state the decision in relation to publicity; and advise of any right to appeal.

Cases of Urgency

Where, in the opinion of the Authority, certain directions need to be imposed as a matter of urgency on the licence of an RFI, the Warning Notice and Decision Notice procedure outlined above does not apply. In such cases, the Authority can impose the directions without a Warning Notice and the directions will take effect immediately. The Authority must in the Notice imposing the directions state the reasons for the decision and afford the licensee the opportunity to make representations. During this process, however, the directions will remain in force. Any representations must be considered by the Authority and a final decision made in accordance with the decision-making process set out above.

Publicity

The Regulatory Acts and SEA contain provisions authorising the Authority to publish any matter where a Decision Notice has been issued. The Acts provide that the Authority may publish such information about the matter as it considers appropriate. In the event that the Authority decides to publish such a decision it is obliged to notify the RFI of this decision prior to publication.

Publication will be by way of a press release by the Authority summarising the matter, including the name of the RFI concerned; the provisions of the legislation that have been breached; a summary of the facts of the breach as they appear in the Decision Notice; the relevant dates; the nature of the disciplinary measure taken; and the quantum of any civil penalty where applicable. The matter will also be published on the Authority's website and in the Authority's Annual Report. The form and content of any publication will ultimately depend on the nature and circumstances of the matter and the nature of the action taken.

As part of the decision-making process, the Authority will consider whether it is in the public interest not to publish its' decision, or any part of it. The Authority will consider its regulatory objectives and the application of the enforcement Principles. The Authority will also consider those facts, matters, and circumstances that have led to enforcement action. More specifically the Authority will consider the following:

- The deterrent effect of publication;
- The protection of the reputation of Bermuda as a sound and well-regulated financial centre;
- The protection of customers and potential customers of the institution concerned;
- The adverse effects of publication where the size and significance of the action is relatively minor;
- The extent to which publication of the decision will assist and inform institutions and the public generally about the relative gravity of the conduct and the penalty considered appropriate for that conduct;

- The potential to jeopardise the stability of financial markets; and
- The extent of any prejudice to an on-going investigation.

The Authority will consider the circumstances of each case, but it will usually publish all enforcement actions, including the name of the entity involved. In some instances, the Authority will consider not publishing the decision where the publication may jeopardise the stability of financial markets, be prejudicial to the interests of customers, or prejudice an on-going investigation. However, the Authority will not withhold publication or withhold publicising the name of the RFI on the basis of unsupported and generalised assertions of reputational harm or loss of business.

From time to time, the facts as set out in the published decision may require the naming of a third party. This will be in a rare case where the third party was so intimately involved in the facts and matters that led to the enforcement action that the inclusion of the name is necessary to make sense of the narrative of the case. In this event, the Authority will take care not to publish the name of such party without first affording them an opportunity of making representations to the Authority.

The Regulatory Acts and SEA prohibit publication of an enforcement action pending an appeal. In the event of an appeal being filed, no publication will occur until all avenues of appeal have been exhausted and only if the Authority's decision is upheld.

4. ENFORCEMENT OPTIONS

The BMA has a wide range of enforcement options available to deal with failure to comply with both prudential and AML/ATF requirements, which it employs in an effective, proportionate and dissuasive manner. These powers are available to be used in order to address non-compliance on the part of licenced entities, as well as NLPs.

The enforcement options available to the Authority are:

- a) Imposition of directions, restrictions, and conditions;
- b) Imposition of a civil penalty;
- c) Injunctions;
- d) Public censure;
- e) Prohibition orders against individual directors and officers;
- f) Objections to Controllers;
- g) Revocation of licence (generally) and cancellation of registration (AML only);
- h) Winding up; and
- i) Referral to the Police.

In the event that a decision is made to proceed with enforcement action the Authority will decide which of the enforcement options to impose, taking into account its regulatory objectives and the enforcement Principles.

It is not possible to define with any precision the circumstances that will dictate which enforcement option will be selected. In addition to those matters listed in Figure 3 above, the Authority may also consider some or all of the matters set out below when choosing an enforcement option:

Imposition of directions, restrictions and conditions

The Authority has power to give an RFI a direction such as appears desirable to protect the interest of customers. Further, the Authority may restrict a licence by imposing such conditions as appear desirable for the same purpose, if it appears that the circumstances are not such as to justify revocation.

These enforcement powers can be tailored to address specific circumstances. The relevant factors in choosing this option, subject to specific statutory criteria, include:

- The effect upon the general operations of the RFI;
- The effectiveness of the direction, restriction, or condition to address the issue;
- The likelihood of compliance and the capacity to monitor that compliance; and

- Whether possible external reporting obligations will adversely affect the operations of the RFI.

Imposition of a Civil Penalty

There are two types of statutory provisions which deal with the imposition of civil penalties.

The first is a power to impose a civil penalty ranging from \$500 - \$5,000 for each week a licensee is late in the submission of statutory filings with the Authority. This power replaces the pre-existing power to impose agreed amounts for late filing. It is anticipated this power will be used to address late filings generally and will be used to encourage timely provision of information to the Authority. Consideration will be given to the resources of the licensee when setting the amount of any penalty as well as any exculpatory circumstances. In the usual course of events the decision to impose this type of civil penalty will be made by the supervisory departments and not by reference to the decision making process discussed in section 3 above.

The second power is the power to impose a civil penalty up to a statutory maximum amount⁶ for each breach of an obligation imposed on the RFI under the Regulatory Acts or SEA. The maximum civil penalty relates to each failure in compliance. It follows that a breach of a number of obligations (which often occurs in AML matters) may attract a separate penalty for each of those breaches, or one penalty reflecting all of the conduct that constitutes the breaches.

The following matters relate to the exercise of this power:

1. *Factors relevant to a decision to impose a penalty*

The factors that the Authority will take into account in determining whether or not to impose a civil penalty include:

- The resources of the RFI;
- The need to deter the Licensee or NLP, and others from similar conduct or practices; and
- The action taken by the Authority in previous similar cases.

2. *Factors relevant to a decision on the amount of the civil penalty*

⁶ Currently \$500,000 under the Regulatory Acts and \$10,000,000 under SEA

Any penalty imposed by the Authority must be appropriate, which is defined in the legislation as being 'effective, proportionate and dissuasive'. The Authority will consider all the relevant circumstances of a case when it determines the level of a financial penalty and will seek to act consistently.

Breaches of AML/ATF requirements are considered to be very serious by the Authority. If the Authority determines that a civil penalty is appropriate in such a case, it will only be in exceptional circumstances that anything other than substantial civil penalties would be imposed. SEA provides that where a company is in breach of AML/ATF requirements, direction or licence condition and that breach was committed with the consent or the connivance of an officer of the company, the competent authority may impose a civil penalty against both the company and the officer.

The Authority will consider the relevant facts, circumstances and impact of each breach. The process by which the level of the penalty will be arrived at is set out in the Annex A.

Injunctions

This power enables the Authority to apply to the Court for injunctive relief. Injunctions may be sought on an urgent and ex-parte basis. The Court may make three types of order under the provisions in the various Acts: to restrain conduct or action, to compel conduct or action and to secure assets and evidence.

In deciding whether an application for an injunction is appropriate in a given case, the Authority will consider the immediate concern, threat or risk. The Authority may consider the following:

- The risk of dissipation of assets;
- Loss or preservation of evidence;
- Likelihood or risk of repeated conduct;
- Applicable legal standards and tests;
- The urgency of the matter; and
- The effectiveness of other options available to the Authority to address the matter.

Public Censure

This power enables the Authority to publish a statement which amounts to a public censure against an RFI and would be used in lieu of other enforcement options. It would only be in an exceptional case that the Authority would be prepared to issue a public censure rather than take alternate enforcement action if such an action would otherwise be available. However, public censure may be an acceptable alternative to other enforcement actions

where other actions may create a serious risk of insolvency or create hardship disproportionate to the nature of the breach, due to the idiosyncratic circumstances of the RFI. For example, where there is verifiable evidence that the RFI would be unable to meet a financial penalty at an appropriate level, then it may be that a Public Censure may be appropriate. Other circumstances which may attract the use of this power may be the need to indicate to the regulated community the Authority's views on specific actions or conduct

Some particular considerations that may be relevant when the Authority determines whether to publicly censure are:

- Whether or not deterrence may be effectively achieved by issuing such a statement. The more serious the breach the more likely that other enforcement options would be chosen;
- If the RFI has brought the contravention to the attention of the Authority this may be a factor in favour of public censure;
- Whether the RFI has co-operated with the Authority;
- The compliance history of the RFI; and
- The impact upon the RFI.

Prohibition orders against individual directors and officers

A prohibition order will ban an individual from roles in relation to licensees in a specific regulatory sector, or in relation to an NLP. The standard of conduct expected of individuals who are directors or individuals who perform functions relating to a regulated activity is set out in the Minimum Criteria of the Regulatory Acts, in section 11A of SEA, and may be supported by sector Guidance Notes, Statements of Principle and Codes of Conduct⁷.

The Authority has the power to vary the scope of prohibition orders depending on the circumstances of each case. For example, the Authority may seek to prohibit individuals from performing any class of function in relation to the regulated activity of any RFI in the specific financial sector, or it may limit the prohibition order to specific functions in relation to that sector.

The scope of a prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper, and the severity of risk which he poses to compliance by regulated licensees and the reputation of Bermuda as a financial centre.

⁷ The Authority has published several Codes of Conduct addressing issues of Corporate Governance

The Authority may take into account some or all of the following matters when considering whether to make a prohibition order:

- The conduct as compared to the standards set out in the Minimum Criteria;
- Whether the conduct was deliberate, reckless, negligent, or inadvertent;
- The impact of the conduct, including risks to the entity, customers, and stakeholders;
- The length of time since the conduct occurred;
- Whether the individual was knowingly concerned in a contravention by the RFI of a requirement imposed on it by or under the Regulatory Acts, or the AML/ATF Regulations;
- The position, activity or role occupied by the individual;
- The nature and activities of the RFI concerned;
- Whether the individual provided false or misleading information to the Authority or made inadequate disclosure;
- Whether the conduct was dishonest, fraudulent or criminal; and
- Whether the conduct showed the individual lacked competence to perform the tasks required in the role.

Objections to Controllers

The Acts contain provisions enabling the Authority to object to officers and directors at the time of appointment, or to the acquisition of significant shareholdings in a RFI giving rise to “control”, (usually 10% or more of the voting shares in the entity), or to the continued control of the entity via such a shareholding. There is also an obligation to notify the Authority of any proposal to acquire such a shareholding and afford the Authority three months within which to advise if it has any objection to the acquisition.

Unless the Authority is satisfied that:

- the person is a fit and proper person to become, or continue to be a controller;
- the interests of customers would not be threatened in any way by the person becoming a Controller; or
- the institution’s capacity to meet the Minimum Criteria would not be affected by the persons likely influence on the Institution, or if the Criteria were not being met, the person would be likely to undertake adequate remedial action.

The Authority may serve a preliminary Notice and, in the absence of an adequate response, a Notice of Objection. A similar provision enables the Authority to issue such Notices where it has reached adverse conclusions, on the same criteria, against an existing shareholder controller.

The Acts contain provisions that provide for consequences for failing to provide the Authority with the level of notice in respect of the acquisition of the shares in question or continuing to be a shareholder controller after receiving a Notice of Objection. In such cases the Authority may issue a further Notice directing one or more of the following restrictions:

- Prohibiting any transfer or agreement to transfer the shares in question;
- No voting rights shall be exercisable in respect of the shares in question;
- No further shares shall be issued in right of the shares in question or pursuant to any offer made to the holder; and
- No payments be made of any sum owed from the institution on the shares, except on liquidation.

The Acts further provide that that Court may, on application of the Authority, order that the shares be sold. No application can be made until the expiry of the Appeal period in respect of the Notice of Objection. The proceeds of the sale are to be paid into Court for the benefit of the persons beneficially interested in them. There are further provisions expanding the extent of the Court's jurisdiction.

This provision will be used in circumstances where the Authority is concerned with the fitness and propriety of the relevant person to either acquire a controlling interest in a regulated entity, or if the Authority becomes aware of issues giving rise to such concerns in respect of a person who already holds such a shareholding.

[Revocation of Licence and cancellation of NLP Registration](#)

Revocation of license

This is one of the most serious enforcement options available to the Authority and will only be taken if all other options are inappropriate. The relevant factors to be considered in exercising this enforcement action include:

- The probability of future compliance with the minimum licensing criteria, including any conditions on the licence;
- The impact on policyholders, depositors, clients or other stakeholders of the RFI; and
- Conduct in breach of the Act, including the Minimum Criteria, of so serious a nature that continued licensing of the RFI is not consistent with the Authority's responsibilities.

Cancellation of Registration of a NLP

The SEA contains provisions requiring the registration of entities designated as AML/ATF regulated financial institutions but which are not otherwise licensed. Given they are not

otherwise supervised by the Authority, SEA requires they be registered for the purposes of that Act. A failure to register as an NLP constitutes a criminal offence. Directors and controllers of an NLP are subject to a fit and proper test. The Act provides for the cancellation of registration in four situations, namely where:

- It appears after registration that the Authority would have grounds to refuse registration;
- The registrant is in breach of a material provision of the AML/ATF Regulations, or a direction/condition;
- The registrant has failed to comply with obligations imposed by or under the SEA; or
- The registrant has ceased to carry on business.

The significance of cancellation of registration is that no non-licensed financial institution can carry on business unless it is registered. Thus, cancellation of registration will have the effect of prohibiting the institution from further carrying on business. It follows that the approach to the exercise of powers to wind-up or revoke the license of RFIs would also apply to the exercise of this power.

The use of this power will be considered if a breach is deemed serious enough to warrant the closure of a business because, for example, it is a business classified as high risk but has no effective AML/ATF controls; or it is a business that is nothing more than a front for money laundering operations. This action will be considered if remedial action is deliberately not taken and/or AML/ATF obligations are continuously ignored. The regime is also supported by criminal sanctions.

Winding Up

An RFI may be wound up by the Court under section 161 of the Companies Act 1981 on grounds that include that the Court is of the opinion that it is just and equitable that it be wound up. Furthermore, the Authority has power to present a petition to wind up an RFI on grounds that include that the RFI has failed to satisfy an obligation placed upon it by the Regulatory Acts.

The winding up of an RFI is one of the most serious options available as it terminates all relationships and crystallises all entitlements and liabilities. It is only likely to be used when there are no viable or appropriate alternatives. The relevant factors to be considered in deciding whether to exercise this option include:

- Whether the RFI is insolvent;
- Whether there is an effective operating board of directors that has undertaken or can be expected to undertake corrective action in a timely manner;

- Whether there are breaches of the Regulatory Acts, including the Minimum Criteria, that are so serious that the continued existence of the entity is not in the interests of customers;
- Whether there is a risk that the ongoing operations of the entity may adversely affect the interests of stakeholders, for example where there is a risk that funds belonging to depositors or investors may be misappropriated; and
- The risk to the reputation of Bermuda as a reputable financial centre.

Referral to Police

The various Acts contain provisions that make certain conduct or omissions liable to criminal sanctions. Among the factors to be considered in choosing this option include:

- Availability of evidence;
- Resources and powers of Authority and other agencies and bodies including the Police and the courts;
- Whether it will be effective in achieving the regulatory outcome; and
- The gravity of the conduct, particularly whether it represents a serious level of dishonesty.

The Regulatory Acts were amended to reduce the number of breaches which attract criminal penalties and, in lieu thereof, grant the Authority power to take administrative action, such as to impose civil penalties. Conducting regulated activities without a licence and misleading the Authority remain criminal offences. A referral to the Police can occur in addition to other regulatory enforcement action.

5. APPEALS

The following enforcement actions carry a right to appeal to a Tribunal:

- a) Imposition of directions, restrictions and conditions;
- b) Imposition of a civil penalty;
- c) Injunctions;
- d) Public censure;
- e) Prohibition orders against individual directors and officers;
- f) Objections to controllers; and
- g) Revocation of licence and cancellation of registration (AML only).

Any appeal shall be dealt with in the manner set out in the sector specific Tribunal Regulations. The Ministry of Finance is responsible for appointing the appeal Tribunals and an appeal is commenced by the RFI serving a notice of appeal to the Secretary of the appeal

Tribunal. The Regulatory Acts and SEA provide that, with the exception of the revocation of a licence and the cancellation of registration of an NLP, the decision of the Authority remains effective unless there is an order by a Tribunal suspending its operation. The Authority will not automatically consent to a stay of a decision pending the outcome of the appeal process.

There is a right of appeal to the Court on a question of law arising from a decision of a Tribunal, and a further appeal from the Court to the Court of Appeal, with leave.

Appeals against the exercise of powers to seek injunctions or winding-up orders are dealt with through the usual Court processes.

6. EXCHANGE OF INFORMATION

Exchange of Information with other National regulators and Enforcement bodies

Specific enforcement issues can be coordinated with the other national supervisors and enforcement bodies via regular bilateral meetings which are held twice annually by the BMA. The meetings focus on sectors relevant to both supervisors or on any potential or actual areas of overlap in supervision and/or enforcement. The BMA holds meetings with:

- the Financial Intelligence Agency;
- the Registrar of Companies (Superintendent of Real Estate);
- the Casino Gaming Commission;
- the AML/ATF Lawyers and Accountants Board; and
- the Bermuda Police Service.

Any requests for information issued to other national regulators or enforcement bodies are coordinated and logged by the Authority's Legal Department.

Any requests for information received from other national regulators or enforcement bodies are reviewed by the Legal Department, which then coordinates an appropriate response with the AML and Enforcement Departments and ensures that this response is provided in a timely manner. The responsibility for providing accurate, comprehensive, and up-to-date information lies with the AML and Enforcement Departments.

The Enforcement Department coordinates directly with the Bermuda Police Service where prudential or AML/ATF concerns indicate that a crime may have been committed in Bermuda or that proceeds of crime are being held on the island.

Exchange of information with International regulators and Enforcement bodies

The Enforcement Department communicates with international regulators and enforcement bodies in order to make or respond to a request for the sharing of information relevant to an investigation or enforcement action.

The Enforcement Department coordinates with the any relevant department within the Authority when issuing a request for information from an international regulator. The Legal Department will advise on whether an existing Memorandum of Understanding ('MoU') is in place with the relevant supervisor and if not, how a request for information might best be made in its absence. The Legal Department keeps an up-to-date log of all requests for information issued. The Regulatory MoU Information Protection Policy applies to all information received from an overseas regulator.

Any requests for information received from other international regulators are reviewed by the Legal Department, which then coordinates an appropriate response with the Enforcement Unit and ensures that this response is provided in a timely manner. The Legal Department responds within the terms of established protocols and will keep a log of all such requests, as well as following up on assistance given and requesting feedback from the overseas supervisor regarding the Authority's assistance. If the BMA is unable to provide assistance to an overseas supervisor due to a lack of statutory powers, the Legal Department will issue requests to the Financial Intelligence Agency, Bermuda Police Service, or other appropriate national body to assist, or it will confirm that it does not have the statutory power to assist the other authority.

7. USE OF REVENUE

The budget of the Authority is based on the fees paid by the institutions it regulates. The amount each institution pays is determined by the size and the type of business undertaken. The Authority also receives fees from NLPs. The Authority does not receive any funds from the public purse.

The revenue from penalties imposed under the Regulatory Acts will be applied to the general cost of supervision. It should be noted that some of that revenue will be used to offset the cost of enforcement, which involves the use of dedicated staff and may involve the use of external Counsel, consultants and other expenses.

SEA provides that the Authority is required to apply the money received from penalties imposed under that Act exclusively to the cost of AML/ATF supervision.

The SEA prohibits the Authority from considering the cost of AML/ATF supervision when considering whether to impose a penalty or the amount of any penalty. That approach is also taken with respect to enforcement action under the various Regulatory Acts.

ANNEX A: Process for arriving at amount of civil penalty

The appropriate penalty means one that is “effective, proportionate, and dissuasive”.

1. Assess Seriousness (culpability & harm)

This will be the key factor in deciding the size of the penalty for each breach. Consider the regulated entity’s culpability and any harm caused, or which might foreseeably have been caused. Identify the appropriate range by reference to the Table below.

Identify the appropriate ‘Starting Point’ based on an entity with no previous findings against it and with a reasonably good supervisory record.

2. Consider the effect of aggravating and mitigating factors.

Once the Starting Point has been identified, make adjustments upwards to take account of any specific matter which aggravates the behaviour/conduct complained of. These will be matters that are not included in the Table but which make the breach more serious. These would include previous regulatory breaches; a poor regulatory history; and whether the regulated entity benefitted from the breach by increasing its profits or avoiding a cost.

Make an adjustment downwards to take into account any matters which mitigate the seriousness of the behaviour/conduct. These will be matters not included in the Table.

3. Consider the ability of the regulated entity to pay the Civil Penalty.

The purpose of a civil penalty is to mark the seriousness of the breach with a penalty that is proportionate and fair. A civil penalty must not be of a size that it threatens the solvency of the entity or threatens its ability to conduct business as a going concern. Consider the last three years of submitted financial returns, and any representations that the entity may have made in response to the Warning Notice about its ability to pay. The same considerations would apply to individuals.

4. Determine Penalty

Having taken the steps outlined above, determine the final penalty and give short reasons. If the penalty falls outside of the range indicated in the Table, state the reasons for this.

5. Multiple Breaches

In cases where there are multiple breaches of a similar nature, it may be appropriate to determine a single civil penalty that reflects all of the behaviour/conduct rather than impose separate penalties for each breach. This will apply only where the appropriate penalty can be accommodated within the statutory maximum.

In cases where the statutory maximum is considered to be insufficient to mark the overall seriousness of the case overall, it may be necessary to apply the appropriate penalty to each breach separately.

Discretionary Civil Penalties –Ranges (per breach)

The table is only a guide and the level of civil penalty recommended in individual cases may differ. Each case will be assessed on its own merits taking into account all of the relevant facts. The most important factors will be the reputational risk to Bermuda and any loss or risk of loss to clients.

	Minor	Moderate	Major	Critical
Nature of the Breach	Small number of non-systemic and low priority regulatory failings	Several non-systemic, medium priority regulatory failings	Significant failings which may be systemic	Highly significant systemic failings
Risk	No risk or very small risk of loss to clients	Some risk of loss to clients	Significant risk of loss or risk of substantial loss to clients	Significant risk of substantial loss to clients or actual substantial loss to clients
Cooperation with the Authority	RFI was open and co-operative with the Authority	RFI was open and co-operative with the Authority	RFI was not fully open and cooperative with the Authority	RFI was not open and co-operative with the Authority
Reputational Risk to the Jurisdiction	No risk or small risk to reputation of Bermuda	Some risk to the reputation of Bermuda	Significant risk to the reputation of Bermuda	Substantial risk to the reputation of Bermuda
Risk of Financial Crime	No risk or small risk of financial crime (including AML/ATF) or being used to facilitate financial crime	Some risk of financial crime or being used to facilitate crime	Significant risk of financial crime or RFI being used to facilitate financial crime	Financial crime committed or RFI used to facilitate financial crime
Conduct of the Institution	RFI acknowledged breaches straight way; RFI self-reported	Some acknowledgement of some breaches	RFI failed to acknowledge breaches	RFI deliberately withheld the breaches from the Authority in order to obtain a benefit or mitigate loss
Remediation by the RFI	Effective steps taken to rectify breach(es) and prevent recurrence	Some steps taken to rectify breach(es) and prevent recurrence, but inadequate	Few steps taken to rectify the breach(es) and prevent recurrence, but inadequate	No steps taken to rectify the breaches
Range of Civil Penalty – Prudential (\$500k max)	No penalty - \$75,-000	\$75,000-\$200,000	\$200,000-\$350,000	\$350,000 - \$500,000
Range of Civil Penalty – SEA (\$10 million max)	No penalty - \$150,000	\$150,000-\$2.5 million	\$2.5 million - \$6 million	\$6 million - \$10 million

