BERMUDA MONETARY AUTHORITY

17 August 2026

Enforcement Guide

Statement of Principles on the Exercise of Enforcement Powers

Glossary of Terms

AML/ATF/CPF	Anti-Money Laundering, Anti-Terrorist Financing and Counter-Proliferation Financing
The AML/ATF/ CPF Regulations	The Proceeds of Crime (Anti-Money Laundering & Anti-Terrorist Financing) Regulations 2008
Authority or BMA	The Bermuda Monetary Authority
CPF	Counter-Proliferation Financing
Customer	A policyholder, depositor, investor, or client
The BMA Act	The Bermuda Monetary Authority Act 1969
The Court	The Supreme Court
Enforcement Committee	The Enforcement Committee is tasked with considering and determining whether enforcement action is necessary in respect of any enforcement-related matters referred to it by the Enforcement Department.
Enforcement Department	The Enforcement Department of the Authority is part of the Authority's Legal Services and Enforcement Department, and separate from the Authority's supervisory departments
Enforcement Guide	The 2026 Statement of Principles on the Use of Enforcement Powers
International Sanctions	Defined in Section 5(1B) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 as meaning every Order that is listed in Schedule 1 to the International Sanctions Regulations 2013 or those extended to Bermuda via United Kingdom obligations.
Proliferation Financing	Defined in Section 2 of Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 as meaning the act of providing funds or financial services for use, in whole or in part, in the manufacture, acquisition, development, export, trans-shipment, brokering, transport, transfer, stockpiling of, or otherwise in connection with the possession or use of, chemical, biological, radiological or nuclear (CBRN) weapons, including the provision of funds or financial services in connection with the means of delivery of such weapons and in contravention of international sanctions obligations that are in force in Bermuda.

The Regulatory Acts	Insurance Act 1978 Banks and Deposit Companies Act 1999 Trusts (Regulation of Trust Business) Act 2001 Investment Business Act 2003 Investment Funds Act 2006 Credit Unions Act 2010 Corporate Service Provider Business Act 2012 Money Service Business Act 2016 Digital Asset Business Act 2018 Fund Administration Provider Business Act 2019 Digital Asset Issuance Act 2020
NLP	A non-licensed AML/ATF/CPF-regulated financial institution registered by the Authority under section 9 of the SEA
RFI	Regulated Financial Institution – being an entity that is licensed/registered under the Regulatory Acts
SEA	The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008

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Preface

The purpose of this Statement of Principles (Enforcement Guide) is to:

- Satisfy the requirements of the Regulatory Acts[1] to publish a statement of principles in accordance with which the Authority will exercise its formal enforcement powers
- Provide a guide which aims to:
    - Establish 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 Statement of Principles provides a unified guide on the Authority's exercise of its enforcement powers. It replaces the 2018 Statement of Principles and Guidance on the Exercise of Enforcement Powers.

The Regulatory Acts and SEA require the Authority to publish a Statement of Principles to provide guidance to the public on how it intends to exercise its enforcement powers and how it proposes to administer its enforcement functions.

1. Part 1 of the Enforcement Guide sets out the Authority's principles on the use of enforcement powers;
2. Parts 2-5 of the Enforcement Guide provides guidance on the use of enforcement powers and an overview of the Authority's Decision-Making Process; and
3. Part 6 of the Enforcement Guide introduces a settlement framework whereby the Authority may, in certain circumstances, enter into a settlement agreement with an RFI or NLP where there is an early acknowledgement by an RFI (and where applicable, a NLP) of breaches committed pursuant to the Regulatory Acts and SEA.

[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, section 5(1) Digital Business Act 2018, section 6(1) Fund Administration Provider Business Act 2019 and section 7(1) Digital Asset Issuance Act 2020.

As each of the Regulatory Acts and SEA broadly contains a uniform suite of enforcement powers, the Enforcement Guide is of general application. Its contents will be taken into consideration by the Authority, as appropriate, at all stages when considering the commencement of enforcement action. The Authority's use of its enforcement powers will be applied in a flexible manner in any given instance, taking into account the legal and factual context. This Enforcement Guide will not apply where provisions of the Regulatory Acts address matters other than enforcement.

1. The Principles of Enforcement

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

The Authority is afforded statutory enforcement powers under the Regulatory Acts and the SEA. The Authority will exercise its formal enforcement powers in accordance with the principles set out in Figure 1, below. The overriding considerations taken into account by the Authority prior to the exercise of enforcement powers are the protection of all clients, policyholders or depositors of an RFI, and the protection of Bermuda's reputation as a well-regulated jurisdiction. The Authority will always take enforcement action where it is necessary to do so in order to protect such interests. In addition to the use of 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 exercises its enforcement powers in accordance with its principal objects and duties. This includes its mandate to:

- Supervise, regulate and inspect any financial institution which operates in or from within Bermuda
- Promote the financial stability and soundness of financial institutions
- Assist with the detection and prevention of financial crime
- Assist foreign regulatory authorities in the discharge of their duties
- Supervise and monitor compliance with all AML/ATF/CPF requirements[2]

The Authority strives to continuously strengthen and improve its enforcement policies and procedures. In addition, its commitment to addressing and enforcing against non-compliant RFIs is stated each year in its Annual Business Plan.

The Authority expects that RFIs will be compliant with all of their regulatory obligations, including the minimum criteria for registration/licensing. Non-compliance creates risks to clients, policyholders and depositors, and may threaten the long-term sustainability of the RFI. Post-enforcement action costs for a non-compliant RFI may include increased headcount, consultancy fees, increased technological budget, reputational damage, potential loss of business opportunities, possible review by other regulators, and long periods of regulatory oversight.

[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/CPF compliance are set out in section 5 of the SEA.

The Regulatory Acts and SEA contain provisions empowering the Authority to publish any matter that is the subject of enforcement action (following the issuance of a decision notice), and it is the policy of the Authority to publish all enforcement actions, including the name of the RFI/NLP, unless there are exceptional reasons not to do so.

By publicising enforcement outcomes, the Authority raises awareness of supervisory and AML/ATF/CPF standards and demonstrates its commitment to regulation in accordance with agreed international standards, thereby *de facto* assisting RFIs in accessing third-country markets that require adherence to such standards and best practices.

Figure 1: The Principles of Enforcement

Principles of Enforcement

- Enforcement action will be taken to protect clients, policyholders or depositors from harm
- Enforcement action will be taken to protect financial stability and 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 licensable or registrable 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 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

- The Authority will exercise its enforcement powers in a manner that is responsive to the breach

2. When will enforcement action be considered?

Minor matters of regulatory non-compliance will generally be addressed as part of the Authority's normal supervisory process and through the ongoing supervisory relationship with the RFI/NLP. This approach recognises that many issues can be resolved effectively through proactive supervision, monitoring, engagement with the RFI/NLP, and timely remedial action, without the need for formal enforcement action. Where a statutory requirement has not been met, the Authority may determine that a supervisory response is appropriate, provided the matter can be addressed promptly and adequately through the supervisory relationship. In such cases, the Authority expects the RFI/NLP to act promptly in taking the agreed remedial action to address the Authority's concerns. Escalation to the Enforcement Department will take place where the matter cannot be adequately addressed through supervision, including where the RFI/NLP fails to take appropriate remedial action, the issue presents a potentially serious risk, or formal enforcement intervention is otherwise necessary to protect clients, policyholders, depositors, Bermuda's reputation or, where applicable, the public. See Figure 2 for a high-level overview of the enforcement process.

Figure 2: Overview of the Enforcement process

2.1 Remediation by Supervision

Supervisors also have certain statutory powers that they may exercise without the need for formal referral to the Enforcement Department. For example, a supervisor may add, vary or delete any condition imposed upon the Certificate of Registration of an RFI. Furthermore, a supervisor may impose statutory late filing fees for failure on the part of an RFI to file statutory statements or returns. Such powers do not require the application of the Warning and Decision Notice procedure under the law. Further, although these powers do not require a formal referral to the Enforcement Department, it is common for supervisors and enforcement officers to work closely to ensure that the same enforcement principles are applied where appropriate. The use of such powers with respect to an RFI is monitored by Supervision with the assistance of the Enforcement Department, as any recurring RFI/NLP operational issues may be indicative of a more serious underlying supervisory issue, which may require enhanced supervision to be applied or the use of formal enforcement intervention, or both.

2.2 Referral to Enforcement by Supervision

If a supervisory issue is potentially serious, the supervisor will refer the matter to the Enforcement Department for consideration of formal enforcement action. A matter will be potentially serious if it creates a risk of harm to clients, policyholders or depositors or to the reputation of Bermuda as a well-regulated financial centre. A breach of AML/ATF/CPF requirements will always be considered by the Authority as potentially serious due to the nature of such contraventions. In relation to contraventions that are not deemed serious at the outset but could escalate quickly, the supervisor will discuss the matter with the Enforcement Department to determine the most appropriate course of action. If the matter is referred to the Enforcement Department, the supervision team and enforcement officers will determine the most appropriate course of action to quickly protect clients, policyholders, depositors or Bermuda's reputation and, in certain scenarios, the public. Matters which are typically referred to the Enforcement Department include:

- Breaches of the Minimum Criteria for Registration/Licensing
- Breaches of minimum solvency/liquidity requirements
- Failure to meet or maintain fitness and propriety requirements
- Corporate governance contraventions resulting in serious risk to RFI operational effectiveness and/or harm to its clients, policyholders or depositors
- Failure to comply with AML/ATF/CPF obligations
- Failure to comply with International Sanctions 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
- Circumstances where a formal investigation or the appointment of an external investigator may be necessary

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

A referral to the Enforcement Department does not operate to suspend ongoing supervision and remediation. Enforcement action and supervision/remediation serve distinct supervisory intervention purposes, and each framework operates independently of the other. Supervision is tasked with overseeing the current and future conduct of the RFI/NLP and will expect all non-compliance to be remediated within a reasonable time period[3], irrespective of any formal enforcement action that may be taken. Enforcement action, however, is designed to address specific failures and ensure effective, dissuasive action. Effective remediation by an RFI/NLP does not preclude the Authority from taking enforcement action with respect to the originating supervisory failures.

Proactive and effective remediation, however, may be a mitigating factor to be considered by the Authority as part of the enforcement process.

The Authority must take into account any failure by an RFI to comply with all laws applicable to it when determining whether or not the RFI is conducting business in a prudent manner, and this includes laws relating to AML/ATF/CPF. In this scenario, a failure to comply with such laws is a breach of the RFI's Minimum Criteria for Registration/Licensing, which then allows for the invocation of enforcement powers under the requisite Regulatory Act by the Authority. However, where there is a breach of or failure to comply with AML/ATF/CPF laws by an RFI/NLP, then the enforcement powers afforded to the Authority as a ‘Supervisor’ under such laws may be exercised. For example, a failure in AML/ATF/CPF or International Sanctions compliance may raise questions about the fitness of one or more individuals within the RFI or raise broader corporate governance concerns. Where such issues arise, the Authority may consider the use of its powers under the relevant Regulatory Act to more appropriately address the failure.

The Regulatory Acts also state 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 Authority will view it as serious and will almost always refer it to the Enforcement Department. Under SEA, the Authority may issue a directive to an AML/ATF/CPF RFI and NLP if it fails to comply with International Sanctions obligations. The Authority expects all RFIs and NLPs to have appropriate systems and controls to mitigate the risk of financial crime and the risk of international sanctions evasion. Under SEA[4], the Authority is responsible for supervising RFIs and NLPs to ensure that they maintain adequate systems and controls to mitigate the risk of breaching International Sanctions. Such a failure may, in certain circumstances, also result in a referral to the Bermuda Police Service.

[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 take much longer to complete.
[4] See Section 5 of the SEA

3. Overview of the Enforcement Decision-Making Process

3.1 Introduction

As set out above, the supervisory departments will refer identified regulatory issues to the Enforcement Department. Although the majority of issues will be identified as part of the usual supervisory process, matters can also come to light through referrals from outside the Authority, such as the Financial Intelligence Agency or the Police.

Following a referral to the Enforcement Department, the Deputy Director of Enforcement 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 and 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 is aligned with 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/NLP of the referral in any correspondence on the matter. If, after referral to the Enforcement Department, a decision is made not to take enforcement action, this will also be communicated to the RFI/NLP. Once a matter has been referred to the Enforcement Department and before a final decision is made as to whether enforcement action will be taken, the Authority will continue to communicate with the RFI/NLP as necessary. This allows for continuous engagement and cooperation, which can lead to proactive resolution or reduction of proposed enforcement actions.

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

3.2 Information Gathering and 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 the Enforcement Department. This process will usually be managed by the Enforcement Department.

The Regulatory Acts, the SEA and the BMA Act provide the Authority with formal powers to require, by written notice, any information reasonably necessary for the performance of its functions, to compel the production of documents, and to require officers of an RFI or NLP to appear before the Authority to answer questions. The Authority also has formal powers to enter the business premises of RFIs under the Regulatory Acts (and both RFIs and NLPs under SEA) for the purpose of inspecting the premises, observing the carrying on of business, inspecting, and taking copies of any recorded information, and requiring any person on the premises to provide an explanation of any recorded information. These powers also enable the Authority to conduct spot checks on premises of RFIs conducting business in high-risk areas, such as wire transmission of funds. Failure to comply with requests for information without a reasonable explanation constitutes a criminal offence.

Some of the Authority's powers under the Regulatory Acts and SEA to compel the production of 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 and where there are reasonable grounds for believing an RFI/NLP would fail to comply with the request. This also extends to situations in which it believes that if such a request were made, that information or documentation would be destroyed. The use of these powers is infrequent as most RFIs/NLPs requested to provide information generally cooperate. Other scenarios where the use of such powers is contemplated are where the Authority has material concerns about the accuracy or completeness of information provided to it. Where representations by an RFI/NLP in response to a Warning Notice (see below) challenge 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 issues raised. The Authority, however, will use the information derived from such an investigation to decide 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 an 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. Obstruction[5] of an investigation and misleading the Authority are also criminal offences, and such conduct may also attract regulatory consequences.

3.3 The Decision to Take Enforcement Action

The Authority will consider all the relevant facts and circumstances of a matter referred to in 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 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 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/NLP itself, the conduct under review, and the broader context.

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 egregiousness of the breach or standard failure
   - 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 contravention is intractable, the Authority will consider restricting or revoking authorisation to conduct business
   - Whether there is a risk of money laundering, terrorist financing, proliferation financing or financial crime
   - Where there are failures to comply with International Sanctions obligations
   - Where there is conduct of unauthorised business and where the entity refuses to voluntarily cease operations

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

- 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 institution's business
- The duration, complexity and frequency of the breach, and whether the entity has gained 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 RFI/NLP 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 RFI/NLP 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 RFI/NLP

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

4. ACTION TAKEN BY THE AUTHORITY IN SIMILAR CASES

The Authority will consider what action it has previously taken against RFIs/NLPs in comparable cases. If there are none, the Authority may also consider the actions taken and powers utilised by other regulators where there have been similar contraventions.

5. GUIDANCE

The Authority will not take action against an RFI/NLP 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 to deter 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.

3.4 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 Authority's policy objectives and strategy, including the exercise of statutory enforcement powers. The BMA Act also allows the Board to delegate and exercise any of its powers to any person or committee of the BMA. In this connection, the Board has designated the Authority's Enforcement Committee (**EC**) as a decision-making committee and has directly delegated the exercise of the Authority's enforcement powers to the EC. The EC's purpose is to consider and determine whether enforcement action is necessary in respect of any enforcement-related matters referred to it by the Enforcement Department.

3.5 Role and Function of the Enforcement Committee

The EC is a standing committee composed of senior management of the Authority and is convened on a case-by-case basis, with membership dependent upon the matter under consideration. All EC meeting decisions must be made by a minimum of four members and chaired by the Chief Executive Officer (**CEO**). At least three other senior managers holding any of the following posts must also comprise the makeup of an EC meeting, provided no conflict of interest exists:

- Deputy CEO
- Managing Director
- Director/Deputy Managing Director (Supervision)/Chief Officer (Supervision)

The quorum for the EC is four members. The Chair is responsible for determining the composition of each meeting, with a view to ensuring that the EC has the requisite combined experience and technical expertise in the relevant industry field to discuss the circumstances of the case and determine whether enforcement action is necessary.

While the Enforcement Department attends every EC meeting and participates in the discussion to provide background and clarity if questioned by the EC, it does not play any role in making the final decision. The supervisor responsible for the oversight of the RFI/NLP under review may also participate in the discussions but will not participate in the decision-making process.

The role of the EC is to review the cases considered for enforcement action and to make determinations on the issues arising, including whether enforcement action is warranted and, if so, the appropriate action to be taken. The EC is not bound to follow the recommendations of the Enforcement Department or the recommending supervisory department and will exercise its discretion in making the final decision. If the EC requires further information, the matter can be deferred to a future meeting.

Once the EC has the information required to make a decision, it then decides by consensus whether enforcement action is necessary and what that enforcement action should be. In so doing, it considers whether Enforcement's recommendations are reasonable in the circumstances. If they are not, the EC will make alternative directions.

Where the EC determines that enforcement action may be necessary, the RFI/NLP is notified of the decision in writing by the commencement of the applicable statutory process.

3.6 Warning Notice to the RFI/NLP/Individual

While some enforcement actions require no prior notice, most are subject to specific written notifications to the RFI/NLP/individual concerned. The Regulatory Acts and SEA embed statutory frameworks for the Authority to issue a Warning Notice and Decision Notice when it seeks to exercise its formal enforcement powers. Such a statutory process underscores and advances the principles of natural justice and the Authority's view that they play a critical role in administering a robust, modern enforcement regime. This statutory process must be administered by the Authority when 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 an application for an injunction or for the winding-up of an RFI/NLP (where other forms of notification are prescribed). Similarly, referrals to the police fall outside of such statutory obligations.

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 (at least 14 days under the Regulatory Acts and at least 28 days under SEA) (Representations). These periods may be extended by the agreement of the Authority. Such applications for extension 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 must be issued in writing and must state the proposed action, the reasons to support such action, the Authority's intentions in relation to publicity (assuming a subsequent decision is made to proceed with the action), and confirm the recipient's right to respond in writing to the proposal within the specified timeframe (hereinafter referred to as 'Representations'). The Notice will also specify the contact details for the receipt of such written representations.

Service of the Warning Notice shall be at the registered office of the RFI/NLP (in the case of an individual, at their last known address) unless other arrangements have been made between the parties.

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

RFIs/NLPs/individuals are advised that the content of the Representations is a vital part of the process, and great care should be given to their preparation. For example, where the RFI/NLP/individual accepts a factual assertion by the Authority, it should state that clearly in the Representations. If it disagrees with any of the Authority's findings, the RFI/NLP/individual will need to explain in detail why it disagrees, addressing each 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 those matters are not disputed, and it will proceed accordingly. If there is a factual challenge, the RFI/NLP/individual should provide any evidence in support of its position or lead the Authority to conclude that no such material exists.

If the RFI/NLP/individual 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. For example, if the RFI/NLP/individual 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 evidence in support of such contentions. The Representations should address all aspects of the Warning Notice, including the proposed action regarding publicity. Where there is a challenge to the proposed publication being made, the RFI/NLP/individual should represent why the Authority's usual policy of publicising enforcement actions should not be followed in the particular case.

Although it is the Authority's policy not to accept oral submissions, it is open to the RFI/NLP/individual to propose that discussions occur with the Enforcement Department lawyers. Such discussions are routine and can assist with clarifying issues before Representations are submitted. In the event that the RFI/NLP/individual is legally represented, the Authority is open to such discussions occurring with the RFI's/NLP's/individual's representatives on a 'without prejudice' basis. This means that, in the context of regulatory action, the information arising from such discussions will not be used or applied against the RFI/NLP/individual subsequently by the Authority in the process and will not be referred to during any appeal hearings without the express consent of both parties.

3.7 Assessment of the Representations

The Authority carefully reviews all Representations received in response to a Warning Notice. If the Authority is of the view that the concerns and issues raised in the Warning Notice have not been satisfied by the Representations, it may proceed to issue a Decision Notice.

However, where its concerns are 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/NLP/individual accordingly by serving a Notice of Discontinuance, in accordance with statutory requirements.

In addition, where it has reviewed Representations received, the Authority may also decide to take a different action than originally proposed in the Warning Notice. In such circumstances, the different action will not represent an increase in the nature or severity of the original enforcement action proposed. If the Authority is of the view that the RFI/NLP/individual has not been afforded an adequate opportunity to address the new intended action, it will afford it an opportunity to do so by way of further written representations.

3.8 Decision Notice to the RFI/NLP/individual

Once the EC has decided the action to be taken by the Authority, it is the responsibility of the Enforcement Department to implement that decision. Further instruction from the EC may be necessary during the course of enforcement proceedings to do so. For example, a decision to issue a Warning Notice may require a further report on the nature and extent of the Representations, as well as further analysis and advice on salient issues. The Enforcement Department also facilitates relevant correspondence and discussions between the parties to ensure a robust procedure is applied to finalise and implement the enforcement action, while acting on the direction of the EC.

In the event that the Authority concludes that 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 EC.

In accordance with statutory requirements, the Decision Notice will be issued in writing and will state the Authority's decision the reasons for the decision. The date the decision is to be effective, the Authority's decision in relation to publicity, and advise of any right to appeal.

3.9 Cases of Urgency

Where, in the opinion of the Authority, certain directions need to be imposed as a matter of urgency on the licence or registration of an RFI, the Regulatory Acts provide that the Warning Notice statutory process outlined above does not apply. In such cases, the Authority can impose directions without a Warning Notice, and the directions will take effect immediately. The Authority must, in the urgent notice imposing the directions, state the reasons for the decision and afford the RFI 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 must be made in accordance with the Decision Notice process set out above.

3.10 Publicity

The Regulatory Acts and the SEA contain provisions authorising the Authority to publish any matter in which a Decision Notice has been issued. The Regulatory Acts and SEA 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/NLP/individual 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/NLP/individual 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 amount 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 the 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 are 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
- 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 publication may jeopardise the stability of financial markets, be prejudicial to the interests of customers, or prejudice an ongoing investigation. However, the Authority will not withhold publication or withhold publicising the name of the RFI/NLP/individual on the basis of unsupported and generalised assertions of its reputational harm or loss/potential 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 a rare case in which the third party was so intimately involved in the facts and matters leading to the enforcement action that the inclusion of the name is necessary to make sense of the published narrative. 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 Authority has a wide range of enforcement options available to deal with failure to comply with both prudential, AML/ATF/CPF, and International Sanctions 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 RFI as well as NLPs and individuals.

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 and cancellation of registration;
h) Winding up; and
i) Referral to the Police.

If a decision is made to proceed with enforcement action, the Authority will determine which enforcement option 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 determine which enforcement option is selected. In addition to those matters listed in Figure 3 at page 16 above, the Authority may also consider some or all matters set out below when choosing an enforcement option.

4.1 Imposition of directions, restrictions and conditions

The Authority has the power to give a RFI/NLP a direction that appears desirable to protect the interests of clients/policyholders/depositors. Further, the Authority may restrict a licence or registration by imposing such conditions as appear desirable for the same purpose, if it appears that the circumstances do not 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/NLP
- The effectiveness of the direction, restriction, or condition to address the issue
- The likelihood of compliance and the capacity to monitor that compliance
- Whether possible external reporting obligations will adversely affect the operations of the RFI

4.2 Imposition of a Late Filing Fee

The Regulatory Acts provide the Authority with the power to impose a late filing fee of $500 to $5,000 for each week an RFI is late in submitting statutory filings to the Authority. This power is used to address late filings generally and is used to encourage the timely provision of information to the Authority. Where such late filing fees provide for an amount payable 'up to' a certain amount for the duration of the breach, consideration will be given to the resources of the RFI when setting the amount of any late filing fee, as well as any exculpatory circumstances. The decision to impose this type of penalty will be made by the supervisory departments and may involve consultation with the Enforcement Department.

4.3 Imposition of a Civil Penalty

The power to impose a civil penalty up to a statutory maximum amount[6] for each breach of an obligation imposed on the RFI/NLP/individual is contained in each of the Regulatory Acts or SEA. The maximum civil penalty applies 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:

[6] Currently $500,000 under the Regulatory Acts and $10,000,000 under SEA and the Digital Asset Business Act 2018 (**DABA**)

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

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

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 determining the level of a financial penalty and will seek to act consistently.

As noted in Figure 3 (on page 16), breaches of AML/ATF/CPF and International Sanctions 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 an RFI/NLP/individual is in breach of AML/ATF/CPF and International Sanctions 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 **Annex A**.

4.4 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 orders under the provisions of the various Regulatory 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 arising. In this regard, the Authority may consider the following issues:

- 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

- The effectiveness of other options available to the Authority to address the matter

4.5 Public Censure

This statutory publication power enables the Authority to publish a statement which amounts to a 'public censure' regarding an RFI/NLP and would be exercised by the Authority in lieu of other enforcement options. However, the Authority would only utilise this option in exceptional cases (i.e., rather than take alternate enforcement action if such an action would result in the protection of existing or future clients, policyholders or depositors of an RFI). For example, public censure may be utilised where other enforcement 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/NLP or where there is verifiable evidence that the RFI/NLP would be unable to meet a financial penalty at an appropriate level. Other circumstances that may warrant the use of this power include the need to inform the regulated community of the Authority's views on specific actions or regulatory 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
- When considering the nature of the breach, whether other enforcement options would be more appropriate to apply in order to effectively protect the public
- Whether the RFI/NLP voluntarily informed the Authority of the breach
- Whether the RFI/NLP co-operated with the Authority throughout the review of apparent contraventions undertaken by the Authority
- The compliance history of the RFI/NLP
- The operational impact upon the RFI/NLP and its clients/depositors/policyholders

4.6 Prohibition orders against directors and officers

A prohibition order results in the banning of an individual from being able to be appointed to roles of RFIs/NLPs in a specific financial services sector. The standard of conduct expected of individuals appointed or to be appointed as controllers, officers or individuals who perform functions relating to a regulated activity is set out in the Minimum Criteria for Licensing/Registration requirements of the Regulatory Acts and in section 11A of SEA. Such matters are further clarified and supported by sector Guidance Notes, Statements of Principle and

Codes of Conduct[7] issued by the Authority, which reflect relevant international standards and best practices.

The Authority has the further statutory 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/NLP 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 a range of factors, including the functions performed by the individual in relation to regulated activities, the reasons why the individual is considered not fit and proper, the level of risk the individual poses to the ability of the RFI or NLP to conduct its business in a prudent manner, and the potential impact on Bermuda's reputation as a reputable financial centre.

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 for Licensing/Registration
- Whether the conduct was deliberate, reckless, negligent, or inadvertent
- The impact of the conduct, including risks to the RFI, its clients/policyholder or depositors
- The length of time since the conduct occurred
- Whether the individual was knowingly concerned in a contravention by the RFI/NLP of a requirement imposed on it by or under the Regulatory Acts, or the AML/ATF/CPF and International Sanctions obligations
- The position, activity or role the individual is appointed to
- The nature and activities of the RFI/NLP concerned
- Whether the individual provided false or misleading information to the Authority or made inadequate disclosure
- Whether the conduct was dishonest, fraudulent or criminal
- Whether the conduct showed the individual lacked competence to perform the tasks required in the role

4.7 Objections to Controllers

The Regulatory Acts contain provisions enabling the Authority to object to shareholder controllers, controllers and officers at the time of appointment, or to the acquisition of significant

[7] The Authority has published on its website several Codes of Conduct addressing issues of Corporate Governance

shareholdings in a RFI giving rise to 'control' (i.e., usually 10% or more of the voting shares in the RFI), or to the continued control of the RFI 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 whether it has any objection to the acquisition.

Unless the Authority is satisfied that:

1. The person is a fit and proper person to become, or continue to be a controller;
2. The interests of clients/depositors/shareholders would not be threatened in any way by the person becoming a controller; and
3. The RFI's capacity to meet the Minimum Criteria for Licensing/Registration would not be affected by the person's likely influence on the RFI, or if the Minimum Criteria for Licensing/Registration were not met, the person would be likely to undertake adequate remedial action.

The Authority may serve a preliminary Notice in accordance with the statutory process under the Regulatory Acts 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, in relation to an existing shareholder controller.

The Regulatory Acts also make provision for failure by an RFI to provide the Authority with 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
- No payments be made of any sum owed from the RFI regarding the shares, except on liquidation

The Regulatory Acts further provide that the Court may, on the Authority's application, 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 an RFI, or if the Authority becomes aware of issues giving rise to such concerns in respect of a person who already holds such a shareholding.

4.8 Revocation of Licence/Registration and cancellation of NLP Registration

4.8.1. Revocation of license or registration

This is one of the most serious enforcement powers available to the Authority and will only be exercised where determined by the Authority that all other enforcement options are inappropriate in protecting an RFI's clients/depositors/policyholders. 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 and clients of the RFI
- Conduct in breach of the Regulatory Act and the AML/ATF/CPF Regulations, including the Minimum Criteria for Licensing/Registration, is of so serious a nature that continued licensing/registration of the RFI is not consistent with the Authority's responsibilities

4.8.2. Cancellation of Registration of an NLP

The SEA contains provisions requiring the registration of entities that are subject to AML/ATF obligations but are not otherwise licensed or registered by the Authority. These entities are classified as Non-Licensed Persons (NLPs) and, upon registration, are subject to the requirements of the AML/ATF/CPF Regulations. A failure to register as an NLP constitutes a criminal offence. Officers and controllers of an NLP are subject to a fit and proper test. SEA provides for the cancellation of registration in four situations, namely where:

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

The significance of the cancellation of registration is that the NLP will no longer be able to carry on any business in Bermuda. Thus, cancellation of registration will prohibit the institution from continuing to conduct 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. For example, this applies if a business is classified as high risk but has no effective AML/ATF/CPF controls, or if it is deemed a 'front' for money laundering operations. This action will be considered if remedial action is deliberately not taken and/or AML/ATF/CPF obligations are continuously ignored. The Authority, as a Supervisor under the SEA, may impose criminal sanctions for contraventions of such laws.

4.9 Winding Up

An RFI/NLP may be wound up by the Court under the Regulatory Acts and SEA via the process set out under section 161 of the Companies Act 1981 (as embedded and referenced in the Regulatory Acts and SEA), on grounds that include that the Court is of the opinion that it is just and equitable that it be wound up. Further and separately, the Authority has the power to present a petition to wind up an RFI on the grounds that the RFI has failed to satisfy an obligation imposed upon it by the Regulatory Acts.

The winding up of an RFI/NLP is one of the most serious enforcement 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 supervisory or enforcement alternatives. The relevant factors to be considered in deciding whether to exercise this option include:

- Whether the RFI/NLP 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 for Licensing/Registration, 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 RFI/NLP may adversely affect the interests of stakeholders, for example, where there is a risk that funds belonging to depositors or investors may be misappropriated
- Whether there is risk to the reputation of Bermuda as a reputable financial centre

4.10 Referral to Police

The Regulatory Acts and SEA contain provisions that make certain conduct or omissions liable to criminal sanctions. Among the factors to be considered when choosing this option include are:

- 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
- The gravity of the conduct, particularly whether it represents a serious level of dishonesty

Conducting regulated activities without a licence/registration and misleading the Authority are criminal offences. A referral to the Police may occur in addition to other regulatory enforcement actions which may be taken by the Authority.

5. Appeals

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

a) Imposition of directions, restrictions and conditions;
b) Imposition of a civil penalty;
d) Public censure;
e) Prohibition orders against individual directors and officers;
f) Objections to existing, new or increased controllers; and
g) Revocation of a licence and cancellation of its registration.

The appeals process is addressed by sector-specific Appeal Tribunal Regulations. Under the Regulatory Acts, the Minister of Finance is vested with the statutory authority to appoint the members comprising the Tribunals established, while the Minister of Justice performs that function under the SEA. An appeal is commenced by the RFI/NLP serving a notice of appeal to the Secretary of the Appeal Tribunal at the relevant Ministry. The Regulatory Acts and SEA provide that, with the exception of the revocation of a licence and the cancellation of the registration of an NLP, the decision of the Authority remains effective unless an appeal Tribunal suspends 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 the Appeal 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. The Settlement Process

6.1 Overview

Early acknowledgement and acceptance by an RFI/NLP of breaches it has made due to non-compliance with the Regulatory Acts and SEA may save time and the investigative resources of the Authority and will always be considered favourably by the Authority when considering effective enforcement outcomes.

In such cases, where the Authority is reasonably satisfied that agreement with the RFI on the imposition of a civil penalty for the contravention, rather than pursuing alternative enforcement action, is (i) consistent with the discharge of its statutory duties and (ii) the imposition of a civil penalty is the appropriate disciplinary measure, it may proceed on that basis.

The Authority will consider the facts, circumstances and impact of each breach as noted in Figure 3 (see page 16). The process by which the level of Civil Penalty will be determined is set out in Annex A. Thereafter, a discount will be applied to the level of Civil Penalty to encourage early settlement.

The amount of the Civil Penalty to be imposed by the Authority will incorporate up to a 50% discount reflecting:

(a) How early in the decision-making process the Settlement Agreement is signed; and

(b) Whether the contravention is remediated to the satisfaction of the Authority before the Settlement Agreement is signed.

Settlement discussions are conducted on a ‘without prejudice’ basis.

6.2 Settlement Discussion Process

6.2.1. Commencement of Settlement Process

- A Settlement Letter will be issued to the RFI/NLP at the commencement of the Settlement Process. The letter will explain the nature of the alleged misconduct, identify the key evidence on which the Authority relies, and, where necessary, provide copies of that evidence to facilitate informed consideration of the proposed settlement

- It will also specify the proposed civil penalty, the amount of which will be determined in accordance with 'Annex A: Process for arriving at the amount of a civil penalty', and will set out the period within which the Authority expects the settlement process to be completed
- The standard period to conclude settlement discussions is 60 days
- A discount of up to 50% may be applied to the civil penalty where a settlement is reached and concluded within the timeframe specified by the Authority
- *An extension will be granted in exceptional circumstances***.** To enhance transparency, the Authority will set out the factors that it may consider relevant to an application for extension

In the event a Settlement Agreement is not reached, the 'Enforcement Decision-Making Process' (referred to in Part 3) will commence through the issuance of a Warning Notice.

6.2.2. Review of Draft Settlement Agreement

The EC is responsible for reviewing and approving the draft Settlement Agreement on behalf of the Authority. Once approved by the EC, the agreement is signed by the Director of Legal Services and Enforcement, and the penalty is published, reflecting any reduction in the civil penalty arising from the settlement reached with the RFI/NLP.

In circumstances where the EC does not approve the draft Settlement Agreement, the reasons are communicated to the RFI/NLP, and the action proceeds to the Enforcement Decision-Making Process referred to in Part 3.

ANNEX A: Process for arriving at the amount of civil penalty

The appropriate penalty is one that is 'effective, proportionate, and dissuasive'. Therefore, the Authority undertakes the following when considering the application or imposition of a civil penalty:

1. Assess the seriousness of culpability and harm.

   This is the key factor in deciding the amount of the penalty for each breach. Therefore, the RFI's/NLP's culpability and any harm caused, or which might foreseeably have been caused, is the main determining issue when seriousness is considered. The appropriate penalty range is then identified in 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 seriousness and starting point have been identified, consider adjustments to account for any specific matter which either aggravates or mitigates the behaviour or conduct in question. These will be matters that are not included in the Table, but which may result in a breach being either more or less serious. These would include previous regulatory breaches, a poor regulatory history and whether the regulated entity benefited from the breach by increasing its profits or avoiding costs.

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

   The purpose of a civil penalty is to indicate the seriousness of the breach with a penalty that is proportionate and fair. A civil penalty must not be of a size that threatens the solvency of the entity or threatens its ability to conduct business as a going concern. Consideration will be taken with respect to the last three years of submitted financial returns, and any representations that the RFI/NLP/individual may have made in response to the Warning Notice about its ability to pay the proposed penalty.

4. Determine the Civil Penalty.

   Having taken the steps outlined above, determine the final penalty and provide reasons for its decision. If the penalty falls outside of the range indicated in the Table, the Authority will provide a clear explanation of the factors that justify the determination of the penalty.

5. Assess whether there are 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 the behaviour or 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 take account of the overall seriousness of the case, it may be necessary to apply the appropriate penalty to each breach separately.

Table: 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.

Criteria / Assessment Factor	Minor	Moderate	Major	Critical
Nature of the Breach	A 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 to clients/depositors / policyholders	No risk or a 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/NLP was open and cooperative with the Authority	RFI/NLP was open and cooperative with the Authority	RFI/NLP was not fully open and cooperative with the Authority	RFI/NLP was not open and cooperative with the Authority
Reputational risk to the jurisdiction	No risk or small risk to the 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 a small risk of financial crime (including AML/ATF/CPF) 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/NLP being used to facilitate financial crime	Financial crime committed or RFI/NLP used to facilitate financial crime
Conduct of the RFI/NLP	RFI/NLP acknowledged breaches immediately; RFI/NLP self-reported	Some acknowledgement of some breaches	RFI/NLP failed to acknowledge breaches	RFI/NLP deliberately withheld the breaches from the Authority in order to obtain benefits or mitigate loss
Remediation by the RFI/NLP	RFI has provided evidence that effective steps have been taken and implemented to rectify all breach(es) and prevent recurrence	RFI has provided evidence that some steps have been taken and implemented to rectify breach(es) and prevent recurrence, but inadequate in its totality	Minimal steps have been taken to rectify the breach(es) and prevent recurrence	No steps taken to rectify the breaches
Range of Civil Penalty – Prudential/breach (up to $500k max)	**No penalty – $75,000**	**$75,000 – $200,000**	**$200,000 – $350,000**	**$350,000 – $500,000**
Range of Civil Penalty/breach – SEA, DABA & DAIA (up to $10 million)	**No penalty – $150,000**	**$150,000 – $2.5 million**	**$2.5 million – $6 million**	**$6 million – $10 million**