

Superintendent of Real Estate

Statement of Principles on the Use of Statutory Powers

December 2017

Pursuant to section 6 of the Real Estate Brokers' Licensing Act 2017

And

*Section 7 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist
Financing Supervision & Enforcement) Act 2008*

Table of Contents

1. Introduction	1
2. Granting a License to do Business	1
3. Interpreting the Minimum Criteria for Licensing.....	2
Fit & Proper	2
Business to be Conducted in Prudent Manner	3
Integrity & Skills	3
4. General Policy on Intrusive Supervision	3
5. General Policy on Enforcement Measures	5
6. Making a Prohibition Order	5
7. Public Censure.....	6
8. Criminal Penalties.....	7
9. Civil Penalties	7
10. Factors relevant to a decision to impose a penalty.....	8
11. Factors relevant to a decision on the amount of the civil penalty	9
12. Grounds to Revoke a License	12
13. Applying Penalty Amounts Against Cost of Supervision.....	12

1. Introduction

1.1. Section 7 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (“SEA”) and Section 6 of the Real Estate Brokers’ Licensing Act 2017 (the “REBL”) enable the Superintendent of Real Estate (“the Superintendent”) to publish a statement of principles:

1.1.1. in exercising the powers in relation to real estate brokers and agents to obtain information, to require the attendance of persons and to require production of documents under Sections 16 to 18 of the SEA;

1.1.2. in exercising the powers granted under the SEA —

- to impose civil penalties against real estate brokers or agents under Section 20; and
- to publish decisions to do so under Section 21; and
- in applying any amounts paid by way of civil penalties in accordance with the duty in Section 24(3).

1.1.3 in exercising the powers granted under the REBL —

- in interpreting the minimum criteria specified in Schedule 1 and the grounds for revocation specified in Section 17;
- in relation to the power to grant, revoke or refuse a license;
- in relation to the power to obtain information and reports and to require production of documents; and
- in relation to the powers granted—
 - under Section 36 to impose a civil penalty;
 - under Section 38 to censure publicly;
 - under Section 40 to make a prohibition order; and
 - under Section 47 to publish information about any matter to which a decision notice relates.

2. Granting a License to do Business

2.1. The Superintendent has the exclusive authority to grant a license to trade in real estate in Bermuda as it is unlawful to trade in real estate without a valid license. There are two types of license, one for brokers and one for agents:

2.1.1. A broker is an entity whose business is in real estate trade. A broker may be an individual, company or partnership. A broker’s license may be issued to the applicant where:

- the minimum criteria for licensing are fulfilled; and
- the applicant maintains an office in Bermuda.

2.1.2. An agent can only be licensed where he or she is the agent of a broker and the Superintendent of Real Estate is satisfied that the minimum criteria set out in Schedule 1 of REBL are fulfilled.

2.2. A company, partnership or individual may apply to the Superintendent to trade in real estate. That application will be in Form 1 set out in Schedule 1 of the Real Estate Broker’s Licensing Regulations 2017.

2.3. Where an applicant can demonstrate that the minimum criteria for licensing can or will be satisfied, a license shall be granted.

2.4. Where an applicant cannot demonstrate that the minimum criteria for licensing can or will be satisfied, a license shall not be granted.

- 2.5. An applicant will have an opportunity to amend their application and associated materials where a license is refused. All refusals will specify, in writing, why the application was refused.

3. Interpreting the Minimum Criteria for Licensing

Fit & Proper

- 3.1. The performance, reliability and professionalism of brokers and agents is consequential to Bermuda's community, property market and wider economy. It is crucial that the responsibilities of a broker or agent are commensurate with the potential impact of that profession. Therefore, a broker or agent must be fit for the role and properly prepared to fulfil those responsibilities.
- 3.2. The Superintendent shall assess every applicant for a license, as well as every current holder of a license on an ongoing basis, under the following standards:
- Probity
 - Competence
 - Judgment
 - Diligence
 - Trustworthiness
- 3.3. The Superintendent is empowered to infer that the applicant or license holder adheres to the standards by having regard to their previous conduct, activities, and standards mentioned in 3.2. This includes ascertaining if the applicant or license holder has:
- committed an offence involving fraud or other dishonesty or violence – the Superintendent's judgment will be used in relation to the type of offence, when it was committed and other significant factors.
 - breached any provisions designed to protect the public from financial loss due to dishonesty, incompetence or malpractice.
 - engaged in actions deemed by the Superintendent to be deceitful, oppressive or improper (whether lawful or not) or any activity which reflects discredit to the applicant's or license holder's method of conducting business.
 - activities or practices which cast doubt on the applicant's or license holder's competence or soundness of judgment.

Business to be Conducted in Prudent Manner

- 3.4. Applicants and license holders must conduct their business in a prudent manner that a reasonable professional¹ would do.
- 3.5. Applicants and license holders must maintain accounting and other systems of internal control adequate to accurately and reliably retain records of their activities.
- 3.6. The accounting and other controls should be commensurate with the nature and scale of the businesses' operation and not contradictory to the overall principle of these standards. For example, a written policy or procedure must accurately reflect a practice. Equally, written policy should not outline a control which the computerized solution is unable to perform.
- 3.7. Any failure to comply with provisions of REBL or any other law, including the provisions of law pertaining to anti-money laundering and financing of terrorism as prescribed in the Proceeds of Crime Act 1997, the Anti-Terrorism (Financial and Other Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist financing) Regulations 2008 and International Sanctions in force in Bermuda, will be inferred as failing to conduct business in a prudent manner.

Integrity & Skills

- 3.8. The nature and scale of the businesses' activities must determine the requisite professional skills of the broker or agent.
- 3.9. Regardless of every other standard, criteria or obligation imposed by this regulatory framework, brokers and agents must at all times and in all circumstances, operate with integrity.

4. General Policy on Supervision

- 4.1. Supervision involves the receipt and analysis of information from brokers and agents. The Superintendent's standard reporting arrangements are kept under review and amended in the light of developments.
- 4.2. The Superintendent generally relies on the voluntary cooperation from brokers and agents, and does not use his powers unless it is deemed appropriate to do so given a particular circumstance.
- 4.3. The Superintendent has intrusive supervision powers under both REBL and SEA, specifically the powers to:
 - 4.3.1. investigate matters and transactions under Section 21 of REBL
 - 4.3.2. compel the production of documents under Section 22 of REBL
 - 4.3.3. compel documents and require a broker's or agent's attendance under Section 16 of SEA
 - 4.3.4. enter business premises under Section 17 of SEA
 - 4.3.5. apply for a Magistrate's warrant to search premises under Section 18 of the SEA
- 4.4. Section 21 of the REBL provides that the Superintendent, or any person authorized by the Superintendent, can with or without a third-party complaint, investigate any matter concerning the administration of REBL, any transaction or any business of an individual acting as a broker or agent, whether they are or are not licensed to conduct that business.

¹ In interpreting, what is a 'reasonable professional', the Superintendent shall have regard for the Chamber of Commerce Code of Conduct.

- 4.5. Any person who is being investigated has five (5) days to provide explicit answers to questions posed in the course of that investigation.
- 4.6. Section 22 of the REBL empowers the Superintendent, or a person authorised by him, to compel a broker or agent to provide documents and books relating to a trade in real estate for inspection. Those documents are further subject to being seized, including related books, papers, correspondence, communication or records of the person or business which is being investigated. A person who refuses or neglects to produce or permit the inspection of books or documents commits an offence.
- 4.7. Section 16 of the SEA provides formal powers for the Superintendent, by notice in writing, to require from a broker or agent such information as is specified in the notice under the SEA, to produce documents and for its officers to attend before the Superintendent to answer questions. Formal use of such powers is infrequent as the Superintendent is able generally to rely on the willingness of brokers or agents to provide information voluntarily. In particular circumstances, however, the Superintendent must consider whether to make use of these powers – notably, for example, where he has material concerns about the accuracy or completeness of information provided by a broker or agent.
- 4.8. Section 17 of the SEA provides the Superintendent with specific powers to enter the business premises of brokers or agents for the purpose of inspecting the premises, observing the carrying on of business, inspecting and taking copies of any recorded information and for requiring any person on the premises to provide an explanation of any recorded information. These powers enable the Superintendent to do spot checks on premises of brokers or agents that are carrying on business in high risk areas.
- 4.9. Under Section 18 of the SEA, the Superintendent has the power to apply to a Magistrate for a warrant to enter premises where documents or information is held. The Superintendent may apply for a search warrant where he has reasonable grounds for believing that if a broker or agent were required to provide information or produce documents, the broker or agent would not comply with such a request. The Superintendent may also apply for such a warrant when it is believed that if such a request was made, that information or documentation would be removed, tampered with or destroyed.

5. Enforcement

- 5.1. Where the Superintendent identifies breaches of the REBL or AML/ATF Regulations by broker or agent, the Superintendent would normally seek remedial action by the broker or agent before resorting to the use of his enforcement powers.
- 5.2. The Superintendent will work with a broker or agent to assist in implementing corrective measures and would give advice in relation to any perceived weaknesses in a broker or agent's systems and controls. In circumstances where such actions fail to remedy identified deficiencies or where the alleged breaches are so serious as to warrant the immediate exercise of enforcement powers, then the Superintendent would not hesitate to do so.
- 5.3. The powers at the disposal of the Superintendent are:
 - 5.3.1. To revoke a license, if fit and proper criteria is not met, for failure to comply with terms and conditions of a license; or for making false, misleading or inaccurate information (section 17);
 - 5.3.2. To impose a civil penalty (section 35);
 - 5.3.3. To censure publicly (section 37);
 - 5.3.4. Make a prohibition order if fit and proper criteria is not met, or if principles of the statement of principles are contravened (section 39);
 - 5.3.5. Seek injunction from the Supreme Court for likely contravention of relevant requirement (section 43);
 - 5.3.6. Issue warning notices to allow a broker or agent to remedy a non-compliance (section 44); and
 - 5.3.7. To publish information about any matter to which a decision relates (section 47).

6. Making a Prohibition Order

- 6.1. Under Section 39 of REBL, where an individual is not fit and proper to perform functions in relation to being a broker or agent, the Superintendent may make an order prohibiting that individual from performing any such function.
- 6.2. The prohibition order will be made only after the Superintendent has made such considerations as outlined in the Fit & Proper section of this Statement of Principles.
- 6.3. All prohibition orders will be published as the Superintendent considers appropriate, on the Government website, www.gov.bm and the Superintendent reserves the right to publish the same in the Official Gazette.
- 6.4. Any broker employing a prohibited person must ensure that the individual does not undertake any functions from which that individual is prohibited.
- 6.5. The functions from which an individual is prohibited from performing, shall be outlined in detail in the prohibition order.
- 6.6. Prohibition orders may be varied or revoked based on an application by the prohibited person or the broker which employs that individual. Once a prohibition order is in place, the onus is on the prohibited person or broker to demonstrate how the individual satisfies the fit & proper person criteria.
- 6.7. The Superintendent may, on the application of the individual named in the prohibition order, vary, or revoke a prohibition order wholly or in part.

7. Public Censure

- 7.1. Under Section 37 of the REBL, should the Superintendent consider that a broker or agent has contravened a requirement imposed under REBL, the Superintendent is empowered to publish a statement to that effect. In the event that the Superintendent decides to publish a public censure a warning notice is issued to the broker or agent in question. If, after considering any representation from the broker or agent, the Superintendent determines to publish the statement, he will give the broker or agent a decision notice.
- 7.2. Under Section 21 of the SEA, the Superintendent has the power to publish a decision to impose a penalty on a broker. In the event that the Superintendent decides to publish such a decision, the broker will be notified in question of this before publication unless the Superintendent's decision is pending an appeal.
- 7.3. If the Superintendent decides to publish a statement under section 37 of the REBL, the statement will be published on www.gov.bm and, if appropriate, in the Official Gazette.
- 7.4. The Superintendent will publish the following particulars -
 - (a) the name of the broker or agent concerned;
 - (b) the provisions that have been breached; (sections)
 - (c) a summary of the facts of the breach as they appear in the decision notice;
 - (d) the relevant dates; and
 - (e) the amount of the penalty (if applicable).
- 7.5. In exercising the discretion to publish, the Superintendent will have regard, amongst other things, to the matters set out in paragraph 7.6, but in all cases, the Superintendent will consider whether it is in the public interest not to publish a decision.
- 7.6. Those matters are -
 - (a) the deterrent effect of publication;
 - (b) the protection of the reputation of Bermuda as a sound and well-regulated financial center;
 - (c) the protection of clients and potential clients of the broker or agent concerned; andthe extent to which publication will assist and inform agents and the public generally about the relative gravity of the conduct and the penalty felt appropriate for that conduct.

8. Criminal Penalties

The statutory regime related to real estate brokers and agents is composite of three forms of sanctions.

	REBL s.49(1)	REBL s.49(2)
Offence	(a) Contravenes a provision of this Act, or any regulations made under this Act;	Failure to comply with terms of a Prohibition Order under section 40(2).
	(b) Omits, refuses or neglects to fulfil, perform, observe or carry out a duty or obligation created or imposed by the Act or any regulations made under the Act	
Penalty	Summary: \$10,000 fine or two years, or both	Summary: \$25,000 or 1 year or both Indictment: \$50,000 or two years or both
Procedure	The Superintendent prepares a report and file for the Director of Public Prosecutions to determine if prosecution is warranted.	The Superintendent prepares a report and file for the Director of Public Prosecutions determine if prosecution is warranted.

9. Civil Penalties

	REBL s.35	SEA s.20/20 (1A)(c)
Offense	Failure to comply with any requirement or contravenes any Prohibition imposed by or under the Act.	Failure to comply with any requirements of the AML/ATF Regulations specified in SEA section 20(3)(b), or a, direction, directive or license condition.
Penalty	A maximum of \$250,000 for each failure or contravention, with the amount as determined appropriate ² by the Superintendent.	A maximum of \$250,000 per failure or contravention, with the amount as determined appropriate ³ by the Superintendent.
Procedure	The Superintendent will establish a finding of fact and then make the determinations as set out in this document. The Superintendent shall not impose a penalty if he is satisfied that the person took all reasonable steps and exercised all due diligence to comply with any requirement.	The Superintendent will establish a finding of fact and then make the determinations as set out in this document. The Superintendent shall not impose a penalty if he is satisfied that the person or entity over which he has supervisory duties under SEA 56A took all reasonable steps and exercised all due diligence to comply with any requirement.

² Appropriate is defined as “effective, proportionate and dissuasive”.

³ Appropriate is defined as “effective, proportionate and dissuasive”.

In deciding whether a person or entity has failed to comply with a requirement of the regulations, direction or a license condition, the Superintendent must consider whether the person or entity followed any relevant guidance which was at the time:

- (a) issued by the Superintendent;
- (b) approved by the Minister; and
- (c) published in the Gazette. (SEA Section 20(1A)(6) as read with SEA Section (6A).

10. Factors relevant to a decision to impose a civil penalty

10.1. The factors that the Superintendent will consider in determining whether or not to impose a civil penalty include the following:

10.1.1. The nature, seriousness and impact of the suspected breach, including:

- (a) whether the breach was deliberate or reckless;
- (b) the duration and frequency of the breach;
- (c) whether the breach reveals serious or systemic weaknesses of the management systems or internal controls relating to all or part of a broker or agent's business;
- (d) the nature and extent of any criminal offences facilitated, occasioned or otherwise attributable to the breach; and
- (e) whether there are a number of smaller issues, which individually may not justify enforcement action, but which do so when taken collectively.

10.1.2. The conduct of the broker or agent after finding or self-reporting of a breach, including:

- (a) the degree of co-operation the broker or agent showed during the investigation of the breach;
- (b) any remedial steps the broker or agent has taken in respect of the breach;
- (c) the likelihood that the same type of breach (whether on the part of the broker or agent under investigation or others) will recur if no action is taken;
- (d) whether the broker or agent concerned has complied with any requirements of the Superintendent; and
- (e) the nature and extent of any false or inaccurate information given by the broker or agent and whether the information appears to have been given in an attempt to knowingly mislead the Superintendent.

10.1.3. The compliance history of the broker or agent including:

- (a) whether the Superintendent has taken any previous action resulting in adverse findings against the broker or agent;
- (b) whether the Superintendent has previously requested the broker or agent to take remedial action, and the extent to which such action has been taken; and
- (c) whether the broker or agent has previously undertaken not to do a particular act or engage in particular behaviour;

10.1.4. ***Conduct consistent with the Superintendent's guidance.***

The Superintendent will not take action against a broker or agent for conduct the Superintendent considers to be consistent with guidance or other materials published by the Superintendent which was current at the time of the conduct in question.

10.1.5. Action taken by the Superintendent in previous similar cases.

10.1.6. **Action taken by other Government departments and/or regulatory authorities.**

Where other regulatory authorities propose to take action in respect of a breach which is under consideration by the Superintendent, the Superintendent will consider whether the other authority's action would be adequate to address the Superintendent's concerns, or whether it would be appropriate for the Superintendent to take his own action.

11. Factors relevant to a decision on the amount of the civil penalty

11.1. Any civil penalty imposed by the Superintendent must be appropriate. Section 20(2) of the SEA and Section 35(2) of the REBL, defines this to mean "effective, proportionate and dissuasive". The Superintendent will consider all the relevant circumstances of a case when he determines the level of a financial penalty.

11.2. The Superintendent will not apply a schedule of penalties for different kinds of breach because there will be very few cases in which all the circumstances are the same and due to the wide range of breaches in respect of which the Superintendent may impose a financial penalty.

11.3. The following factors may be relevant to determining the appropriate level of financial penalty to be imposed on agents (the list of factors outlined is not exhaustive and not all of these factors may be relevant in a particular case):

11.3.1. **Deterrence.**

When determining the appropriate level of penalty, the Superintendent will have regard to the principal purpose for which he imposes a financial penalty, namely to encourage a high degree of compliance with the Regulations and deterring persons from committing breaches.

11.3.2. **The nature, seriousness and impact of the breach in question.**

The Superintendent will consider the seriousness of the breach in relation to the nature of the regulation breached. The following considerations are among those that may be relevant:

- (a) the duration and frequency of the breach of regulation;
- (b) whether the breach revealed serious or systemic weaknesses in the broker's or agent's procedures or of the management systems or internal controls relating to all or part of their business;
- (c) the nature and extent of any money-laundering or terrorist financing facilitated, occasioned or otherwise attributable to the breach.

11.3.3. **The extent to which the breach was deliberate or reckless.**

The Superintendent will regard a breach which is deliberate or reckless as a serious breach. The matters to which the Superintendent may have regard in determining whether a breach is serious includes the following:

- (a) whether the breach was intentional: if the broker or agent intended or foresaw the potential or actual consequences of its actions;
- (b) where the broker or agent has not followed its own internal procedures and/or Superintendent guidance, the reasons for not doing so; and
- (c) whether the broker or agent has given no apparent consideration to the consequences of the behaviour that constitutes the breach.

11.3.4. *Whether the person on whom the penalty is to be imposed is an individual.*

When determining the amount of a financial penalty to be imposed on an individual operating as a sole trader, the Superintendent will take into account that an individual will not always have the resources of a body corporate; that enforcement action may have a greater impact on an individual; and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a body corporate. The Superintendent will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

11.3.5. The size, financial resources and other circumstances of the broker or agent on whom the penalty is to be imposed:

- (a) the Superintendent may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the broker were to pay the level of penalty appropriate for the particular breach. The Superintendent regards these factors as matters to be considered in determining the level of a financial penalty, but not to the extent that there is a direct correlation between those factors and the level of penalty;
- (b) the purpose of a penalty is not to render a broker insolvent or to threaten the broker's solvency; where this would be a material consideration, the Superintendent will consider, having regard to all other factors, whether a lower penalty would be appropriate; this is most likely to be relevant to a broker or agent with lower financial resources; but if a broker reduces its solvency with the purpose of reducing its ability to pay a financial penalty, for example by transferring assets to third parties, the Superintendent will take account of those assets when determining the amount of a penalty;
- (c) the degree of seriousness of a breach may be linked to the size of the broker; for example, a systemic failure in a large broker or agent business with a high volume of business, over a protracted period may be more serious than breaches over similar periods in a broker or agent business with a smaller volume of business;
- (d) the size and resources of a broker or agent may also be relevant in relation to mitigation, in particular what steps the broker or agent took after the breach had been identified; the Superintendent will consider what is reasonable to expect from a broker or agent in relation to its size and resources, and factors such as what proportion of a broker or agent's resources were used to resolve a problem.

11.3.6. *Difficulty of detecting the breach.*

A broker's or agent's incentive to commit a breach may be greater where the breach is, by its nature, harder to detect; the Superintendent may, therefore, impose a higher penalty where he considers that a broker or agent committed a breach in such a way as to avoid or reduce the risk that the breach would be discovered, or that the difficulty of detection (whether actual or perceived) may have affected the behaviour in question.

11.3.7. *Conduct following the finding of a breach.*

The Superintendent may take the following factors into account:

- (a) the degree of co-operation the broker or agent showed during the investigation of the breach by the Superintendent, or any other Government or regulatory authority; and where a broker or agent has fully co-operated with the Superintendent's investigation, this will be a factor tending to reduce the level of financial penalty;

- (b) any remedial steps taken since the breach was identified, including whether these were taken on the broker or agent's own initiative or that of the Superintendent or another regulatory authority;
- (c) whether the broker or agent concerned has complied with any recommendations made by the Superintendent relating to the breach.

11.3.8. *Compliance history of the broker or agent.*

The Superintendent may take the previous compliance record and general compliance history of the broker or agent into account. This will include:

- (a) whether the Superintendent has taken any previous enforcement action against the broker or agent;
- (b) whether the broker or agent has previously undertaken not to do a particular act or engage in a particular behaviour;
- (c) whether the Superintendent has previously requested a broker or agent to take remedial action and the extent to which that action has been taken;
- (d) the general compliance history of the broker or agent, including whether the Superintendent has previously brought to the broker or agent's attention, issues similar or related to the conduct that constitutes the breach in respect of which the financial penalty is imposed; a broker or agent's compliance history could lead to the Superintendent imposing a higher penalty, for example where the broker or agent has committed similar breaches in the past; in assessing the relevance of a broker or agent's compliance history, the age of a particular matter will be taken into account, although a long-standing matter may still be relevant.

11.3.9. *Other action taken by the Superintendent.*

Action that the Superintendent has taken in relation to similar breaches by other agents may be taken into account; as stated, the Superintendent does not operate a tariff system; however, the Superintendent will seek to apply a consistent approach to determining the appropriate level of financial penalty.

11.3.10. *Action taken by other regulatory authorities.*

The Superintendent may consider action taken or to be taken against a broker or agent by other Government or regulatory authorities with respect to the size of the penalty imposed by the other regulatory authorities when considering the amount of a civil penalty.

11.3.11. Superintendent guidance and other published materials:

- (a) a broker or agent does not commit a breach by not following the Superintendent's guidance; however, where a breach has otherwise been established, the fact that guidance had raised relevant concerns may determine the seriousness with which the breach is to be regarded by the Superintendent when considering the level of penalty;
- (b) the Superintendent will consider the nature of the guidance when deciding whether it is relevant to the level of penalty and, if it is, what weight to give it in relation to other relevant factors.

12. Grounds to Revoke a License

- 12.1. The Superintendent may revoke a license for a broker or agent at any time under Section 17 of REBL where:
- 12.1.1. the minimum licensing criteria have not been met;
 - 12.1.2. a term or condition of a license or an obligation imposed on a broker or agent by the REBL;
or
 - 12.1.3. when false, misleading or inaccurate information is provided by a broker, agent or a representative of a partnership or company, to the Superintendent.
- 12.2. The Superintendent is aware of the economic and professional ramifications to a professional practicing broker or agent, and therefore will not revoke a license in an arbitrary manner without full consideration and providing an opportunity for a broker or agent to make representations.
- 12.3. The Superintendent will use the “reasonable man” test to determine compliance with any above described standard, criteria or obligation.

13. Applying Penalty Amounts Against Cost of Supervision

- 13.1. The amount each broker or agent pays is determined according to its size and the type of business it undertakes.
- 13.2. Under Section 24 of the SEA, brokers are required to pay to the Superintendent penalties levied on them for breaches of the Regulations and the Superintendent is required to apply such amount of penalties towards the cost of supervising brokers and securing their compliance with AML/ATF Regulations. Monies received in respect of any penalties levied on brokers will be offset against the costs of supervising them. a warning notice is issued to the broker or agent in question. If, after considering any representation from the broker or agent, the Superintendent determines to publish the statement, he will give the broker or agent a decision notice.