

941 SANCTIONS AND PENALTIES

In line with the objective of ensuring that covered persons maintain high AML/CFT standards in order to protect its safety and soundness as well as protecting the integrity of the national banking and financial system, violation of this Part shall constitute a major violation subject to the following enforcement actions against the board of directors, senior management and line officers, not necessarily according to priority and whenever applicable:

- a. Written reprimand;
- b. Restriction on certain licenses/product, as appropriate;
- c. Suspension or removal from the office they are currently holding; and/or
- d. Disqualification from holding any position in any covered institution.

In addition to the non-monetary sanctions stated above, the Bangko Sentral may also impose monetary penalties computed in accordance with existing regulations and in coordination with the AMLC.

Enforcement action shall be imposed on the basis of the overall assessment of the covered person's AML risk management system. Whenever a covered person's AML compliance system is found to be grossly inadequate, this may be considered as unsafe and unsound banking practice that may warrant initiation of prompt corrective action.

To implement the enforcement action provision of this Part along with the AML Risk Rating System (ARRS), the following rules shall apply:

- a. An AML Composite rating of 4 and 3 will require no enforcement action.
- b. An AML Composite rating of 2 or 1 will require submission by the covered person to the appropriate department of the Bangko Sentral, of a written action plan duly approved by the BOD aimed at correcting the noted inefficiency in BOD and SM oversight, inadequacy in AML and TF policies and procedures, weakness in internal controls and audit, and/or ineffective implementation within a reasonable period of time.

The appropriate department of the Bangko Sentral shall assess the viability of the plan and shall monitor the covered person's performance.

In the event of non-submission of an acceptable plan within the deadline or failure to implement its action plan, the appropriate department of the Bangko Sentral shall recommend appropriate enforcement action on the covered person and its responsible officers including

monetary penalties to be computed on a daily basis until improvements are satisfactorily implemented.

- c. An AML rating of 1 shall also be considered as an unsafe and unsound banking practice. For this reason, prompt corrective action shall be initiated on the covered person.

Escalation of enforcement action. In cases of heightened AML/CFT supervisory concern as reflected in the overall AML risk rating over a certain period of time, the Bangko Sentral shall impose escalated enforcement action which shall include corrective action, sanction and/or additional supervisory enforcement action, consistent with Sec. 002 on supervisory enforcement policy.

Monetary penalty guidelines. These guidelines are divided into three (3) parts.

Part I – *Monetary penalty matrices.* The monetary penalty matrices, where monetary penalties are categorized based on the (1) Composite rating and (2) Asset size of the Bangko Sentral covered institution.

Part II – *Guiding principles.*

- a. The first step is to determine the over-all risk rating of the Bangko Sentral covered institution for purposes of identifying which penalty matrix will be used. If the Composite rating is “1” or “2”, penalty matrix A or B, respectively shall be used. If the over-all rating is “3” and “4”, no monetary penalty shall be imposed.
- b. Second step is to establish the asset size of the Bangko Sentral covered institution as of the cut-off period of examination;
- c. Third step is to identify the aggravating and mitigating factors. If the aggravating factors are more than the mitigating factors, then the maximum range shall be used. On the other hand, if the mitigating factors are more than the aggravating factors, then the minimum range shall be applied. In case there are no aggravating and mitigating factors or there is a tie, the medium range shall be used.
- d. For Composite ratings of 1 and 2 where the covered institution concerned was required to submit within a reasonable period of time an acceptance plan, non-submission of the plan within the deadline or failure to implement the action plan shall be a basis for imposition of monetary penalties computed on a daily and continuing basis from the time the covered institutions is notified until corrective measures are satisfactorily effected. The penalty may be imposed on the covered institution itself or directly on the Board of Directors as a body, or the individual

directors who have direct oversight, or the line officers involved in the management of money laundering and terrorist financing prevention.

Part III – *Aggravating and mitigating factors.*

a. *Aggravating factors*

- (1) *Frequency of the commissions or omissions of specific violation*– Majority of the following violations were noted:
 - (a) Deficient Know Your Customer process
 - (b) Unsatisfactory Covered Transaction reporting system
 - (c) Non-reporting of and Improper Suspicious Transaction reporting
 - (d) Non-compliance with the Record keeping requirement
 - (e) Inadequate AML Training Program
 - (f) Deficient AML Electronic system
- (2) *Duration of violations prior to notification*– This pertains to the length of time prior to the latest notification on the violation. Violations that have been existing for a long time before it was revealed/discovered in the examination or are under the evaluation for a long time due to pending requests or correspondences from covered institutions on whether a violation has actually occurred shall be dealt with through this criterion. Violations outstanding for more than one (1) year prior to notification, at the minimum, will qualify as violations outstanding for a long time.
- (3) *Continuation of offense or omission after notification*– This pertains to the persistence of an act or omission after the latest notification on the existence of the violation, either from the appropriate appropriate supervising department of the Bangko Sentral, Department or from the Monetary Board and/or Deputy Governor, in cases where the violation has been elevated accordingly. This covers the period after the final notification of the existence of the violation until such time that the violation has been corrected and/or remedied. The corrective action shall be reckoned with from the date of notification.
- (4) *Concealment*– This factor pertains to the cover up of a violation. In evaluating this factor, one shall consider the intention of the party/ies involved and whether pecuniary benefit may accrue accordingly. The act of concealing an act or omission constituting the violation carries with it the intention to defraud regulators. Moreover, the amount of pecuniary benefit, which may or may not accrue from the offense or omission, shall also be considered under this factor.

Concealment may be apparent when a covered institution's personnel purposely complicate the transaction to make it difficult to uncover or refuse to provide information and/or document that would support the violation/offense committed.

- (5) *Loss or risk of loss to bank*– In asserting this factor, “*potential loss*” refers to any time at which the covered institution was in danger of sustaining a loss.

b. *Mitigating factors*

- (1) *Good faith* – is the absence of intention to violate on the part of the erring individual/entity.
- (2) *Full cooperation* – covered person's personnel or the covered institution immediately took action to correct the violation after it is brought to its attention either verbally or in writing.
- (3) *With positive measures* – covered person's personnel or the covered institution commits to undertake concrete action to correct the violation but is being restrained by valid reasons to take immediate action.
- (4) *Voluntary disclosure of offense* – covered person's personnel or the covered person disclosed the violation before it is discovered in the course of a regular or special examination or off-site monitoring.

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