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| Securities Commission of The Bahamas                    |  |
| Assessment of Automatic Administrative Penalties Policy |   |
| Ref: PSs135.2-170217                                    |   |

## 1. APPLICABILITY & SCOPE

- 1.1 This policy position is applicable to any person who, pursuant to the Securities Industry Act, 2011 (the "SIA") or the Investment Funds Act, 2003 (the "IFA"), is required to file with or deliver to the Securities Commission of The Bahamas (the "Commission") a document within a required time period.

## 2. COMMENCEMENT DATE

- 2.1 This policy commences with immediate effect.

## 3. BACKGROUND

- 3.1 The Commission has authority, pursuant to section 13(j) of the SIA, to publish notices, guidelines, bulletins and policies describing the views of the Commission regarding the interpretation, application, or enforcement of securities laws in the discharge of its function.
- 3.2 Pursuant to section 135(2) of the SIA, any person in breach of any provision of securities law solely by reason of failing to file with or deliver to the Commission a document within the required time period shall be subject to an automatic penalty of up to \$1000, or as prescribed, for every day from the day the document was required to be filed or delivered to the day the document was filed or delivered.
- 3.3 This document establishes the Commission's policy on the assessment of automatic administrative penalties as provided for under section 135(2) of the SIA, to be levied against persons delinquent in their filing requirements under securities laws.

## 4. PROCEDURE FOR NOTIFYING REGISTRANTS OF PENALTIES

- 4.1 The assessment of penalties commences the calendar day immediately following the date that the document was required to be filed with or delivered to the Commission.
- 4.2 Where a licensee or registrant is required to file with or deliver to the Commission a document within a required time period or immediately and the document is not filed by the requisite date, the registrant will be notified via letter that the prescribed automatic penalty will be assessed.

## 5. TREATMENT OF PUBLIC HOLIDAYS AND WEEKENDS

- 5.1 If the deadline for filing/delivery of requisite documents falls on a weekend or public holiday, the working day immediately following the weekend or public holiday will be treated as the date the document is due to be delivered to or filed with the Commission for the purpose of assessing automatic penalties.

## **6. TREATMENT OF IMMEDIATE FILING REQUIREMENTS**

- 6.1 Where a document is required to be filed with or delivered to the Commission “immediately”, the Commission will treat the timeframe for compliance as being within 24 hours of the event triggering the requirement. Once the 24-hour timeframe has expired the penalty period will commence.
- 6.2 In the event that 24-hours after an event triggering an “immediate” filing requirement would occur on a weekend or public holiday, the working day immediately following the weekend or public holiday will be treated as the date the document is due to be delivered to or filed with the Commission for the purpose of assessing automatic penalties.

## **7. APPLICATIONS FOR EXTENSION OF FILING/DELIVERY PERIOD**

- 7.1 If a registrant/licensee wishes for the Commission to consider granting an extension or exemption to the deadline to file/deliver a document, the registrant or licensee must apply to the Commission in writing no less than seven calendar days prior to the requisite delivery/filing deadline.
- 7.2 The application letter should be addressed to the Manager, Market Surveillance Department, Securities Commission of The Bahamas.
- 7.3 Providing that an extension request is received at least seven days prior to the due filing/delivery date, the Commission may determine to waive the prescribed time period and impose a new deadline, pursuant to section 161 of the SIA, or the Investment Funds (Financial Statements Extension of Time) Rules, 2004.
- 7.4 The Commission will notify the registrant in writing if the extension request is approved and the new date by which the requisite documents must be filed/delivered.
- 7.5 Once an extension request has been approved, a registrant or licensee will no longer be considered delinquent in the filing of the required document as long as it is filed by the date the Commission specifies in the extension approval letter.
- 7.6 In the event the Commission declines to approve an extension/exemption request an automatic daily penalty applies (see Section 8 and Appendix I).
- 7.7 In the specific case of applications for extension/waiver of filing requirements for audited financial statements, certain conditions on the content of the application letter and associated application fees and penalties apply. These are specified in the “Failure to File Audited Financial Statements Policy” (Ref: PSs135.2-170217[2]).

## **8. PENALTIES**

- 8.1 The schedule of automatic administrative penalties for failure to file with or deliver to the Commission requisite documents within the timeframe provided is contained in Appendix I of this Policy. This schedule may be updated by the Commission from time to time.
- 8.2 Assessed penalties will accrue to a maximum of sixty calendar days. Should outstanding documents not be submitted by the end of the maximum period, matters will then progress through the Commission’s enforcement process for further disciplinary action.

## APPENDIX I: PENALTIES

### I. Automatic Administrative Penalties Assessment – Public Issuers/Companies

The following table represents the penalties for non-compliance for Public Issuers/Companies under the SIA:

|                                  | <b>Requirement</b>  | <b>Timeline to comply</b>  | <b>Legislative Reference (SIA)</b>                            | <b>Penalty for First Infraction*</b>           |
|----------------------------------|---|--|---|--|
| <b>Financial Reporting</b>       | Audited Financial Statements  | Within 120 days of end of fiscal year end  | Section 101 and Regulation 120                                | \$200 each day that financials are outstanding |
|                                  | Interim Financial Statements  | Within 45 days of the end of each quarter of fiscal year   | Section 101(5) and Regulation 120                             | \$100 each day that financials are outstanding |
|                                  | Annual Report   | Within 120 days of end of fiscal year end  | Section 101 (6) (a) and Regulation 122                        | \$100 each day report is outstanding           |
|                                  | Management Discussion and Analysis  | Concurrent with Annual Financial Statements  | Section 101 (6) (b) and Regulation 123                        | \$100 each day of non-compliance               |
| <b>Material Change Reporting</b> | Notice of material change or event**  | File a report with the Commission within 5 days of change  | Section 99 and Regulation 124                                 | \$100 each day of non-compliance               |
|                                  | Notice of change in auditor   | Within 10 days of change   | Regulation 15   | \$100 each day of non-compliance               |
| <b>Initial Public Offers</b>     | Prospectus and Prospectus Form  | File prior to Initial Public Offer   | Section 83 and Regulation 95                                  | \$300 each day of non-compliance               |
|                                  | Materials to be filed with Preliminary Prospectus                                   | File together with submission of Preliminary Prospectus  | Regulation 96, Section 1, Appendix B                          | \$200 each day of non-compliance               |
|                                  | Materials to be filed with Final Prospectus or made available for public inspection | Two business days before filing of final Prospectus  | Regulation 97 Section 2, Appendix B and Section 4, Appendix B | \$200 each day of non-compliance               |
| <b>Insider Reporting</b>         | File insider report   | No later than the 5 <sup>th</sup> day after the date of the event triggering the obligation to file a report | Section 128 and Regulation 136                                | \$200 each day of non-compliance               |

\* NOTE: Subsequent infractions of a filing requirement within the same calendar year referred for enforcement action.

\*\* Press release to be issued immediately

## II. Automatic Administrative Penalties Assessment – Market Places and Clearing Facilities

The following table represents the penalties for non-compliance for Market Places and Clearing Facilities under the SIA:

|                              | <b>Requirement</b>   | <b>Timeline to comply</b>   | <b>Legislative Reference (SIA)</b> | <b>Penalty for First Infraction*</b>           |
|------------------------------|--|---|------------------------------------|--|
| <b>Financial Reporting</b>   | Audited Financial Statements                                 | Within 120 days of end of fiscal year end   | Section 65(a) and Regulation 30    | \$200 each day that financials are outstanding |
|                              | Interim Financial Statements (Financial Operational Reports) | Within 30 days of the end of the first, second, third and fourth quarter of its fiscal year | Section 61(b) and Regulation 31    | \$100 each day financials are outstanding      |
| <b>Statutory Obligations</b> | Notice of change in auditor                                  | Within 10 days of change  | Regulation 15                      | \$100 each day of non-compliance               |
|                              | Notice of change of information – post registration          | Within 5 days of the change   | Regulations 27(1) and 28           | \$100 each day of non-compliance               |
|                              | Other material changes                                       | Immediately   | Regulations 27(2) and 28           | \$100 each day of non-compliance               |
|                              | Issue or transfer of securities (approval required )         | No less than 30 days before proposed transfer   | Regulations 34(2)                  | \$200 each day of non-compliance               |

\* NOTE: Subsequent infractions of a filing requirement within the same calendar year referred for enforcement action.

### III. Automatic Administrative Penalties Assessment– Registered Firms and Individuals

The following table represents the penalties for non-compliance for Registered Firms and Individuals under the SIA:

|   | <b>Requirement</b>   | <b>Timeline to comply</b>   | <b>Legislative Reference (SIA)</b> | <b>Penalty for First Infraction*</b>           |
|---|--|---|------------------------------------|--|
| <b>Financial Reporting</b>  | Audited Financial Statements                                     | Within 120 days of end of fiscal year end   | Section 77 (a) and Regulation 49   | \$200 each day that financials are outstanding |
| <b>Note: This specific filing requirement has been waived for joint licensees of the Central Bank of The Bahamas.</b> | Interim Financial Statements (Financial and Operational Reports) | Within 30 days of the end of the first, second, third and fourth quarter of its fiscal year | Section 77 (c) and Regulation 50   | \$100 each day statements are outstanding      |
| <b>Statutory Obligations</b>  | Notice of change in auditor                                      | Within 10 days of change  | Regulation 15                      | \$100 each day of non-compliance               |
|   | Firm - Notice of change of information – post registration       | Within 5 days of the change   | Regulations 53(1) and 54           | \$100 each day of non-compliance               |
|   | Individual – Notice of change of information – post registration | Immediately   | Regulation 62                      | \$100 each day of non-compliance               |
|   | Firm - Other material changes                                    | Immediately   | Regulations 53(2) and 54           | \$100 each day of non-compliance               |
|   | Employment of representative                                     | Immediately   | Regulation 47                      | \$100 each day of non-compliance               |
|   | Resignation, Termination or Retirement of registered individual  | Immediately   | Regulation 48                      | \$100 each day of non-compliance               |

\* NOTE: Subsequent infractions of a filing requirement within the same calendar year referred for enforcement action.

#### IV. Automatic Administrative Penalties Assessment– Investment Funds

The following table represents penalties for non-compliance for Investment Funds under the Investment Funds Act, 2003:

|                              | <b>Requirement</b>   | <b>Timeline to comply</b>                         | <b>Legislative Reference (IFA)</b> | <b>Penalty for First Infraction*</b>           |
|------------------------------|--|---|------------------------------------|--|
| <b>Financial Reporting</b>   | Audited Financial Statements   | Within 180 days of end of fiscal year end         | Section 31 (as amended)            | \$200 each day that financials are outstanding |
| <b>Statutory Obligations</b> | Annual Declaration   | Annually  | Section 27(1)(a)                   | \$100 each day of non-compliance               |
|                              | Amendments to Offering and Constitutive Documents  | Immediately                                       | Section 9(4)                       | \$100 each day of non-compliance               |
|                              | Change to an investment fund or its investors that does not require amendment to the Offering Memorandum | Within 21 days of occurrence                      | Section 30(1)                      | \$100 each day of non-compliance               |
|                              | Change in Fund Operators   | Immediately                                       | Section 9(4)                       | \$100 each day of non-compliance               |
|                              | Change in Registered Office or Principal Office  | Immediately                                       | Section 9(4)                       | \$100 each day of non-compliance               |
|                              | Surrender of License of Registration   | 14 days prior to the effective date of surrender  | Section 18(1)                      | \$200 each day of non-compliance               |
|                              | Transfer from The Bahamas  | 14 days prior to the effective date of transfer   | Section 19                         | \$100 each day of non-compliance               |
|                              | Transfers into The Bahamas   | Within 7 days of the transfer                     | Section 19                         | \$100 each day of non-compliance               |
|                              | Transfer of Investment Fund Administration   | Within 14 days of the effective date of transfer  | Section 20                         | \$100 each day of non-compliance               |
|                              | Termination of Administration Agreement  | 7 days prior to the effective date of termination | Section 21(2)                      | \$100 each day of non-compliance               |
|                              | Dormancy   | Within 14 days of becoming dormant                | Section 22                         | \$100 each day of non-compliance               |
| Winding Up or Closure        | Within 14 days after such commencement   | Section 28  | \$100 each day of non-compliance   |  |

\* NOTE: Subsequent infractions of a filing requirement within the same calendar year referred for enforcement action.

**V. Automatic Administrative Penalties Assessment– Investment Fund Administrator**

The following table represents penalties for non-compliance for Investment Fund Administrators under the Investment Funds Act, 2003:

|                              | <b>Requirement</b>   | <b>Timeline to comply</b>                 | <b>Legislative Reference (IFA)</b> | <b>Penalty for First Infraction*</b>           |
|------------------------------|--|---|------------------------------------|--|
| <b>Financial Reporting</b>   | Audited Financial Statements   | Within 120 days of end of fiscal year end | Section 42                         | \$200 each day that financials are outstanding |
|                              | Filing Statistical Information (For Investment Funds under Administration)             | Every 6 months (June 30 and December 31)  | Section 51                         | \$100  |
|                              | Capital Requirement  | Ongoing                                   | Section 37 (1)                     | \$200 each day statements are outstanding      |
| <b>Statutory Obligations</b> | Annual Declaration   | Annually                                  | Section 27(1)(a)                   | \$100 each day of non-compliance               |
|                              | Change in Principal Office, Registered Office, or any individual acting as its agent   | Within 14 days of the change              | Section 33(3)                      | \$100 each day of non-compliance               |
|                              | Change in Obligations to the Fund  | Immediately                               | Section 39                         | \$100 each day of non-compliance               |
|                              | Occurrence of any business in contravention to the Act or other applicable legislation | Immediately                               | Section 39                         | \$100 each day of non-compliance               |
|                              | Fund is operating prejudicial to investors or creditors                                | Immediately                               | Section 39                         | \$200 each day of non-compliance               |
|                              | Change in Directorship   | Immediately                               | Section 44                         | \$100 each day of non-compliance               |
|                              | Change in transfer or disposal of shares   | Immediately                               | Section 40                         | \$200 each day of non-compliance               |
|                              | Termination of Administration  | 30 days prior to the date of termination  | Section 21                         | \$200 each day of non-compliance               |

\* NOTE: Subsequent infractions of a filing requirement within the same calendar year referred for enforcement action.