

January
2019

Compliance & Enforcement Annual Report 2018

For the period ended December, 2018

Capital Markets Supervision Directorate
Investigation & Enforcement Department



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Central Bank of Bahrain

Table of Contents

1. Introduction.....	2
2. Compliance Status 2018	3
2.1. Listed Companies	3
Figure 1	3
Table 1	5
Table 2	6
2.2. Unlisted Companies	7
2.3. Self-Regulatory Organizations (SROs).....	8
2.4. Members of SROs (Licensed Brokers)	8
2.5. Individual Investors	9
3. Imposition of Financial Penalties	9
4. Conclusion	10

1. Introduction



The Capital Markets Supervision Directorate's (the "CMSD") regulatory mandate is to set and enforce high quality capital market industry standards, protect investors and strengthen market integrity while supporting a stimulating capital markets' ecosystem. The Investigation and Enforcement ("IE") team within the CMSD assumes responsibility to ensure effective enforcement of the Central Bank of Bahrain's (the "CBB") regulatory requirements, in order to achieve fairness, transparency, investor protection and safeguard public interests in the Kingdom of Bahrain.

In pursuing these mandates, IE aims to institute a fully-fledged proactive enforcement regimen that ensures the fulfilment of CMSD's requirements by listed companies, self-regulatory organizations ("SROs") and the related licensees. Accordingly, given each department's invaluable role, the CMSD as a whole, strives to continue to instil and integrate the compliance and enforcement function, directorate-wide. CMSD believes that this inclusive view of enforcement strengthens and enhances the efforts expended to protect the integrity of the capital markets.

This annual report provides a comparative overview of CMSD's efforts in 2016-2018 to identify and address non-compliances, negligence or misconduct, by accounting for all market participants in order to enact the word of the law, safeguard the interests of all stakeholders and ensure a stimulating environment within which the needs of members, investors and the regulator are met.

2. Compliance Status 2018

With reference to MIE-3.1.8 of the Market Surveillance, Investigation and Enforcement Module (“MIE Module”) of Volume 6 of the CBB Rulebook, in deciding on any given regulatory and enforcement response, the CBB is dependent on examining the circumstance of each individual contravention against Decree No. (64) of 2006 with respect to promulgating the Central Bank of Bahrain and Financial Institutions Law (“CBB Law”) and the MIE Module. The CBB’s approach is three-way, in that the gravity of each respective contravention is assessed, the concerned person’s/entity’s compliance track record is examined and finally remedial measures to prevent future contraventions are evaluated and consequently instituted. Accordingly, this section will examine the most recent cases of contraventions of CBB Law and CBB rulebook requirements.

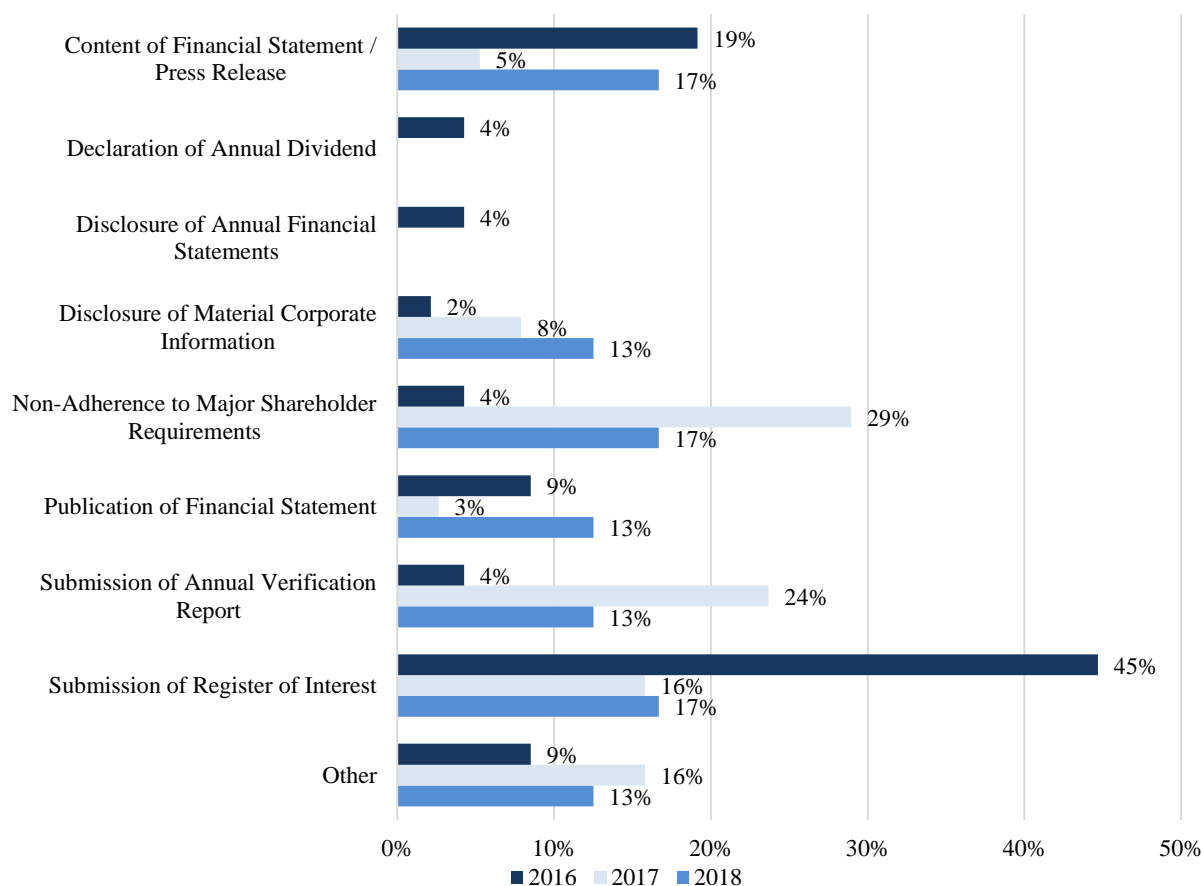
2.1. Listed Companies

➤ Most Recurring Contraventions by Type

Figure 1 below illustrates the overall trend of CMSD-addressed contraventions (including those to which it issued Non-Compliance Letters (“NCLs”), Reminders, Notices, Directives, Warnings, Financial Penalties or suspension of trading) in the years 2016-2018 across listed companies:

Figure 1

Most Recurring Contraventions by Type, (2016-2018)



With a focus on the years 2017 and 2018, as illustrated above, the three most common non-compliances across listed companies for 2017 were concentrated on the Submission of Register of Interest along with another periodic return, Submission of Annual Verification Report, but most prevalently, and making up approximately a third of all contraventions of 2017, was the Non-Adherence to Major Shareholder Requirements. Generally, contraventions of regulatory requirements relating to periodic returns are often expected to recur due to their high frequency. More specifically, the Submission of Register of Interest is due on a monthly basis (not later than 5 working days after the end of each month in accordance with CMSD’s Letter CMS/L018/2007 dated 22nd January 2007 and also for upload on CBB’s electronic submission portal, ESRAD) and the Submission of the Verification of Insider Register is due on an annual basis (as per MAM-2.15.6 of the Prohibition of Market Abuse and Manipulation Module (“MAM Module”) of Volume 6 of the CBB Rulebook, requiring listed companies to submit their report not later than 10 days after the Annual General Meeting date).

In 2018 however, the top three contraventions related to the Submission of Register of Interest (at approximately the same rate as 2017), Non-Adherence to Major Shareholder Requirements (albeit proportionally lower, comprising 17% of total contraventions as opposed to 29% in 2017) and Content of Financial Statement/Press Release (which doubled in absolute value from 2 cases in 2017 to 4 cases in 2018, although still significantly lower than the 9 cases of 2016).



To further contextualize one of the most prevalent contraventions in both 2017 and 2018, Non-Adherence to Major Shareholder Requirements, the following summarizes the rules underlying such violations:

- ✓ In line with AML-7.1.1, AML-7.1.2 and AML-7.1.3 of the Anti-Money Laundering and Combating of Financial Crime Module (“AML Module”) of Volume 6 of the CBB Rulebook:
 - Ownership of 5% or more of any listed security necessitates the owner to *notify the licensed exchange* forthwith, which must in turn notify the CBB of this fact.
 - Ownership of 5% or more of any listed security *must conclude all transactions on such security on a licensed exchange in Bahrain.*
 - *CBB’s prior written approval is required* to execute any order that will bring ownership to 10% or more in any listed security. Any further increase of 1% or more shall also be subject to CBB’s prior written approval.

- ✓ In accordance with Article 32.12.1 of the CBB's Disclosure Standards, *the issuer must notify the CBB of any major developments* or changes in its sphere of activity including any shareholder's acquisition of 5% or more of the issuer's issued and paid-up capital, reaching 5% or more.

The non-compliances related to the Content of Financial Statement/Press Release within 2018 were predominantly in contravention of the CBB's Disclosure Standards wherein the respective listed companies' issued press releases/announcements to the general public which were incomplete or entailed unwarranted promotional disclosures not justified by actual developments in their affairs and exaggerated reports or misleading predictions about financial results without sufficient evidence and prior to the issuance of the financial results.

Table 1 below outlines these cases further:

Table 1

Listed Company Contraventions by Type (2016-2018)			
Contraventions by Type	2018	2017	2016
Content of Financial Statement / Press Release	4	2	9
Declaration of Annual Dividend			2
Disclosure of Annual Financial Statements			2
Disclosure of Material Corporate Information	3	3	1
Non-Adherence to Major Shareholder Requirements	4	11	2
Publication of Financial Statement	3	1	4
Submission of Annual Verification Report	3	9	2
Submission of Register of Interest	4	6	21
<i>AGM Agenda Approval</i>			<i>1</i>
<i>Content of Register of Interest</i>			<i>1</i>
<i>Corporate Governance</i>		<i>1</i>	
<i>Imposition of Trading Restriction</i>	<i>1</i>		
<i>Non-adherence to Offering Timetable in Offering Documents</i>	<i>1</i>		
<i>Non-compliance with CMSD Instructions</i>		<i>1</i>	<i>1</i>
<i>Publication of Financial Statement Prior to BOD Approval</i>		<i>1</i>	<i>1</i>
<i>Publication of OGM Agenda</i>		<i>2</i>	
<i>Treasury Share Transactions</i>	<i>1</i>	<i>1</i>	
Other Total	3	6	4
Grand Total	24	38	47

As outlined in Table 1 above, total non-compliances by listed companies in 2018 (24 contraventions) has decreased from 2017 (38 contraventions) by 14 cases, the majority of which the CMSD attributes to listed companies' increased awareness in the area of major shareholder transaction requirements after the CBB addressed 11 cases of contraventions in 2017 related to 7 listed companies. In line with this and in comparison to 2017, of the 4 identified cases in 2018, only 1 pertains to a listed company in an observed repetitive non-compliant behaviour. Another driver behind the decrease in the total number of contraventions can be attributed to the CMSD's efforts expended in furthering communications with listed companies with regards to date-sensitive requirements and accordingly listed companies' increased diligence in adhering to periodic returns' deadlines particularly in relation to the Submission of Register of Interest and the Submission of Annual Verification Report.

➤ **Temporary Suspension of Trading**

In addition to viewing the contravention cases by type and listed company in question, the CBB's enforcement mechanism must also be examined. As per Article 87 of Decree No. (64) of 2006 with respect to promulgating the Central Bank of Bahrain and Financial Institutions Law, the CBB is empowered to suspend trading of any listed securities facing exceptional circumstances which it considers as sufficient grounds for suspension. The CBB, supported by regulations specifying cases in which it will suspend the trading of securities, may decide to suspend and subsequently resume securities' trading once the requirement is met. Table 2 below denotes the notable suspension cases of 2016-2018:

Table 2

Suspension Cases (2016-2018)					
Nature of Suspension	Listed Company	Legal Reference	2018	2017	2016
Content of Financial Statement / Press Release	INOVEST	CBB's Disclosure Standards particularly Article 65 "Content and Preparation of a Public Announcement".			1
	GFH	CBB's Disclosure Standards particularly Article 65 "Content and Preparation of a Public Announcement" and Article 42.5.12 requiring prompt announcements relating to declaration or omission of dividends or determination of earnings.		1	
		Resolution No. (54) of 2015 in respect of The Disclosure of Listed Companies' Financial Statements & Board of Directors' Meetings.			
Disclosure of Annual Financial Statements	BTC (now, GHG)	Resolution No. (54) of 2015 in respect of The Disclosure of Listed Companies' Financial Statements & Board of Directors' Meetings.			1
Publication of Financial Statement	BMB	Resolution No. (54) of 2015 in respect of The Disclosure of Listed Companies' Financial Statements & Board of Directors' Meetings.	1		
	ARIG		1		
Unusual Trading Activity	INOVEST	Article 87 of the CBB Law 2006.		1	
Disclosure of Material Corporate Information	AHLIA (now, SOLID)	CMSD letter dated 3 rd December 2003 (ref: ODG/407/03) regarding Disclosure Standards; TMA-2.3.11 of the Takeovers, Mergers & Acquisitions Module of Volume 6 of the CBB Rulebook.			1
	AUB	CBB's Circular Ref. OG/352/2005 dated 20 th November 2005 in respect of Disclosure Standard Press Announcements, and Article (54) and (55) of CBB's Disclosure Standards; TMA-2.3.11 of the Takeovers, Mergers & Acquisitions Module of Volume 6 of the CBB Rulebook.	1	1	
Other - Publication of Financial Statement Prior to BOD Approval	SALAM	Resolution No. (54) of 2015 in respect of The Disclosure of Listed Companies' Financial Statements & Board of Directors' Meetings; CBB's Disclosure Standards; High-Level Controls Module of Volume 6 of the CBB Rulebook.		1	
Grand Total			3	4	4

➤ Other Notable Enforcement Measures

Further to the above-mentioned cases of temporary suspensions of trading, and in elaboration of a notable enforcement measure imposed on one of the listed companies, the Directorate issued a Directive to the noted listed company following suspected market misconduct in relation to an impending transaction on one of the listed securities. The Directive mandated the listed company to dispose/sell their acquired shares in the respective listed security through the market, ensure that the related parties adhere to the stipulated rules of the High-Level Controls Module (“HC Module”) of Volume 2 and Volume 6 of the CBB Rulebook, and that any future conflict of interest should formally be approved by the complete Board of Directors.



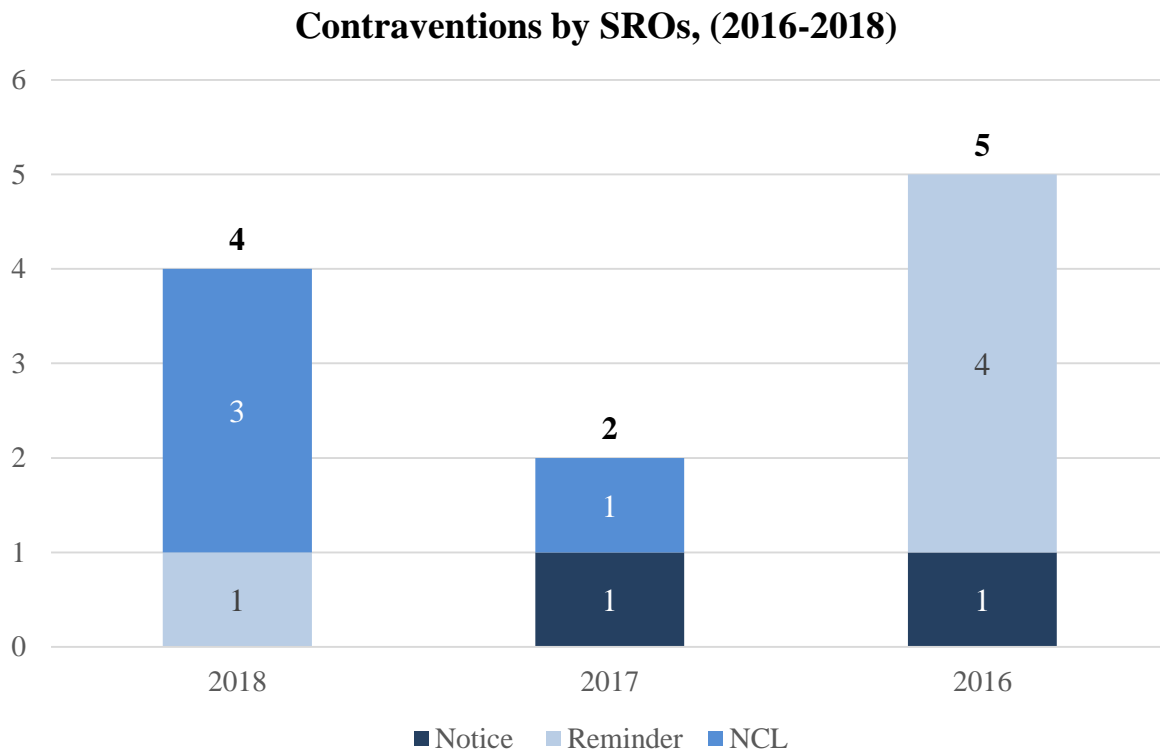
2.2. Unlisted Companies

As part of the CBB’s mandate to maintain and promote fairness, efficiency and transparency within the capital market, the CMSD also addressed contraventions and suspected misconduct by unlisted companies in 2018 in the following cases:

1. The Directorate issued a Non-Compliance Letter to an unlisted licensee for failing to comply with the CBB’s requirements stipulated under OFS-1.4.5 and OFS-1.4.6 of the Offering of Securities Module (“OFS Module”) of Volume 6 of the CBB Rulebook, due to marketing of a product under a prospectus which has not been filed with the CMSD and does not include the necessary prominent statements.
2. Pursuant to Article 38 of the CBB Law and MIE-1.13.1 of the Market Surveillance, Investigation and Enforcement Module of Volume 6 of the CBB Rulebook, the Directorate issued 2 letters imposing trading restrictions on 2 companies, an unlisted company and an unlisted licensee, as a preventive surveillance measure following suspected market misconduct in relation to an impending major transaction in one of the listed securities.

2.3. Self-Regulatory Organizations (SROs)

With reference to MIE-A.4.2 of the Market Surveillance, Investigation and Enforcement Module of Volume 6 of the CBB Rulebook, the CBB’s supervisory role includes licensing, inspection, investigation and enforcement and regulatory oversight on the licensed exchanges, licensed market operators, licensed clearing houses and depositories and other SROs. In line with this, during the period 2016-2018 and from a supervisory standpoint, the CBB addressed the following:



2.4. Members of SROs (Licensed Brokers)

With reference to MIR-A.4.2 of the Market Intermediaries and Representatives Module (“MIR Module”) of Volume 6 of the CBB Rulebook, the CBB’s supervisory role includes licensing, inspection, investigation and enforcement and regulatory oversight on members of SROs. In line with this, during 2018 and from a supervisory standpoint, the CBB addressed a case pertaining to one of its licensed brokers.

With reference to the aforementioned increase in ownership of a major shareholder in one of the listed companies, resulting in holding a stake of over 15%, without obtaining CBB’s prerequisite approval as instructed under AML-7.1.3 of the Anti-Money Laundering and Combating of Financial Crime Module of Volume 6 of the CBB Rulebook, a Non-Compliance Letter was issued to one of the licensed brokers. As per MIR-A.4.4 (a) of the Market Intermediaries and Representatives Module of Volume 6 of the CBB Rulebook, the noted licensed broker was obligated to be well-aware of the Bahrain Bourse and the CBB’s rules and regulations and as such, was expected to proactively advise the client of the potential market misconduct (i.e. major shareholder trading without the CBB’s prior approval).

2.5. Individual Investors

As part of the CBB's mandate to maintain and promote fairness, efficiency and transparency within the capital market, the CMSD also addressed a case of contravention by an individual investor.

Following an investigation during the period of January 2017 to February 2018, into closing price spikes pertaining to multiple suspicious transactions executed on the Bahrain Bourse towards the end of the trading sessions on behalf of an investor, a Directive, in the form of a Private Warning was issued to the said investor on 22nd October 2018.

In summary, upon examining the investor's transactions it appeared that he was accordingly able to influence the closing price by either explicitly buying securities at higher prices or avoiding a price dip that would have resulted were it not for the execution of his trades. Such activity in the market is in breach of Article 106 of the CBB Law as it closely resembles the dynamics of "Marking the Close" as defined in MAM-3.10.20 of the Market Abuse and Manipulation Module of Volume 6 of the CBB Rulebook.

As such, the issued Directive highlighted the implications of such market manipulation, wherein such transactions may artificially inflate the share price and distort the price discovery system which may be perceived as a misleading indicator to investors and market-wide stakeholders. The CMSD further emphasized the importance of adhering to the CBB's and BHB's rules and regulations, specifically those pertaining to trading in securities, through exercising further care and diligence in relation to the execution of transactions in order to avoid engaging in any suspected market manipulation or misconduct.

3. Imposition of Financial Penalties

On 10th April 2018, the CMSD issued a Non-Compliance Letter addressed to one of its listed companies regarding its contravention of the CBB's "Equivalent Information" Rule as stipulated under OFS-5.1.19 of the Offering of Securities Module of Volume 6 of the CBB Rulebook, related to obligating Bahraini issuers (who made an offer or listed their securities outside Bahrain) and overseas issuers (who made an offer or listed their securities in Bahrain) to make public in Bahrain all information of importance to shareholders, that has been made public about the issuer in other markets, whether or not disclosure of such information would otherwise be required by the CBB.

In summary, the listed company provided a clarification to an overseas exchange, where it is cross-listed, regarding the content of a news article published in the overseas jurisdiction pertaining to the listed company's operations. This clarification was accordingly disseminated on the overseas exchange's website without the same on Bahrain Bourse's website, which was only published by the listed company, a day after, in response to the CBB's instructions.

In light of this, the case was escalated for review by the Enforcement Decision Review Committee ("EDRC") resulting in the imposition of a financial penalty on 12th June 2018 in accordance with Article 129 of the CBB Law. In response, the listed company duly submitted its appeal which was forwarded to and subsequently rejected by the Appeal Committee hence re-enforcing the listed company's duty to pay the stipulated financial penalty.

4. Conclusion

In conclusion, the CMSD carefully considers the appropriate regulatory response to potential breaches of rules or market misconduct. Seeing as each non-compliance or suspected case is unique and involves a variety of different circumstantial elements, the CMSD strives to be as consistent and transparent as possible in the related decision-making. The CMSD's most prevalent role revolves around ensuring effective implementation and enforcement of CBB's regulatory requirements for the capital markets, as such, it continuously seeks to develop and improve its regulatory framework (including the clear articulation of regulatory requirements to all stakeholders, imposition of sanctions and enforcement of disciplinary actions) in line with regional and international counterparts and benchmarks. Ultimately, and in line with findings of this annual report, the CMSD, alongside key stakeholders, will work to improve standards of compliance in the market, reduce recurrences and overall boost market awareness of its regulatory framework – with the core objective of solidifying the efficiency of one of Bahrain's aspired key financial drivers, the capital markets.