



THE CENTRAL BANK OF THE BAHAMAS

Consultation Paper on the Banks and Trust Companies (Administrative Monetary Penalties) (Amendment) Regulations, 2018 and the Administrative Monetary Penalties Guidelines

Bank Supervision Department

Publication Date: 11th May, 2018

Closing date for Comments: 25th May, 2018

INTRODUCTION

The Central Bank of The Bahamas (“the Central Bank”) is responsible for the licensing, registration, regulation and supervision of supervised financial institutions (“SFIs”) operating in and from within The Bahamas pursuant to the Banks and Trust Companies Regulation Act, 2000 (“BTCRA”), the Central Bank of The Bahamas Act, 2000, and The Bahamas Cooperative Credit Unions Act, 2015 (“BCCUA”). Additionally, the Central Bank has the duty, in collaboration with its SFIs, to promote and maintain high standards of conduct and management in the provision of banking and trust services.

The Banks and Trust Companies (Administrative Monetary Penalties) Regulations, 2016 and the Administrative Penalties Guidelines (issued 19th May, 2016) have been revised to allow the Central Bank to separate the imposition of administrative monetary penalties for the filing of late returns from the filing of erroneous returns; to introduce a fixed rate penalty for erroneous returns and to factor in the size of the supervised financial institution when imposing penalties. The amended Guidelines also explain in more detail the Central Bank’s approach in determining materiality of errors.

Consultative Period

The consultative period will run from 11th May 2018 to 25th May, 2018. The key changes in both documents have been shaded grey for ease of reference. We welcome your comments on these proposals.

Questions and/or Comments

Your comments and questions regarding the proposed changes should be directed to the Policy Unit, Bank Supervision Department via email.

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Issued: 11th May, 2018

BANKS AND TRUST COMPANIES (ADMINISTRATIVE MONETARY PENALTIES) (AMENDMENT) REGULATIONS, 2018

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**BANKS AND TRUST COMPANIES (ADMINISTRATIVE MONETARY
PENALTIES) (AMENDMENT) REGULATIONS, 2018**

(SECTION 24)

The Governor of the Central Bank of The Bahamas, in exercise of the powers conferred by section 24 of the Banks and Trust Companies Regulation Act,
makes the following regulations ---

1. Citation and commencement

- (1) These Regulations may be cited as the Banks and Trust Companies (Administrative Monetary Penalties) (Amendment) Regulations, 2018.
- (2) These Regulations shall come into force on the day of , 2018.

2. Amendment of Regulation 5

The principal Regulations are amended by the deletion of regulation 5 and the substitution of the following-

“5. Penalties for late or erroneous filings

- (1) The Central Bank may impose a penalty of two hundred and fifty dollars in respect of a large or small supervised financial institution that commits a minor contravention that consists of a late filing and which is listed under items 3,13,14,15,16, 34, 35,36,57,63,69,75,84 and 89 of the fourth column of the First Schedule.
- (2) A minor contravention referred to in paragraph (1) which is continued for more than one day shall, pursuant to subsection (3) of section 24A of the Act, be subject to—
 - (a) a penalty of two hundred and fifty dollars for each day or part of a day during which the contravention continues; and
 - (b) an aggregate maximum penalty of-
 - (i) ten thousand dollars, in the case of a large supervised financial institution; or
 - (ii) one thousand dollars, in the case of a small supervised financial institution.

- (3) The Central Bank may impose the following penalties in respect of a large or small supervised financial institution that commits a minor contravention that consists of an erroneous filing:
- (a) one thousand dollars, where the error is identified by the Central Bank; and
 - (b) five hundred dollars, where the error is identified by the supervised financial institution .
- (4) For the purposes of these Regulations--
- (a) “large supervised financial institution” means a licensee that is authorized by the Central Bank to conduct banking and or trust company business with the general public.
 - (b) “small supervised financial institution” means a licensee that is a trust company that is authorized by the Central Bank to conduct trust business with specified persons only or to offer nominee services only; a Money Transmission Service Provider, a Money Transmission Agent, a Private Trust Company or a Registered Representative.

Made this day of 2018

**John A. Rolle
Governor
Central Bank of The Bahamas**

SUPERVISORY AND REGULATORY GUIDELINES

Administrative Monetary Penalties Guidelines

1. INTRODUCTION

- 1.1 The Central Bank of The Bahamas (“the Central Bank”) is responsible for the supervision of banks, trust companies, registered representatives, non-bank money transmission businesses and money transmission agents (“supervised financial institutions” or “SFIs”) operating in and from within The Bahamas pursuant to the Banks and Trust Companies Regulation Act, 2000 (“BTCRA”), and the Central Bank of The Bahamas Act, 2000. Additionally, the Central Bank has the duty, in collaboration with its SFIs, to promote and maintain high standards of conduct and management in the provision of banking and trust services.
- 1.2 All SFIs are expected to adhere to the Central Bank’s licensing or registration and prudential requirements and ongoing supervisory programmes, including periodic onsite examinations, and required regulatory reporting. SFIs are also expected to conduct their affairs in conformity with all other relevant Bahamian legal requirements.

2. PURPOSE

- 2.1 The BTCRA and the Banks and Trust Companies (Administrative Monetary Penalties) Regulations, 2016 (“the AMP Regulations”) provide the Central Bank with a wide range of discretionary enforcement powers to address situations that give the Central Bank cause for concern. Specifically, the Central Bank has the power to impose administrative monetary penalties (“penalties”) against any SFI/person in respect of their contravention of any provision of the BTCRA, any Regulations made under that Act, any direction issued or order made by the Central Bank or any condition and/or limitation imposed by the Central Bank. Administrative monetary penalties are monetary sanctions imposed by the Central Bank under statutory authority in respect of the matters indicated above, without the Central Bank having to go to court.
- 2.2 Penalties are imposed primarily to promote high standards of regulatory conduct by deterring persons from committing contraventions and encouraging those who have committed contraventions to take appropriate remedial action. The imposition of penalties is also designed to prevent, or at least reduce recourse to more costly and time consuming enforcement action such as criminal prosecution. This tool supports and enhances the Central

Bank's efforts to ensure compliant behavior by providing the Bank with greater flexibility and responsiveness while enabling it to achieve prompt, effective, measured, proportionate and equitable resolution of particular contraventions in order to meet its regulatory objectives.

- 2.3 The Administrative Monetary Penalties Guidelines ("the Guidelines") set out the procedures that the Central Bank will generally follow when it has cause for concern regarding the operations of a SFI or in the event of non-compliance by any person or entity with applicable legislation, orders, directives, conditions or limitations of the Central Bank.
- 2.4 The objective of these Guidelines is to promote awareness and enhance transparency of the penalties regime for SFIs and other relevant parties. The Guidelines summarize the circumstances under which the imposition of a monetary penalty may be expected. The circumstances under which the Central Bank would undertake other intervention and enforcement measures are set out in the Guide to the Central Bank's Ladder of Supervisory Intervention.

3. APPLICABILITY

- 3.1 These Guidelines are applicable to all SFIs and their controllers, directors, managing directors and senior executive officers ("approved persons"), and to any other relevant person.

4. PROCEEDINGS AND DETERMINATION OF RESPONSIBILITY

- 4.1. The Central Bank is empowered to impose monetary penalties in respect of the following matters, where it is satisfied that a person:
 - (i) has committed an offence against –
 - (a) Regulation 8 of the Financial Intelligence (Transactions Reporting) Regulations, 2000; or
 - (b) The Financial Transactions (Wire Transfers) Regulations, 2015; or
 - (ii) has contravened –
 - (a) any provision of the BTCRA;
 - (b) any regulations made under the BTCRA;
 - (c) any direction issued by the Bank pursuant to section 6C(1) or section 18(1)(h) of the BTCRA;
 - (d) any condition or limitation imposed by the Central Bank; or
 - (e) any order made by the Central Bank under the BTCRA or under a regulation made pursuant to the BTCRA.

- 4.2. The Central Bank’s decision to impose a penalty is taken by an Administrative Monetary Penalties Decisions Committee (“AMPDC”) comprising of not less than three (3) senior Central Bank officers (which may include the Inspector of Banks and Trust Companies (“the Inspector”) and the Manager of the Bank Supervision Department). The composition and size of the AMPDC may vary depending on the nature and complexity of the particular matter under consideration. The AMPDC is not a standing committee but is convened on a “case by case” basis as required.
- 4.3. Whenever the Central Bank considers it appropriate to impose a penalty against a person in respect of a contravention outlined in paragraph 4.1 above, it may, before taking such action, issue to the person concerned, by hand or via email, a Notice of Contravention (“Notice”), which must contain:
- (i) the name of the person believed to have committed a contravention or an offence;
 - (ii) the nature of the contravention or offence;
 - (iii) the penalty that the Central Bank intends to impose;
 - (iv) the right of the person, within 30 days after the Notice is served or within such longer period as the Central Bank may specify in the Notice, to pay the penalty or to make representations to the Central Bank with respect to the contravention or offence and the proposed penalty, and the manner for so doing; and
 - (v) the fact that, if the person does not pay the penalty or make representations in accordance with the Notice, the person will be deemed to have committed the contravention or offence, as the case may be, and the Central Bank may issue an Order imposing a penalty in respect of it.
- 4.4. It is important to note, however, that no Notice is required to be given to SFIs before the Central Bank issues an Order with respect to contraventions involving the late or erroneous filing of routine returns that SFIs are required to submit to the Central Bank pursuant to section 9 of the BTCRA or other applicable legislation (see section 6 below for details on late or erroneous filings.)
- 4.5. The person on whom a Notice is served may choose to pay the penalty proposed in the Notice without dispute. In such a case, the Central Bank would regard the person as having committed the contravention or offence notified and the proceedings in respect of the contravention or offence are ended.
- 4.6. Representations must be made in writing (either via e-mail or hand-delivered letter) and must clearly articulate why the representation is being submitted as well as the facts the Central Bank should take into consideration as part of its review. The letter must be signed by an appropriate senior officer of the SFI, such as the Senior Officer I or Senior Officer II.

- 4.7. Representations must be received by the Central Bank within thirty (30) days after the date of the Notice (or such further period as the Central Bank may specify in the Notice). Representations received after this deadline will not be considered. They should be addressed to:
- Inspector of Banks and Trust Companies
The Bank Supervision Department
The Central Bank of the Bahamas
Frederick Street
Nassau, N.P., Bahamas
- or
- e-mail: AdminPenalties@centralbankbahamas.com
- 4.8. Where representations are made, the Central Bank will normally respond in writing within thirty (30) days of receipt. Representations are considered by at least two (2) senior Central Bank officers (“the decision makers”) who would not have participated in the initial decision to impose the penalty which is the subject of the representations. Such officers will include the Bank’s Governor and Legal Counsel. In deciding whether the penalty should be imposed, the decision makers will consider, on a balance of probabilities, whether the person committed the contravention or offence alleged.
- 4.9. Where representations are made, the decision makers will assess the appropriateness of imposing the penalty contemplated in the light of the representations and any new information they receive relating to the matter under consideration. If the decision makers determine that the person has committed the contravention or offence, the Central Bank will issue an Order setting out the penalty imposed in respect of the contravention or offence. Such penalty may be in the amount indicated in the original Notice or it may be of a lesser amount, having regard to the representations made.
- 4.10. The decision makers may also decide, in light of the representations made, that it is not appropriate to impose the penalty. If such a decision is taken, the Notice will be withdrawn and the concerned person will be advised in writing. No Order will be issued.

5. CONTRAVENTIONS AND PENALTIES

- 5.1. The BTCRA and AMP Regulations classify contraventions as “minor”, “serious” or “very serious”. Penalties may be imposed on a lump sum basis up to the specified maximum set out below, against individuals and/or corporate entities in the case of a serious or very serious contravention, or a minor contravention that is not a late or erroneous filing of returns. The filing of a late return attracts a penalty at the prescribed per diem rate of \$250. The filing of erroneous returns would attract a fixed penalty of \$1,000 or \$500 in

the circumstances described in paragraph 6 below. Penalties for late and erroneous filings may only be imposed against companies. See the table below.

CLASS		INDIVIDUAL	COMPANY	COMPANY
		Lump sum	Lump sum	Per diem
Minor	Non- LEF	\$2,500	\$10,000	N/A
	Late Filings- Large SFIs ¹	N/A ²	N/A	\$250 (up to a maximum of \$10,000)
	Late Filings Small SFIs ³	N/A	N/A	\$250 (up to a maximum of \$1,000)
	Erroneous Filings ⁴	N/A	\$1,000 or \$500 (as determined)	N/A
Serious		\$5,000	\$50,000	N/A
Very serious		\$10,000	\$100,000	N/A

- 5.2 As there will be very few cases of a particular contravention in which all the circumstances will be essentially the same, the Central Bank’s ability to impose a range of penalties for a particular contravention provides the Bank with much needed flexibility to assess each case on its merits and to impose a penalty that is proportionate in all the circumstances of the case being considered.
- 5.3 As mentioned above, the Central Bank may impose a penalty for late or erroneous filing of returns that SFIs are required to submit to the Bank as prescribed by the AMP Regulations (see section 6 of the guidelines below for details).
- 5.4 These Guidelines address errors that are inadvertent. The Central Bank does not accept intentional errors, gross negligence or willful non-compliance. To the extent that errors and erroneous filings are intentional, fit and proper considerations will apply to any person responsible for deliberately reporting false information.

¹Minor contravention for late filing of returns with respect to bank and trust companies.

²Not applicable.

³Minor contravention for late filing of returns with respect to smaller SFIs i.e. non-bank money transmission businesses, restricted nominee trusts, private trust companies and registered representatives.

⁴Minor contravention that is an erroneous filing of returns and is applicable to both small and large SFIs.

- 5.5 A listing of the various contraventions in respect of which the Central Bank may impose penalties and the classifications of each such contravention is set out in the First Schedule to the AMP Regulations.

Action against approved persons

- 5.6 The primary responsibility for ensuring compliance with a SFI's obligation rests with the SFI's board and senior management. As such, the Central Bank may take disciplinary action, including imposing a penalty, against an approved person where there is evidence of culpability on the part of that approved person. Personal culpability arises where the behavior was deliberate or where the approved person's standard of behavior was below that which would be reasonable in all the circumstances at the time of the conduct concerned.
- 5.7 In some cases it may not be appropriate to take disciplinary measures against a SFI for the actions of an approved person (an example might be where the SFI can show that it took all reasonable steps to prevent the contravention.). In other cases, it may be appropriate to take action against both the SFI and the approved person. For example, a SFI may have breached the rule requiring it to take reasonable care to establish and maintain such systems and controls as are appropriate to its business and the approved person may have taken advantage of deficiencies in systems and controls to misappropriate assets.
- 5.8 The Central Bank will not impose a penalty against an approved person simply because a regulatory contravention has occurred in an area for which the person is responsible. Such action will only be taken if the approved person's conduct was below the standard which would be reasonable in all the circumstances at the time of the contravention concerned.
- 5.9 An approved person who has exercised due and reasonable care when assessing information, has reached a reasonable conclusion and has acted on it will not have committed a contravention.

6. LATE AND ERRONEOUS FILING OF RETURNS

- 6.1. SFI's are required to file a variety of financial and corporate information and related documents ("returns") specifically mandated by the BTCRA or that the Inspector deems necessary to carry out his legislative functions. Much of this information is required in accordance with a pre-determined schedule and is subjected to review for accuracy and completeness when received by the Central Bank. Where the Inspector requests non-routine information, the Central Bank and the SFI will, where practicable, agree a timeframe for providing the information.

- 6.2. Returns must be: (i) made in the form and manner prescribed by the Central Bank, (ii) complete, (iii) validated⁵ (i.e. returns cannot be submitted without passing the validation test) and (iv) received by the Central Bank by the required due date. If a return fails to meet any of these requirements, it is deemed to be in contravention of requirements and, as provided under regulation 5 of the AMP Regulations, is subject to a penalty for each day the contravention continues. The returns required in accordance with a pre-determined schedule, and the related due dates are set out in Appendix 1 hereto. The attached Appendix 1 may be updated from time to time, and is not intended to be an exhaustive schedule of regulatory filing requirements.
- 6.3. The table below outlines the penalty structure for a minor contravention that is a late or erroneous filing of returns. The penalties are per diem charges that are assessed against the SFI in respect of individual returns that are late, up to the specified maximum. For erroneous filing of returns, fixed rate penalty charges will be assessed against the SFI.

Class	Penalty Type	Company	Minimum	Maximum
Minor	Per Diem	Large SFIs	\$250	\$10,000
<i>(i) Late</i>		Small SFIs	\$250	\$1,000
Minor	Lump Sum	ALL SFIs	\$500	\$1,000
<i>(ii)Erroneous</i>				

- 6.4. In the case of returns containing errors, the Central Bank calculates penalties based on: (i) the materiality of the error, and (ii) who identified the error (i.e. whether the Central Bank or the SFI). For the purposes of the Guidelines, “material errors” or “material misstatements” are omissions or misstatement of items that, (by their size or nature) could individually and/or collectively influence the decisions of users, taken on the basis of the financial information provided⁶. Appendix 2 provides some examples of material errors. When assessing whether information is material to the return, the Central Bank will, among other things, consider the following:

⁵ ‘Validated’ – means the financial return passes the validation process when received by the Central Bank via its Online Reporting and Information Management System (“ORIMS”).

⁶ ‘Materiality’ definition taken and adapted from IAS 8, paragraph 5.

- a. Does the error have a material impact on the SFI's capital and/or financial position;
 - b. Was the error systematic or random; and
 - c. Does the error occur frequently. The Bank has a 25% tolerance threshold for errors and will consider an error to be "frequent" where it has occurred more than three times annually for SFIs reporting on a monthly basis or more than once annually for SFIs reporting on a quarterly basis.

- 6.5. In general, the due date for determining whether a return is **late** is the due date as prescribed in Appendix 1, and there is no grace period save for the audited financial statements and the copy evidencing publication of same as provided for in the BTCRA. For example, a complete, **validated** return that is in the prescribed form that is received before the end of the first day following the due date is considered one day late. The following guidelines apply for the purpose of calculating the number of days a return is late:
 - (i) where the prescribed due date for any return falls on a holiday or on a Saturday or Sunday, the due date (for penalty purposes) is the first business day following the holiday, Saturday or Sunday;
 - (ii) in the case of any return that is not received *by the end* of the day on which it is due, holidays, Saturdays and Sundays are included in the number of days the return is late;
 - (iii) the date the return is received, is the date recorded by the Central Bank's systems in the case of returns that must be filed electronically via the Online Reporting and Information Management System ("ORIMS");
 - (iv) the date the return is received, is the Central Bank's date stamp in the case of returns that must be filed in hard copy. All returns must be complete, **validated and received** directly by the Bank on or before the due date, to be considered filed on time;
 - (v) a day ends at 11:59:59 PM in the case of returns that must be filed electronically via ORIMS, or at the close of business at 5:00 p.m. in the case of returns that must be filed in hard copy; and
 - (vi) an incomplete **or out-of-date return**, where completeness is determined in relation to the requirements of the relevant instructions or validation rules, is considered "not filed" until the Central Bank receives all necessary elements of the return.

- 6.6 SFIs are reminded that it is their responsibility to provide the Central Bank with the returns listed in Appendix 1. This includes taking reasonable measures to ensure they are received by the Central Bank by the prescribed due date, and not merely dispatched by that date.

- 6.7 Where the Central Bank has received a request for an extension for the filing of the audited financial statements and the copy of the published audited financial

statements, such request must be made by the SFI/person at least 5 working days prior to the prescribed due date. If the request for an extension is granted, the newly established deadline is the enforceable due date and the relevant penalties will apply for late submission beyond this date.

- 6.8 If a return cannot be filed on time because the Central Bank is not able to receive it due to a system malfunction or other event outside of its control, or if the Central Bank makes an error that affects the correct recording of the filing date, any penalty assessed will either not be imposed (i.e., no Notice or Order will be issued), or corrected accordingly if a Notice was issued in error.
- 6.9 Penalties are imposed for returns (original and any subsequent submissions) that are not in the prescribed form, are incomplete or contain errors. Although the focus is on financial returns (primarily because errors may be more readily identified in financial information than in corporate information), the Central Bank reviews certain corporate returns to identify and resolve errors in their completion. Penalties for incomplete or erroneous corporate returns also apply.
- 6.10 Financial returns are subjected to a variety of validation rules when they are received by the Central Bank. Most of the Central Bank's validation rules are mathematical rules that test the data for internal consistency, with very narrow tolerance levels.
- 6.11 The validation process may identify errors in a single return, or in two or more returns, and these errors would result in contraventions in respect of all the returns affected. However, these errors should be avoidable because they are the result of failure to comply with the validation rules. In addition, every licensee has the ability to run the Central Bank's validation rules against the information reported in its financial returns to identify such errors.
- 6.12 The following guidance describes the Central Bank's approach when assessing penalties for the filing of **erroneous** financial returns (see also Appendix 3):
 - (i) the Central Bank notifies SFIs by e-mail of errors as they are identified. Typically, the Central Bank will review and notify the SFI within three to five (3-5) business days of receipt:
 - a. Where the due date for filing a return has not expired and the SFI provides the correction prior to the due date, no penalty will be imposed.
 - b. Where the due date has expired, and the error is considered by the Central Bank to be immaterial, no penalty will be imposed unless the occurrence of errors is frequent or systematic. Where the Central Bank considers an error to be frequent as defined under paragraph 6.4(c) above, a fixed penalty of \$1,000 will be imposed.

- c. Where the due date has expired, and the error is considered by the Central Bank to be material, a fixed penalty of \$1,000 will be imposed.
- (ii) the Central Bank acknowledges that its validation process cannot identify all errors and does not want to discourage SFIs from correcting errors that the validation process does not detect;
 - a. Where the SFI files a return containing an error and has self-identified and corrected the error before the due date, no penalty will be imposed.
 - b. Where the SFI self-identifies an error and files a correction to the previously submitted return, no penalty will be imposed, if the Central Bank considers the error to be immaterial.
 - c. Where the Central Bank considers the error to be material, and the SFI self-identifies the error and files a correction to the previously submitted return, a fixed penalty of \$500 will be imposed.
 - (iii) SFIs must use the most recent excel forms provided on the Central Bank's website. A return filed on an out-of-date form is considered **to be late** and will incur a per diem penalty, if filed after the due date.
 - (iv) In the case of cross-returns with validation issues (between two returns fails), only the return that does not pass validation (in general, the first one to be filed of the returns affected) is subject to penalty, regardless of the number of returns affected. As such, any penalty will be calculated based on (i) thru (iii) above.

6.13 Outdated corporate returns (i.e., corporate returns that do not show current information) are erroneous for the purpose of applying penalties.

6.14 As indicated above, the Central Bank has no discretion as to the amount of a penalty imposed for late filing of returns once the penalty is incurred. The Bank may exercise discretion as to whether a penalty should be imposed. However, the Central Bank exercises this discretion judiciously so as not to undermine the integrity of the administrative penalties framework. The discretion is exercised when SFIs are either generally or individually affected by something over which they have little or no control, such as an act of nature or a major power outage, or a similar situation or business interruption that prevented the licensee from producing or delivering the complete return to the Central Bank on time and validated. As such, few penalties are dealt with in this manner.

6.15 Examples of situations that will not be considered by the Central Bank as compelling include: the failure of the postal system or a courier to deliver materials, if they are otherwise available and operating; breakdowns in a licensee's internal controls, staff shortages, work pressures and vacations; the

licensee's previous filing record and similar situations within the control of the licensee.

6.16 SFIs that are consistently late or frequently file inaccurate returns will be subject to penalties under the administrative monetary penalties regime. Additionally, the SFI:

(i) may be placed at Stage 1 Intervention in accordance with the Central Bank's Guide to the Ladder of Supervisory Intervention; and/or

(ii) may be subject to additional supervisory intervention measures, such as Pillar 2 add-ons.

7 ELECTION (CONTRAVENTION OR CRIMINAL OFFENCE) AND TIME LIMIT WITHIN WHICH PROCEEDINGS MAY BE BROUGHT

7.1 One of the primary advantages of having administrative monetary penalties in the Central Bank's regulatory enforcement toolkit is that procedural and legal requirements are greatly reduced since the Central Bank can impose penalties without recourse to the Courts. It is also an effective enforcement alternative to criminal prosecution which, being a more costly and time-consuming process, can be reserved for the most severe cases of regulatory non-compliance and misconduct.

7.2 Section 24C of the BTCRA requires the Central Bank to choose whether to proceed with an act of regulatory non-compliance as a contravention in respect of which a penalty may be imposed, or whether to proceed by way of a criminal prosecution. Once the election is made, the Central Bank is precluded from proceeding in the alternative manner.

7.3 Proceedings relating to a minor contravention must be brought no later than six months from the date on which the contravention came to the knowledge of the Central Bank. Proceedings relating to a serious or very serious contravention must be brought no later than six years from the date on which the contravention came to the knowledge of the Central Bank (BTCRA Section 24G(1)).

7.4 A document that appears to have been issued by the Central Bank which certifies the day on which a contravention came to the knowledge of the Central Bank may be accepted as evidence in court proceedings as proof of that date. There is no need to prove the signature or official character of the letter's apparent signatory, unless there is evidence to the contrary (for example, that the signature on the document is not that of a Central Bank official or that the signatory was not authorized to sign the letter.)

8 DETERMINING THE AMOUNT OF THE PENALTY

- 8.1 The Central Bank will consider all the relevant circumstances of a case when it determines the amount of a penalty that is appropriate and in proportion to the contravention under consideration. In this regard, the Central Bank's main objectives are to ensure transparency and proportionality with respect to the matters being regulated; having regard to the seriousness of the contravention, its effects on maintaining the Central Bank's regulatory programme and the public interest that is sought to be protected.
- 8.2 Section 24A(4) of the BTCRA stipulates the factors that the Central Bank must consider when determining the amount of any penalty it proposes to impose. The list of factors is not exhaustive: not all of them may be relevant to a particular case, and there may be other factors not included that are relevant. Below are the factors that the Central Bank will consider in determining the amount of a penalty:
- (a) the degree of intention or negligence on the part of the person who committed the contravention;
 - (b) the harm done by the contravention;
 - (c) the history of the person who committed the contravention with respect to any prior contravention or conviction under the BTCRA within the five-year period immediately before the contravention;
 - (d) whether the contravention or non-compliance was brought to the attention of the Central Bank by the person concerned;
 - (e) the seriousness of the contravention or non-compliance;
 - (f) whether or not the contravention or non-compliance was inadvertent;
 - (g) the efforts, if any, made to rectify the contravention or non-compliance and to prevent a recurrence;
 - (h) the potential financial consequences to the licensee or person concerned and to third parties, including customers and creditors of the licensee, of imposing a penalty;
 - (i) the penalties imposed by the Central Bank in other cases; and
 - (j) any other criteria that may be prescribed by regulation.
- 8.3 The Central Bank assesses "harm" in relation to the degree to which the contravention jeopardizes the interests of depositors, or other creditors, the

beneficiaries of any trust, the financial system of The Bahamas or the Central Bank's regulatory programme.

9 PAYMENT OF PENALTY

- 9.1 The Central Bank's Notice of Contravention and its Order which is issued after representations are made with respect to a Notice, would both contain details of the amount of the penalty imposed as well as the period and the form within which the penalty is required to be paid.
- 9.2 All penalties must be made payable to the Central Bank within the period specified by the Central Bank in its Notice or Order. Penalties may be subject to the accrual of interest for late payment, whereby interest accrued will be calculated at the same rate as interest payable on court judgments (i.e. prime plus 2%).

10 APPEALS

- 10.1 The Central Bank's decision to impose a penalty for a serious or very serious contravention may be appealed to the Supreme Court of The Bahamas in accordance with Section 26 of the BTCRA.

11 REMISSION

- 11.1 The Central Bank may remit all or part of any penalty imposed, including any interest that has accrued on the penalty. Such remission may be made subject to conditions or may be unconditional and may arise in instances where the Central Bank has imposed a penalty in error or without regard to all relevant circumstances.

12 PUBLICATION

- 12.1 The Central Bank may make public a statement of the contravention or offence in respect of which it imposes a penalty. Publication will be made in respect of serious and very serious contraventions on the Central Bank's website and such publication would include, inter alia, the name of the person that committed the contravention, the nature of the contravention, and the amount of the penalty imposed.

APPENDIX 1
Statutory/Regulatory Filing Requirements

#	Name of Document	# of Days to File/Due Date	Applicability
1.	Payment of Annual Licence Fee to the Central Bank	March 1 st	All licensees, Money Transmission Businesses and Non-Licenses Registered Representatives
2.	Copy of the Registrar General's Fee Receipt		
3.	Audited Financial Statements	Within 120 days after the financial year end	All licensees, (except Nominee Trust Licensees) ⁷ Money Transmission Businesses and Non-Licenses Registered Representatives
4.	Copy of the Published Audited Financial Statements		All licensees (except Restricted Nominee Trust Companies, Restricted Banks and Restricted Trust Companies) and Money Transmission Businesses
5.	Copy of Group Organizational Chart	1st January	All licensees (except for Nominee Trust Companies)
6.	Corporate Governance Certification	Within 120 days after the calendar year end	All licensees (except Restricted Nominee Trust Companies or Restricted Trust Companies whose operations are limited to conducting business on behalf of one client or clients who are members of the same family) and Money Transmission Businesses
7.	Annual Statement as filed with the Registrar General	Within 10 days following the statutory deadline for filing with the Registrar General's Office	All locally incorporated Companies (under the Companies Act)
8.	Returns in respect of Beneficial Ownership of Shares	March 31 st	All locally incorporated Companies under the Companies Act that have Bahamian ownership of sixty percent or more
9.	Management Letter from the External Auditors	Within 45 days after the expiration of the deadline for submission of the audited financial statements	All licensees and Money Transmission Businesses
10.	Monthly unaudited financial Statements	Within 15 business days after the month end	Domestic Banks (Authorized Agents and Dealers)
11.	Quarterly unaudited financial Statements	Within 15 business days after the quarter end	Public Licensees, Money Transmission Businesses and Non-Licenses Registered Representatives
12.	Auditors' Certification	Within 120 days after the calendar year end	Restricted Licensees (Not consolidated)
13.	Directors' Certification		Restricted Licensees (Not consolidated)
14.	Verification of Existing Clients Report	Within 21 days after the quarter end	Commercial Banks (Authorized Dealers)
15.	Restructured Loans Report	Within 15 days after the month end	
16.	Debt Service Ratio Report	Within 21 days after the month end	Commercial Banks (Authorized Dealers), as applicable
17.	Monthly Credit Quality Reports	Within 10 days of the month end	Domestic Banks (Authorized Agents and Dealers), as applicable
18.	Dormant Account Report	February 28 th for accounts where 7 years has elapsed since the last	All licensees

⁷ Provided the nominee trust licensee consolidates its financial statements into the annual audited financial statements of its parent, and the nominee trust licensee does not account for its own income and expenses.

		customer initiated activity took place	
19.	Daily B\$ Position	Two business days after referenced period	Commercial Banks <i>(Authorized Dealers)</i>
20.	Weekly Interim Report	By noon on Tuesdays	Domestic Banks <i>(Authorized Agents and Dealers)</i>
21.	Directors' Certificate	31 st January	Non-Licensee Registered Representatives
22.	Professional Indemnity Insurance Cover	31 st December	Public Trust Companies
23	Foreign Currency Daily Sales Submission Report	By 3:00 pm the following business day	Commercial Banks <i>(Authorized Dealers)</i> and Money Transmission Businesses
24	Certified Copy of the Board of Directors' Resolution Authorizing the Closure/Liquidation of a PTC	Within five business days of the date of the resolution and before the effective date of the closure	Registered Representatives

A P P E N D I X 2

Examples of Material Errors

The assessment of whether information is to be considered material should be taken both on an individual and a collective basis. The following are some examples of errors that may be regarded as ‘material’ for the purposes of these Guidelines:

- a. Errors where the size or value of the transaction or balance influences the overall assessment of the SFI and nature of its operations. For example:
 - (i) Misclassifications of items by more than 5 percent of the balance sheet total;
 - (ii) The error moves Total Assets by more than 1 percent change (in either direction);
or
 - (iii) The error moves CET1 Capital Ratio by more than 1 percent change (in either direction).

(For the purposes of financial reporting, accounting adjustments are not considered to be errors).
- b. Errors that report an item as compliant with regulations or guidelines, when it is in fact non-compliant.
- c. The nature of the error or omission if the information impedes a full understanding of the SFI’s scope of operation.
- d. Errors which affect an SFI’s overall statistical indicators.
- e. Unapproved financial transactions that impact financial statement reporting.

The examples provided above are not exhaustive. The Central Bank reserves the right to declare any error material, if warranted.

APPENDIX 3
Flowchart for Late or Erroneous Filings

