



## **POLICY ON THE ASSESSMENT OF ADMINISTRATIVE PENALTIES FOR ANTI-MONEY LAUNDERING AND TERRORIST FINANCING INFRACTIONS BY REGISTRANTS AND LICENSEES OF THE SECURITIES COMMISSION OF THE BAHAMAS UNDER THE FINANCIAL TRANSACTION REPORTING ACT, 2018**

### **1. INTRODUCTION**

1.1 The Securities Commission of The Bahamas (“the Commission”) has responsibility for the licensing, regulation and supervision of the securities and investment fund industries of The Bahamas pursuant to the Securities Industry Act, 2011 and the Investment Funds Act, 2003 (the “IFA”). The Commission is also the Inspector for the purposes of administering the Financial and Corporate Service Providers Act, 2000 (the “FCSPA”). Additionally, the Commission is mandated, *inter alia*, to maintain surveillance over as well as to formulate principles to regulate and govern investment funds, securities and capital markets, to ensure orderly, fair and equitable dealings.

1.2 All Financial Institutions (FIs) and other regulated persons which are licensees and registrants of the Commission are required to comply with the Financial Transaction Reporting Act, 2018 (“FTRA”) and all of the Anti-Money Laundering and Countering the Financing of Terrorism (“AML/CFT”) standards contained therein. For the purposes of administering the FTRA, the Commission has responsibility with respect to its licensees and registrants.

1.3 Pursuant to Section 57 of the FTRA, the Commission may impose administrative penalties to its licensees and registrants whether they be firms or individuals for a breach(s) of any provision of the FTRA or the Proceeds of Crime Act, 2018.

1.4 This document establishes the Commission’s policy on the assessment of penalties provided under section 57 of the FTRA, to be imposed for breaches contrary to the requirements under said act.

1.5 In the case of licensees or registrants which are regulated by both the Central Bank of the Bahamas (“CBOB”) and the Commission (Joint Licensees), the Commission will address AML/CFT infractions with respect to all “securities” transactions as the primary regulator for securities activity; however, the Commission may also examine other matters, including cash transactions whether or not related to securities transactions and may also refer infractions relating to cash transactions or other matters to the CBOB, as appropriate.

## **2. COMMENCEMENT DATE**

2.1 This policy commences with immediate effect.

## **3. ASSESSMENT AND APPLICATION OF PENALTIES BY THE COMMISSION**

3.1 Pursuant to Section 57(1)(b) of the FTRA, the Commission as a Supervisory Authority may impose in the case of a company, a maximum penalty of two hundred thousand dollars (\$200,000); and in the case of an individual, a maximum penalty of fifty thousand dollars (\$50,000). Notwithstanding, the Commission will, in determining the appropriate penalty to be applied, examine the facts of each case as well as take into account relevant considerations as prescribed by the FTRA. The Commission will also observe the applicable processes as prescribed by the FTRA.

3.2 Without prejudice to paragraph 3.1 above and Section 57 of the FTRA, the Commission will, regarding any infraction found, consider whether, in the circumstances, it is appropriate to impose a monetary penalty or otherwise require another form of sanction and/or remediation. The Commission will also consider issues such as the pervasiveness of infractions and whether there are systemic or compliance culture failures in determining the appropriateness of remedial action, penalties, sanctions and/or other enforcement action.

3.3 In circumstances where the Commission, in the conduct of its onsite examinations, find a certain percentage of the “random sample” examined to be non-compliant with the requirements of the FTRA, the Commission may, for the purposes of assessing penalties, apply penalties to that percentage of the entire population of clients, files and/or accounts, whichever is applicable.

## **4. PENALTIES**

The schedule of administrative penalties for breaches under the FTRA, 2018 are contained in Appendix I of this Policy. The Commission from time to time may update this schedule.

## Appendix 1

### ADMINISTRATIVE FINES UNDER THE FINANCIAL TRANSACTIONS REPORTING ACT, 2018

*The Commission here notes that, pursuant to section 57 of the Act, all persons and/or financial institutions may be subject to administrative penalties as well as to potential fines for criminal convictions, where this is provided for in the Act.*

Section(s)	Breach	Corporate body or other legal entity	Individual*
<b>5</b>	Failure to Conduct Risk Assessment.	Minimum \$5,000 up to \$50,000 per file/client account.	Up to \$50,000 per file/client account.
<b>6 to 11</b>	Failure to Conduct Customer Due Diligence.	Minimum \$1,000 up to \$200,000 per file/client account.	Up to \$50,000 per file/client account.
<b>12 &amp; 13</b>	Failure to, where appropriate, Conduct On-going Customer Due Diligence and Enhanced Due Diligence.	Minimum \$1,000 up to \$200,000 per file/client account.	Up to \$50,000 per file/client account.
<b>14</b>	Failure in obligation to have risk management system and/or to determine whether Customers are PEPs.	Minimum \$1,000 up to \$200,000 per file/client account.	Up to \$50,000 per file/client account.
<b>15 to 17</b>	Failure to, as appropriate, keep, maintain and destroy Records.	Minimum \$10,000 up to \$200,000 per file/client account.	Up to \$50,000 per file/client account.
<b>19</b>	Failure to develop and implement procedures to prevent activities related to identified risks.	Minimum \$10,000 up to \$200,000.	Up to \$50,000.
<b>20 &amp; 21(3)</b>	Failure in obligation concerning designating and empowering a Compliance Officer.	Up to \$200,000.	Up to \$50,000.

<b>Section(s)</b>	<b>Breach</b>	<b>Corporate body or other legal entity</b>	<b>Individual*</b>
<b>21</b>	Failure to implement internal controls concerning a group of entities.	Up to \$200,000.	Up to \$50,000.
<b>23</b>	Failure to require compliance of a foreign subsidiary or branch and/or apply appropriate additional measures.	Up to \$200,000 for each subsidiary or branch involved.	Up to \$50,000 for each subsidiary or branch involved.
<b>24</b>	Failure to adhere to prohibition against dealing with shell banks.	Up to \$200,000.	Up to \$50,000.
<b>25 &amp; 26</b>	Failure to report suspicious transaction(s).	Minimum \$5,000 up to \$50,000 per file/client account.	Up to \$50,000 per file/client account.
<b>27</b>	Failure in obligation to not disclose information on identity of person who prepared or made a suspicious transaction report.	Minimum \$10,000 up to \$200,000.	Up to \$50,000.
<b>47 to 51 (Offences)</b>	Please refer to the various sections cited above outlining the administrative penalties for breaches of the sections, which are also indicated in sections 47 to 51 of the Act.		

\*In relation to penalties applied to individuals, the standard determined by the FTRA 2018 is to “knowingly concur with a failure to comply.”