

**CALCULATING
THE
ADMINISTRATIVE
FINE**

**Version 1
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1. Introduction

- 1.1. This policy is to be followed after it is determined that a breach has occurred and that an administrative penalty should be imposed. It should be consulted prior to issuing a breach notice and again after the consideration of any representations received.

2. Determining the Appropriate Level of Financial Penalty

- 2.1. The Authority's penalty-setting regime is based on the following principles:
- 2.1.1. The for the legal profession to contribute to promoting and maintaining trust in the Cayman Islands;
 - 2.1.2. Disgorgement - a Firm should not benefit from any breach;
 - 2.1.3. Discipline - a Firm should be penalised for wrongdoing; and
 - 2.1.4. Deterrence - any penalty imposed should deter the Firm who committed the breach, and others, from committing further or similar breaches.
- 2.2. The total amount payable by a Firm subject to an administrative fine may be made up of two elements: (i) disgorgement of the benefit received as a result of the breach; and (ii) a financial penalty reflecting the nature and seriousness of the breach. These elements are incorporated in a five-step framework, which can be summarised as follows:
- 2.2.1. Step 1: the removal of any financial benefit or avoidance of loss derived directly from the breach (“disgorgement”);
 - 2.2.2. Step 2: the determination of a figure which reflects the nature and seriousness of the breach;
 - 2.2.3. Step 3: an adjustment made to the Step 2 figure to take account of any aggravating and mitigating circumstances;
 - 2.2.4. Step 4: an adjustment made to the amount arrived at after Steps 2 and 3, where appropriate, to ensure that the penalty is consistent with the Guiding Principles, outlined at paragraph 2.1.

- 2.2.5. Step 5: if applicable, a settlement discount will be applied. This discount does not apply to disgorgement of any financial benefit derived directly from the breach.
- 2.3. These steps will apply in all cases.
- 2.4. Where a breach committed by a corporate body is shown to have been committed with the consent, connivance, knowledge or neglect of any relevant, finable individual, that individual Firm may also be subject to an administrative fine as well as the corporate body.
- 2.5. The Authority recognises that a penalty must be proportionate to the breach. The Authority may decrease the level of the penalty arrived at after applying Step 2 of the framework if it considers that the penalty is disproportionately high for the breach concerned, which the Authority may take into account.
- 2.6. The lists of factors and circumstances in this Part are not exhaustive. Not all of the factors or circumstances listed will necessarily be relevant in all cases and there may be other factors or circumstances not listed which are relevant.

3. The Five Steps for Imposing Penalties

3.1. Step 1 – Disgorgement

- 3.1.1. The Authority will seek to deprive a Firm (or individual) of the financial benefit derived directly from the breach (which may include the profit made or loss avoided) where it is practicable to quantify this. The Authority will ordinarily also charge interest on the benefit from the time the breach started
- 3.1.2. Where the success of a Firm’s (or individual’s) entire business model is dependent on breaching the Anti-Money Laundering Regulations (2020 Revision) or linked legislation and the breach is at the core of the Firm’s regulated activities, the Authority will seek to deprive the Firm (or individual) of all the financial benefit derived from such activities. Where a Firm (or individual) agrees to carry out a redress programme to compensate those who have suffered loss as a result of the breach, the Authority will, when calculating the financial benefit derived directly from the breach, take any redress into consideration. In such cases, the

final penalty might not include a disgorgement element, or the disgorgement element might be reduced.

3.2. Step 2 - The Seriousness of the Breach

- 3.2.1. The Authority will determine a figure that reflects the seriousness of the breach. In many cases, the amount of revenue generated by a Firm (or individual) from a particular business area is indicative of the harm or potential harm that its breach may cause, and in such cases the Authority will determine a figure which will be based on a percentage of the Firm's (or individual's) revenue from the relevant business areas. The Authority also believes that the amount of revenue generated by a Firm (or individual) from a particular product or business area is relevant in terms of the size of the financial penalty necessary to act as a credible deterrent. However, the Authority recognises that there may be cases where revenue is not an appropriate indicator of the harm or potential harm that a Firm's breach may cause, and in those cases the Authority will use an appropriate alternative. For example, the Authority may also consider the breach's effect on the performance of the Authority's statutory functions; any inconvenience or distress to clients, third parties and / or members of the public; or any negative impact on the image of the Cayman Islands.
- 3.2.2. In those cases where the Authority considers that revenue is an appropriate indicator of the harm or potential harm that a Firm's (or individual's) breach may cause, the Authority will determine a figure which will be based on a percentage of the Firm's "relevant revenue". "Relevant revenue" will be the revenue derived by the Firm during the period of the breach from the business areas to which the breach relates. Where the breach lasted less than 12 months, or was a one-off event, the relevant revenue will be that derived by the Firm (or individual) in the 12 months preceding the end of the breach. Where the Firm (or individual) was in existence for less than 12 months, its relevant revenue will be calculated on a pro rata basis to the equivalent of 12 months' relevant revenue.
- 3.2.3. Having determined the relevant revenue, the Authority will then decide on the percentage of that revenue which will form the basis of the penalty. In making this determination the Authority will consider the seriousness of the breach and choose a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach. The more serious the breach, the higher the

level. For penalties imposed on Firms (or individuals) there are the following five levels:

3.2.3.1. level 1 - 0% No profit add on;

3.2.3.2. level 2 - 10% of profit;

3.2.3.3. level 3 - 20% of profit;

3.2.3.4. level 4 - 30% of profit; and

3.2.3.5. level 5 - 40% of profit.

3.2.4. The Authority will assess the seriousness of a breach to determine which level is most appropriate to the case.

3.2.5. In deciding which level is most appropriate to a case, the Authority will take into account various factors, which will usually fall into the following four categories:

3.2.5.1. factors relating to the impact of the breach;

3.2.5.2. factors relating to the nature of the breach;

3.2.5.3. factors tending to show whether the breach was deliberate;
and

3.2.5.4. factors tending to show whether the breach was negligent.

3.2.6. Factors relating to the impact of a breach committed by a party include:

3.2.6.1. the level of benefit gained or loss avoided, or intended to be gained or avoided, by the Firm from the breach, either directly or indirectly;

3.2.6.2. the loss or risk of loss, as a whole, caused to clients, third parties or members of the public in general;

3.2.6.3. the loss or risk of loss caused to individual clients or third parties;

- 3.2.6.4. whether the breach had an effect on particularly vulnerable people, whether intentionally or otherwise;
 - 3.2.6.5. the inconvenience or distress caused to clients; and
 - 3.2.6.6. whether the breach had an adverse effect on the stability of Cayman's Financial markets or a negative effect on the Cayman Islands in general, and, if so, how serious that effect was. This may include having regard to whether the orderliness of, or confidence in, the Cayman Islands has been damaged or put at risk.
- 3.2.7. Factors relating to the nature of a breach by a Firm include:
- 3.2.7.1. the nature of the rules, requirements or provisions breached;
 - 3.2.7.2. the frequency of the breach;
 - 3.2.7.3. whether the breach revealed serious or systemic weaknesses in the Firm's procedures or in the management systems or internal controls relating to all or part of the Firm's business;
 - 3.2.7.4. whether the Firm's directors and/or senior management were aware of the breach;
 - 3.2.7.5. the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach;
 - 3.2.7.6. the scope for any potential financial crime to be facilitated, occasioned or otherwise occur as a result of the breach;
 - 3.2.7.7. whether the Firm failed to conduct its business with integrity or in a fit and proper manner;
 - 3.2.7.8. whether the Firm, in committing the breach, took any steps to comply with rules and statements of guidance, and the adequacy of those steps; and
 - 3.2.7.9. the extent to which the behaviour which constitutes the contravention departs from current market practice.
- 3.2.8. Factors tending to show the breach was deliberate include:

- 3.2.8.1. the breach was intentional, in that the Firm's directors and/or senior management, or a responsible individual, intended or foresaw that the likely or actual consequences of their actions or inaction would result in a breach;
 - 3.2.8.2. the Firm's directors and/or senior management, or a responsible individual, knew that their actions were not in accordance with the Firm's internal procedures;
 - 3.2.8.3. the Firm's directors and/or senior management, or a responsible individual, sought to conceal their misconduct;
 - 3.2.8.4. the Firm's directors and/or senior management, or a responsible individual, committed the breach in such a way as to avoid or reduce the risk that the breach would be discovered;
 - 3.2.8.5. the Firm's directors and/or senior management, or a responsible individual, were influenced to commit the breach by the belief that it would be difficult to detect;
 - 3.2.8.6. the breach was repeated; and
 - 3.2.8.7. in the context of a contravention of any prescribed provision, the Firm obtained reasonable professional advice before the contravention occurred and failed to follow that advice. Obtaining professional advice does not remove a Firm's responsibility for compliance with applicable prescribed provisions.
- 3.2.9. Factors tending to show the breach was reckless or negligent include:
- 3.2.9.1. the Firm's directors and/or senior management, or a responsible individual, appreciated or ought to have appreciated there was a risk that their actions or inaction could result in a breach and failed adequately to mitigate that risk; and
 - 3.2.9.2. the Firm's directors and/or senior management, or a responsible individual, were aware or ought to have been aware there was a risk that their actions or inaction could

result in a breach but failed to check if they were acting in accordance with the Firm's internal procedures.

- 3.2.10. Additional criteria to which the Authority will have regard when determining the appropriate level of financial penalty to be imposed are set out under regulations 55X & 55Y of the Anti-Money Laundering Regulations (2020 Revision).
- 3.2.11. In following this approach, factors which are likely to be considered 'level 4 factors' or 'level 5 factors' include:
 - 3.2.11.1. the breach caused a significant loss or risk of loss to individual clients, third parties or the general public;
 - 3.2.11.2. the breach revealed serious or systemic weaknesses in the Firm's procedures or in the management systems or internal controls relating to all or part of the Firm's business;
 - 3.2.11.3. financial crime was facilitated, occasioned or otherwise attributable to the breach;
 - 3.2.11.4. the breach created a significant risk that financial crime would be facilitated, occasioned or otherwise occur;
 - 3.2.11.5. the Firm failed to conduct its business with integrity or in a fit and proper manner;
 - 3.2.11.6. the Firm's behaviour in facilitating the breach, or failing to avoid the breach, caused actual or potential harm to the Islands' reputation;
 - 3.2.11.7. the breach caused actual or potential harm to the Islands' financial stability; and
 - 3.2.11.8. the breach was committed deliberately or recklessly.
- 3.2.12. Factors which are likely to be considered 'level 1 factors', 'level 2 factors' or 'level 3 factors' include:
 - 3.2.12.1. little, or no, profits were made or losses avoided as a result of the breach, either directly or indirectly;

- 3.2.12.2. there was no or little loss or risk of loss to consumers, investors or other market users individually and in general;
 - 3.2.12.3. there was no, or limited, actual or potential effect on the orderliness of, or confidence in, markets as a result of the breach;
 - 3.2.12.4. there is no evidence that the breach indicates a widespread problem or weakness at the Firm; and
 - 3.2.12.5. the breach was committed negligently or inadvertently.
- 3.2.13. In those cases where revenue is not an appropriate indicator of the harm or potential harm that a Firm's breach may cause, the Authority will adopt a similar approach, and so will determine the appropriate Step 2 amount for a particular breach by taking into account relevant factors, including those listed above. In these cases the Authority may not use the percentage levels that are applied in those cases in which revenue is an appropriate indicator of the harm or potential harm that a Firm's breach may cause.

3.3. Step 3 - Mitigating and Aggravating Factors

- 3.3.1. The Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.
- 3.3.2. The Authority will consider the relevant criteria set out in regulations 55X & 55Y of the Anti-Money Laundering Regulations (2020 Revision), in determining whether there are any factors that may have the effect of aggravating or mitigating the breach, along with any other factors the Authority deems as relevant.
- 3.3.3. The weight given to the criteria outlined in regulations 5 and 6 are set out in Schedule 1 to this Procedure.

3.4. Step 4 - Adjustment for Deterrence (the deterrence principle)

- 3.4.1. If the Authority considers the figure arrived at after Step 3 is insufficient to deter the Firm who committed the breach, or others, from committing further or similar breaches then the Authority may increase the penalty. Circumstances where the Authority may do this include:
- 3.4.1.1. where the Authority considers the Final Fine Amount insufficient in relation to the breach in order to meet the statutory principle of acting as a deterrent;
 - 3.4.1.2. where previous Authority action in respect of similar breaches has failed to improve industry standards;
 - 3.4.1.3. where the Authority considers it is likely that similar breaches will be committed by the Firm or by other parties in the future;
 - 3.4.1.4. where the Authority considers that the likelihood of the detection of such a breach is low; and
 - 3.4.1.5. where a penalty based on an individual's income may not act as a deterrent, for example, if an individual has a small or zero income but owns assets of high value.

3.5. Step 5 - Discount Agreement

- 3.5.1. The Authority and the Firm on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the Firm concerned, reached an agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1. The process for agreeing an early settlement by way of a Discount Agreement is outlined at paragraph 6 of this policy.

4. Serious Financial Hardship

- 4.1. The Authority's approach to determining penalties is intended to ensure that financial penalties are proportionate to the breach. The Authority recognises that penalties may affect firms and individuals differently, and that the Authority should consider whether a reduction in the proposed penalty is appropriate if the penalty would cause the subject of enforcement action serious financial hardship.
- 4.2. Where an individual or firm claims that payment of the penalty proposed by the Authority will cause them serious financial hardship, the Authority will consider whether to reduce the proposed penalty only if:
 - 4.2.1. the individual or firm provides verifiable evidence that payment of the penalty will cause them serious financial hardship; and
 - 4.2.2. the individual or firm provides full, frank and timely disclosure of the verifiable evidence, and cooperates fully in answering any questions asked by the Authority about their financial position.
- 4.3. The onus is on the individual or firm to satisfy the Authority that payment of the penalty will cause them serious financial hardship.

4.4. Individuals

- 4.4.1. In assessing whether a penalty would cause an individual serious financial hardship, the Authority will consider the individual's ability to pay the penalty over a reasonable period (normally no greater than three years). The Authority's starting point is that an individual will suffer serious financial hardship only if during that period his net annual income will fall below \$14,000 and his net worth will fall below \$16,000 as a result of payment of the penalty. Unless the Authority believes that both the individual's income and net worth will fall below these respective thresholds as a result of payment of the penalty, the Authority is unlikely to be satisfied that the penalty will result in serious financial hardship.
- 4.4.2. The Authority will consider all relevant circumstances in determining whether the income and net worth threshold levels should be increased in a particular case.

- 4.4.3. The Authority will consider agreeing to payment of the penalty by instalments where the individual requires time to realise his assets, for example by waiting for payment of a salary or by selling property.
- 4.4.4. For the purposes of considering whether an individual will suffer serious financial hardship, the Authority will consider anything that could provide the individual with a source of income, including savings, property (including Firmal possessions), investments and land.
- 4.4.5. The Authority may also consider the extent to which the individual has access to other means of financial support in determining whether he is able to pay the penalty without being caused serious financial hardship.
- 4.4.6. Where a penalty is reduced it will be reduced to an amount which the individual can pay without going below the threshold levels that apply in that case. If an individual has no income, any reduction in the penalty will be to an amount that the individual can pay without going below the thresholds in paragraph 4.4.1.
- 4.4.7. There may be cases where, even though the individual has satisfied the Authority that payment of the financial penalty would cause serious financial hardship, the Authority considers the breach to be so serious that it is not appropriate to reduce the penalty. The Authority will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether:
 - 4.4.7.1. the individual directly derived a financial benefit from the breach and, if so, the extent of that financial benefit;
 - 4.4.7.2. the individual acted fraudulently or dishonestly with a view to Firmal gain;
 - 4.4.7.3. previous Authority action in respect of similar breaches has failed to improve that Firm's conduct; or
 - 4.4.7.4. the individual has spent money or dissipated assets in anticipation of Authority or other enforcement action with a view to frustrating or limiting the impact of action taken by the Authority or other authorities.

4.5. Corporate Bodies

- 4.5.1. The Authority will consider reducing the amount of a penalty if a firm will suffer serious financial hardship as a result of having to pay the entire penalty. In deciding whether it is appropriate to reduce the penalty, the Authority will take into consideration the firm's financial circumstances, including whether the penalty would render the firm insolvent or threaten the firm's solvency. The Authority will also take into account its statutory objectives, for example in situations where consumers would be harmed or market confidence would suffer, the Authority may consider it appropriate to reduce a penalty in order to allow a firm to continue in business and/or pay redress.
- 4.5.2. There may be cases where, even though the firm has satisfied the Authority that payment of the financial penalty would cause it serious financial hardship, the Authority considers the breach to be so serious that it is not appropriate to reduce the penalty. The Authority will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether:
- 4.5.2.1. the firm directly derived a financial benefit from the breach and, if so, the extent of that financial benefit;
 - 4.5.2.2. the firm acted fraudulently or dishonestly in order to benefit financially;
 - 4.5.2.3. previous Authority action in respect of similar breaches has failed to improve industry standards; or
 - 4.5.2.4. the firm has spent money or dissipated assets in anticipation of any investigation or other action by the Authority, other regulatory authority or other enforcement agency and / or with a view to frustrating or limiting the impact of action taken by the Authority or other authorities.

5. Early Settlement

- 5.1. Early settlement is available to parties to encourage early resolution through voluntary settlement of administrative fines. The Authority and the Firm on which an administrative fine is to be imposed may seek to negotiate the amount of the fine, and other terms, as part of an early settlement. A Firm may wish to enter into an early settlement with the Authority, and may do so prior to or after receiving a Breach Notice for the Proposed Discretionary Fine. The Authority may, but need not, negotiate with a Firm to attempt to reach an early settlement, whether or not the Authority has given a Breach Notice for the Proposed Discretionary Fine.
- 5.2. In cases where early settlement is agreed upon, a discount may be applied by the Authority up to a maximum of 40%. The discount does not apply to the disgorgement of any financial and economic benefits derived by the Firm from the breach (as provided for in the disgorgement principle). Where the Authority and the Firm agree the terms of the early settlement, the Authority and the Firm will enter into a discount agreement.
- 5.3. In accordance with the requirements of the Anti-Money Laundering Regulations (2020 Revision), arriving at an early settlement reflects an efficient use of the Authority's time and resources and reduces the cost and supervisory burden of a protracted administrative fines process. In recognition of the benefits of such processes, the amount of the fine which might otherwise have been payable, that is, the usual fine, may be reduced to reflect the stage at which the Authority and the Firm enter into a binding discount agreement.
- 5.4. A Firm may write to the Head of Enforcement at any time indicating its desire for an early settlement as part of its breach resolution process. The Authority will consider the request and where it agrees to the negotiation of an early settlement, this in no way indicates the suspension of an investigation. The investigation of the breach will continue in accordance with the Anti-Money Laundering Regulations (2020 Revision), this Procedure and any other relevant procedures.
- 5.5. The Authority may deviate from the application of these procedures in certain exceptional circumstances, which will be determined at the sole discretion of the Authority.

6. The Discount Agreement

- 6.1. If a Firm requests the early settlement of an administrative fine, the process is as follows:
 - 6.1.1. The Firm makes a formal written request to the Authority for an early settlement, addressed to the Head of Enforcement. The Authority expects that the Firm will admit the breach and/or breaches in this correspondence, and submit any mitigating factors upon which the Firm wishes to rely. This is the Early Settlement Request.
 - 6.1.2. The Authority, within 21 days following receipt of the Early Settlement Request, will write to the Firm acknowledging receipt and requesting any relevant information² in relation to the breach, with a clear deadline for submission. This is the Early Settlement Response. The Authority will provide the Firm with a reasonable timeframe to submit the requested information. This timeframe will usually be no more than 30 days, and extensions will not usually be granted except in exceptional circumstances.
 - 6.1.3. The Authority, once satisfied that full and frank information has been provided in response to the Early Settlement Response, will then schedule a settlement meeting with the Firm at an agreed upon date and time³. It is intended that there would be only one settlement meeting required in order to finalise the discount agreement.
 - 6.1.4. The Authority and the Firm will exchange all information, in advance of the meeting, which will form the basis for the discount agreement. This information will include details of progress on remedial action being taken in the case of the Firm and details of the usual fine(s) for the breach or breaches being discussed, in the case of the Authority.
 - 6.1.5. The meeting will be attended by representatives of the Firm who are authorised or empowered to agree and sign on the terms of the proposed discount agreement. It is not anticipated that the Authority will sign the discount agreement at this meeting.
 - 6.1.6. The proposed discount agreement containing the amount and terms of the settlement will be submitted to the Head of Enforcement.
 - 6.1.7. The decision of the Head of Enforcement including, the settlement amount, discount, response timeframe and any other terms will be

communicated to the Firm within 21 days following the settlement meeting, via submission of the Discount Agreement.

- 6.1.8. The Firm will be required to sign the discount agreement to formally indicate their acceptance of the Discount Agreement at the meeting.
- 6.2. The fully executed discount agreement is binding on the Authority and the Firm.
- 6.3. The terms of the early settlement will usually be published, save for exceptional circumstances and at the discretion of the Authority. The public release will provide an account of the admitted breaches and all relevant details including, amongst other things, the name of the Firm, the breaches, investigations summary and the fines imposed, including any discount applied.
- 6.4. At any point during this process, the Authority may, in its discretion, decide to conclude the early settlement discussions. This decision may be as a result of a lack of cooperation by the Firm as displayed by, for example, failure to meet specific requests, terms or timeframes.

7. The Settlement Discount

- 7.1. This Procedure allows for the Authority to apply a discount, up to a set maximum, to a fine that it would otherwise expect to impose on a Firm after considering the breach and other relevant factors. The settlement discount will be applied to the usual fine, which will be determined by reference to the Authority's penalty-setting regime. The decision to agree to early settlement and the level of the discount applied must take account of some key factors including:
 - 7.1.1. A clear determination of the amount of the financial penalty that the Authority would otherwise have expected to impose on the Firm had the administrative fines procedure been taken through to its conclusion;
 - 7.1.2. The Authority's satisfaction with the Firm's progress and/or plans at remediating the breaches; and
 - 7.1.3. The Firm's level of cooperation with the Authority during the breach investigation.
- 7.2. The Authority may reduce the usual fine by a stipulated percentage subject to the stage at which the early settlement was initiated by the Firm by way of writing to the

Authority requesting such; and based on the established criteria presented in Table A. Table A presents the four stages of the Authority’s administrative fines process for the purpose of determining the discount to be applied. For the maximum discount to be applied at any stage of the process the Authority should be satisfied that following initiation of early settlement discussions by the Firm, all requirements set by the Authority were fully met and that the Firm made good faith attempts to cooperate and provide full information to the Authority.

Table A: Discount Criteria

Stage	Discount	Description
1	Up to 40%	Stage 1 refers to the period preceding the Authority’s discovery of the breach. Essentially, this applies to cases where the Authority becomes aware of the breach solely because the Firm advises the Authority of the breach.
2	Up to 30%	Stage 2 refers to the period from the commencement of the breach investigation by the Authority until, but not including, the date on which the Breach Notice for Proposed Discretionary Fine is issued to the Firm.
3	Up to 20%	Stage 3 refers to the period from the end of Stage 2 until the expiration of the period (including any extensions granted) allowed to the Firm for providing written representations in response to the Breach Notice for Proposed Discretionary Fine. In cases where these representations are submitted to the Authority prior to the set deadline, Stage 3 will end on the date on which the Authority is in receipt of the written representations.
4	Up to 10%	Stage 4 refers to the period from the end of Stage 3 until, but not including the date on which the Fine Notice of Discretionary Fine is issued by the Authority.

- 7.3. In addition to the discounted fine, or instead of the discounted fine, the Authority may impose an enforcement action on the Firm. This enforcement action may form part of the discount agreement and may be considered when determining the discount applied.
- 7.4. If the Firm does not enter into a binding discount agreement or fails to settle the agreed fine within the timeframes set by the Authority, the discount agreement will be void at the expiration of the period. During Stage 4 or any time prior, a further request to enter into another discount agreement negotiation may be submitted by

the Firm for consideration by the Authority. The Authority will not consider discount agreements and/or requests for early settlements on the date of or following the issuance of the Fine Notice of Discretionary Fine.

- 7.5. In the event that a discount agreement cannot be agreed by all parties, the breach will be dealt with in accordance with the Enforcement Policy, the Anti-Money Laundering Regulations (2020 Revision) and this Procedure.
- 7.6. Where the Firm enters into a Discount Agreement, that Firm may not appeal against the decision of the Authority to issue the fine or the fine amount, if the fine is no more than the amount agreed to in the Discount Agreement.

APPENDIX ONE

Schedule 1

The tables below provide the relative weighting applied by the Authority in considering the appropriate mitigating and aggravating criteria prescribed by Regulation 55X & 55Y of the Anti-Money Laundering Regulations (2020 Revision). The criteria and prescribed weight does not apply to the disgorgement of any benefit calculated at Step 1.

Table A: Criteria considered aggravating by the Authority		Weight
1	Any financial or other damage or loss or other harm done or caused by the breach, including, for example, to – i. the Firm’s creditors, customers, investors, policyholders or shareholders; ii. the performance of the Authority’s functions.	20
2	The nature and seriousness of the breach	15
3	The Firm’s history of compliance, in the 5 years before the breach, with the Anti-Money Laundering Regulations and similar laws in other jurisdictions.	10
4	The degree of the Firm’s inadvertence, intent or negligence in committing the breach.	10
5	Evidence of intent by the Firm to conceal the breach or mislead the Authority.	10
6	If the Authority has imposed a fine on the Firm in similar circumstances to the breach, the amount of that fine.	10
7	The measures or precautions that a reasonable Firm in the Firm’s position, acting prudently and exercising due diligence, would have taken to prevent the breach.	10
8	The degree of difficulty in detecting the breach.	5
9	If the breach is a continuing one, its duration.	5
10	A circumstance that aggravates, or may tend to aggravate, the breach or its effects.	5
TOTAL		100

Table B: Criteria considered mitigating by the Authority		Weight
11	The Firm's conduct after becoming aware of the breach, including, for example – <ul style="list-style-type: none"> i. whether and how quickly the Firm brought the breach to the Authority's attention; and ii. the Firm's efforts to remedy the breach or prevent its reoccurrence. 	-30
12	The measures or precautions the Firm took to prevent the breach.	-15
13	Whether or not the breach was due to – <ul style="list-style-type: none"> i. reasonable reliance on information given to the Firm; or ii. a cause beyond the Firm's control, including, for example, someone else's act or default or an accident. 	-10
14	Whether, before or after the breach, there was a change to the Firm's business or affairs that affects or may affect the consequences of the breach for the Firm, including, for example, the Firm's ability to pay a fine.	-10
15	In deciding the amount of a fine: in relation to the Firm, the Firm's resources and ability to pay	-10
16	In deciding the amount of a fine: in relation to the Firm, financial hardship to the Firm.	-10
17	In deciding the amount of a fine: the potential adverse financial consequences on third parties of imposing a fine in the amount proposed.	-10
18	In deciding the amount of a fine: in relation to the Firm, any circumstances of mitigation that may exist.	-5
TOTAL		100

Calculation of Table A and Table B to determine Total Weight

TABLE A		Criteria Considered	Weight Assigned
TABLE B		Criteria Considered	Weight Assigned
TOTAL TABLE A			
TOTAL TABLE B			
TOTAL WEIGHT			

The Authority will apply the Total Weight as a percentage to the Starting Fine Amount calculated to determine the Weighted Fine Amount. The Authority will then compare the Weighted Fine Amount against the Principles to confirm that the Weighted Fine Amount complies with the Principles. The Authority may make any adjustments necessary to the Weighted Fine Amount in order to ensure that Weighted Fine Amount complies with the Principles. Once the Authority has determined that the Weighted Fine Amount complies with the Principles, the Authority will make a final determination of the Final Fine Amount.