



# **MARKET SURVEILLANCE, INVESTIGATION & ENFORCEMENT MODULE**

CONSULTATION



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## MIE-A.1 Purpose

### *Executive Summary*

MIE-A.1.1 The Central Bank of Bahrain's (CBB) statutory regulatory objectives include maintaining and promoting the fairness, efficiency, competitiveness, transparency and orderliness of the securities markets in the Kingdom of Bahrain. The CBB believes that investor confidence in the fairness of markets enhances liquidity and efficiency of the markets and for this purpose, it is essential that the laws and standards governing the markets are rigorously and credibly enforced. In this respect, the CBB is making continuous efforts to ensure that the rules are strongly and fairly enforced, with proscribed behaviour clearly and unambiguously defined.

### *The CBB's Enforcement Responsibilities*

MIE-A.1.2 The CBB's key enforcement-related aims are to protect investors and maintain market integrity and confidence. The CBB's regulatory framework needs to address stray cases of non-compliance to ensure that such contraventions of relevant laws, rules and regulations:

- do not cause potential loss to the investing public;
- do not disrupt the financial sector in general and the capital market in particular;
- do not adversely impact the Kingdom's credibility as an international financial centre;
- do not encourage non-compliance or contravention of rules; and
- do not unfairly disadvantage the market participants who comply with all laws, rules and regulations.

MIE-A.1.3 The Market Surveillance, Investigation and Enforcement Module (MIE Module) sets out the CBB's regulatory framework governing the mechanisms and proceedings relating to detection and investigation of breaches of laws, rules and regulations and the appropriate enforcement actions. The process of enforcing the laws and regulations generally involves three main steps:

- **Market Surveillance:** identifying that a potential breach of the relevant laws or regulations has taken place and identification of those responsible for the potential breach;
- **Investigation:** once there is a suspected case of a breach of relevant laws or standards, the CBB may conduct investigations or enquiries to find out what has happened, and whether there is any evidence of a breach; and
- **Enforcement:** taking necessary steps to protect the public interest and if appropriate, to punish those responsible for the breach.

### *The CBB's Approach to Enforcement*

MIE-A.1.4 The CBB's approach is to provide a strong and facilitative regulatory framework along with an effective enforcement of regulatory requirements. While the CBB favours an open and pragmatic approach to supervision within the boundaries set by the law and the CBB's regulations, it ensures effective enforcement of regulatory requirements.

## MIE-A.1 Purpose (continued)

- MIE-A.1.5 The CBB seeks to clearly lay down the rules that will be applied transparently and consistently to ensure that the bona fide investors and market participants are not inconvenienced in their normal course of business, by enabling them to take all reasonable precautions and exercise due diligence to avoid their engagement in prohibited market conducts.
- MIE-A.1.6 The CBB is guided by the following principles of regulation and enforcement:
- **Firmness** – firm and appropriate action against those who harm investors or damage market integrity, regardless of their position or status.
  - **Fairness** – treat everyone fairly. The requirements of procedural fairness and natural justice are important in CBB’s decision-making processes.
  - **Consistency** – try to ensure that consistency is maintained in decisions or actions whilst having regard to the specific circumstances of each case.
  - **Proportionality** – try to ensure that decisions or actions are proportionate, or balanced. For example, take tough action against serious misconduct but more lenient action against less serious conduct.
- MIE-A.1.7 The CBB’s enforcement actions are aimed at achieving the following:
- **Prevention** – it is better to stop improper conduct before it happens. To achieve this, the CBB encourages market participants to foster a culture of compliance. The investing public can also help by learning how to look after their own rights and interests.
  - **Remedying what has happened** – if a breach has already occurred, the CBB will take appropriate steps in terms of applicable laws, rules and regulations to remedy it and look at each situation in light of its particular circumstances and consider what might be appropriate courses of action. It is important to note that, although the CBB is required to act in the public interest, the CBB cannot seek compensation for those who have suffered loss as a result of a breach, or directly assist them in their attempts to seek compensation through the courts.
  - **Punishing wrongdoers and deterring others** – in general, punishment is usually appropriate for those who engage in wrongdoing. Punishment serves a number of purposes. Firstly, it is an effective tool to deter wrongdoers from engaging in further wrongdoing. Punishment may also deter others from engaging in wrongdoing. Thus, it has a deterrent effect that minimises misconduct. To maximise the deterrent effect, the CBB generally publicises its enforcement sanctions wherever appropriate. Note that the CBB cannot represent or bind other authorities or regulators that may have an interest in the matter.
  - **Effectiveness of action** – the CBB must set priorities and make the best use of the limited resources available. Therefore, the costs and benefits of any action that the CBB proposes to take must be considered.
  - **Cooperation with other regulators** – the CBB cooperates with other domestic and overseas regulators in situations where it may be more appropriate for a regulatory body other than the CBB to take action.

## MIE-A.1 Purpose (continued)

- **A balancing act** – each of the CBB’s enforcement actions involves a careful balancing of a number of complex issues. These issues will also vary from case-to-case. In balancing them and making a decision, the CBB will always endeavour to act firmly, fairly and impartially, keeping in mind at all times the CBB’s principles of regulations and aims described under paragraphs MIE-A.1.6 and MIE.A.1.7.

### *Legal Basis*

- MIE-A.1.8 Article 38 (a) of Chapter 8 of Part 1 of the CBB Law mandates the Governor of the CBB to issue necessary directives to ensure the implementation of the CBB Law and regulations and the achievement of the objectives of the CBB. Article 38 (b) provides the CBB with the power to issue necessary directives to ensure the implementation of CBB laws and regulations that aim to formulate the understanding and implementation of the CBB Law and regulations.
- MIE-A.1.9 Article 96 of Chapter 2 of Part 4 of the CBB Law states that: “Subject to the rules and laws of evidence and electronic transactions, any computer data, electronic files, recorded telephone calls, telex and facsimile correspondence may be used as evidence in disputes relating to securities”.
- MIE-A.1.10 Chapter 1 of Part 5 of the CBB Law (Articles 97 to 105) defines insiders, inside information and market information, prohibits abuse of inside information, and provides defences. Particularly, Article 99 provides the CBB with the power to issue regulations concerning the necessary procedures and controls of publishing market information. Article 100 states that: “A person who is in possession of inside information, as an insider shall not use such information to:
- (1) Deal in any securities to which that information relates.
  - (2) Encourage any person to deal in any securities to which that information relates.
  - (3) Disclose inside information to any other person, otherwise than in the proper performance of the functions of his employment, office or profession.
  - (4) Violate the rules governing the publishing of market information.”
- MIE-A.1.11 Chapter 2 of Part 5 of the CBB Law (Articles 106 and 107) deals with Violation of Market Dealings. Article 106 states that: “In the application of this law a person is guilty of market manipulation if he:
- (1) Is engaged, or encourages others to engage, in any conduct that may give a false or misleading impression as to the supply of or demand for, or the price or value of any securities.
  - (2) Is engaged, or encourages others, to engage in any conduct that may give an unrealistic picture of the market regarding the volume and prices of any securities.”
- MIE-A.1.12 Chapter 1 of Part 7 of the CBB Law (Articles 111-115) provides the CBB with the power to obtain information and reports, conduct inspections and to participate in judicial investigations with the Ministry of Justice and Islamic Affairs.

## MIE-A.1 Purpose (continued)

- MIE-A.1.13 Part 8 of the CBB Law (Articles 116-120) provides for restrictions on disclosure of confidential information.
- MIE-A.1.14 Part 9 of the CBB Law (Articles 121-132) provides for the appointment of investigators, obtaining information, documents and explanations in possession of a third party, entering and inspecting specific premises to obtain relevant information, documents and explanations, retaining the information, penalties and administrative proceedings, and assistance in investigations by overseas authorities.
- MIE-A.1.15 Part 11 of the CBB Law (Articles 160-172) provides for penalties for various contraventions and violations of the provisions of the CBB Law.
- MIE-A.1.16 Article 167 of Part 11 of the CBB Law specifically provides penalty for the offence of abuse of inside information and states that “Without prejudice to any greater penalty prescribed in the Penal Code or under any law, a person who contravenes Article 100 of this Law, while he is fully aware, shall be liable to imprisonment for a term not exceeding six months and a fine not exceeding Bahraini Dinars (10,000), or either penalty”.
- MIE-A.1.17 Article 168 of Part 11 of the CBB Law specifically provides penalty for the offence of market manipulation and states that: “Without prejudice to any greater penalty prescribed under the Penal Code or any other law, a person who contravenes Article 106 of this law is guilty of an offence of market manipulation and shall be liable to imprisonment for a term not exceeding six months and a fine not exceeding Bahraini Dinars ten thousand (10,000), or either penalty”.
- MIE-A.1.18 Article 175 of Part 12 of the CBB Law provides that neither the CBB nor any of its employees shall be responsible for any procedure, action or forbearance that resulted in inflicting damages to others if such procedure, action or forbearance was performed in good faith in the course of execution of the duties and responsibilities of the CBB and within its authorities as specified in the Law and the regulations and by-laws issued in implementing it.



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## MIE-A.2 Module History

### *Evolution of Module*

MIE-A.2.1 This Module was first issued in October 2009. Any material changes that are subsequently made to this Module are annotated with the calendar quarter date in which the change is made; Chapter UG-3 provides further details on Rulebook maintenance and version control.

~~MIE-A.2.2 Article 13 of the Bahrain Stock Exchange Law (BSE Law) provides for an arbitration mechanism and Chapter 7 (Articles 56 to 72) of the BSE Internal Regulation provides for a procedure for reference to an Arbitration Committee and settlement of disputes relating to transactions done on the BSE. [This Paragraph has been deleted in February 2021].~~

~~MIE-A.2.3 Article 14 of the BSE Law requires the BSE to have a Disciplinary Board for deciding on violations of the provisions of the BSE Law, regulations and resolutions regulating the BSE, as well as any violation affecting the proper conduct of business and order in the BSE. [This Paragraph has been deleted in February 2021].~~

~~MIE-A.2.4 Article 15 of the BSE Law provides for an appeal to the Disciplinary Board of Appeal against the decisions of the Disciplinary Board. [This Paragraph has been deleted in February 2021].~~

~~MIE-A.2.5 Chapter 8 (Articles 73 to 91) of the BSE Internal Regulation specifies the procedures to be followed by the Disciplinary Board; registering complaints against members and listed companies of the BSE, investigations to be conducted by the Control and Investigation Unit of the BSE, decision-making process of the Disciplinary Board, and notification of the decision. [This Paragraph has been deleted in February 2021].~~

### *Superseded Requirements*

MIE-A.2.6 This Module supersedes the following provisions contained in circulars or other regulatory instruments:

Circular/ other references	Provision	Subject





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### **MIE-A.3 Interaction with Other Modules**

- MIE-A.3.1 All market participants must comply with all the other Modules in Volume 6 in addition to other applicable laws, rules and regulations.



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## MIE-A.4 Division of Responsibilities

MIE-A.4.1 While dealing with cases relating to contravention of the CBB Law, rules and regulations, or other applicable laws, rules and regulations, a clear division of responsibilities between the CBB as the securities regulator and the licensed exchanges or the licensed market operators as a self-regulatory organization (SRO) is required:

- To achieve greater efficiency and transparency in the enforcement of the laws, rules and regulations;
- To maximise the regulatory effectiveness;
- To permit flexibility to the licensed exchanges or the licensed market operators in their functioning;
- To minimise the regulatory cost; and
- To maintain market integrity and investor confidence.

MIE-A.4.2 As a regulator, CBB's role is as follows:

- Regulatory supervision, including the licensing, supervision, inspection, investigation and enforcement and regulatory oversight on the licensed exchanges, licensed market operators, licensed clearing houses and depositories and other SROs and other capital market service providers;
- Maintaining and promoting fairness, efficiency and transparency within the capital market;
- Acting as an enforcement agency with powers to investigate and take administrative, civil or criminal actions as it may deem appropriate;
- Approving the rules, by-laws and business rules of the licensed exchanges or the licensed market operators, licensed clearing houses or depositories, whereby any change in the rules, by-laws and regulations of the SROs would need prior approval of the CBB; and
- Ensuring that the licensed exchanges and licensed market operators, licensed clearing houses and depositories, members of SROs and other capital market service providers and members of SROs have appropriate systems and procedures for detection of unlawful transactions and contraventions of the CBB Law, rules and regulations and report the same to the CBB at the earliest stage possible.

**MIE-A.4.3** The licensed exchange or the licensed market operator or licensed clearing house or central depository established as an SRO must comply with the requirements laid down under the CBB Law, rules and regulations, this Module and the other applicable laws and regulations.

MIE-A.4.4 As an SRO, the main objective of the exchange or the operator or the clearing house would be to:

- Actively perform market surveillance as a front-line regulator;
- Promote fairness and investor protection;
- Promote fair access to market facilities and information;
- Promote the provision of timely and accessible market information;
- Promote the efficient regulation of its members;
- Maintain fairness of price discovery mechanism and ensure prices are determined by the genuine forces of supply and demand;
- Monitor the trading and market on a continuous basis;

#### MIE-A.4 Division of Responsibilities (continued)

- (h) Report any irregular transactions or irregular market behaviour or suspected cases of market abuse or market manipulation, or any contravention of the CBB Law, rules and regulations;
- (i) Identify irregular transactions and take appropriate enforcement actions;
- (j) Take disciplinary action for contraventions by market participants and listed companies through an SRO's Disciplinary Action Committee(s).

##### MIE-A.4.5

Apart from the obligations of the licensed exchanges and market operators under the Markets & Exchanges (MAE) Module, and the obligations of the licensed clearing houses and depositories under the Clearing, Settlement and Central Depository (CSD) Module, these SROs shall:

- (a) Provide such assistance to the CBB in the manner required by the CBB for the purposes of the CBB's market surveillance, investigation and enforcement functions;
- (b) Provide such reports as the CBB may require for the purposes of this Module;
- (c) Conduct inspections or investigations as the CBB may require the SRO to do and submit its Inspection and Investigation Report, along with the facts, documents and evidence supporting the outcome of such inspection or investigation;
- (d) Implement the decisions or measures or actions decided by the CBB, both at the market level and at the level of the individual security or issuer, or member or market participant level in the manner required by the CBB;
- (e) Promptly implement such enforcement actions determined by the CBB against the members and issuers, through the SROs Disciplinary Action Committees.

#### *Role of Other Capital Market Service Providers*

##### MIE-A.4.6

All capital market service providers in general, and members of the SROs in particular, must have the necessary infrastructure and systems to identify and report any irregular transactions or suspected cases of market abuse or market manipulation, or suspected cases of contravention of the CBB Law, rules and regulations, or any other relevant laws, rules and regulations, which they come across in the normal course of business, to the CBB in the format given in paragraph MIE-A.4.7. This reporting shall be done immediately on becoming aware of such incidences or contraventions, or suspected cases.



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## MIE-A.4 Division of Responsibilities (continued)

### *Reporting of Irregular Transactions*

MIE-A.4.7 Persons subject to the obligations to report irregular transactions to the **Capital Markets Supervision Directorate (CMSD)** shall report in the following standard format:

<b>Description of the transaction(s)</b> <i>Details of the securities, including the code of the security (ISIN Number); the market(s) concerned; the original order's entry date/ time, price and size; the times and sizes of the transaction(s); the type and characteristics of the order, etc.</i>
<b>Reasons for Suspicion</b> <i>Reasons for suspecting that the transaction(s) might constitute insider dealing/ market abuse/ market manipulation</i>
<b>Identities of persons carrying out transaction(s)</b> <i>Names, addresses, telephone number, location, account number, client identification code used by the firm, etc.</i>
<b>Identities of any other persons known to be involved in the transaction(s)</b> <i>Names, addresses, telephone number, location, relation to person carrying out transaction, position held, role played, etc.</i>
<b>Capacity in which the person performing the transaction(s) acts</b> <i>e.g. broker, underwriter, agent, investment/ fund manager, auditor, insider.</i>
<b>The ownership of securities before and after the execution of the transaction</b> <i>(of the concerned parties carrying out the transactions).</i>
<b>Any information which may be of significance (along with a list of any accompanying documents/evidence)</b>
<b>Details of the person making notification</b> <i>Name of person, name of firm, position held within firm, contact details, etc.</i>
<b>Signed</b> ..... <i>(person making report)</i>  <b>Dated</b> ..... <i>(date of report)</i>



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## MIE-A.4 Division of Responsibilities (continued)

MIE-A.4.8 Where the information specified to be reported is not available at the time of reporting, the report shall include at least the reasons why the reporting persons suspect that the transactions might constitute contravention of the CBB Law, rules and regulations. All remaining information shall be provided to the CMSD as soon as it becomes available.

Persons making reports therefore, do not need to have all the required information before reporting to the CMSD. If the case is one which (the persons subject to the reporting obligation consider) needs to be brought to the attention of the CMSD urgently, then the person(s) concerned shall make the first contact quickly. This can be done by telephone if appropriate, giving the basic details and reasons for suspicion, followed by written confirmation. The other information may be supplied subsequently.

### *Records of Telephone Conversations and Electronic Communications*

MIE-A.4.9

In addition to meeting the book-keeping and record-keeping requirements as per the applicable laws, rules and regulations, all capital market service providers and members of SROs must maintain records of telephone conversations and electronic communications, including facsimile, email and other instant messaging devices relating to their activities in the securities market and particularly the following activities:

- (a) Receiving client orders;
  - (b) Executing client orders;
  - (c) Arranging for client orders to be executed;
  - (d) Carrying out transactions on behalf of the capital market service provider/member of an SRO, or another person in the capital market service provider/member of an SRO group, and which are part of the capital market service provider's/member of an SRO's trading activities, or the trading activities of another person in the capital market service provider/member of an SRO group;
  - (e) Executing orders that result from decisions by the capital market service provider/member of an SRO to deal on behalf of its client;
  - (f) Placing orders with other entities for execution that result from decisions by the capital market service provider/member of an SRO to deal on behalf of its client;
- that are required to be maintained by the capital market service provider/member of an SRO as per the CBB rules, regulations and directives.



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#### MIE-A.4 Division of Responsibilities (continued)

- MIE-A.4.10** All capital market service providers/~~members of an SRO~~ must take reasonable steps to retain and protect the records referred to in rule MIE-A.4.9:
- (a) Apart from complying with various requirements relating to record keeping, as per CBB Law, rules and regulations and other applicable laws, rules and regulations, the recordings of telephone conversations and electronic communications, including facsimile, email and other instant messaging devices relating to their activities in the securities market ~~recordings of telephone conversations~~ shall be retained for a period of at least twelve months from the date the record was created;
  - (b) For a period of at least twelve months from the date the record was created;
  - (c) In a medium that allows the storage of the information in a way accessible for future reference by the CBB, and so that the following conditions are met:
    - (i) the CBB must be able to access the records readily and take copies;
    - (ii) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections and amendments to be easily ascertained;
    - (iii) it must not be possible for the records to be otherwise manipulated or altered.



MODULE	MIE: Market Surveillance, Investigation & Enforcement
CHAPTER	MIE-B: Scope of Application

## MIE-B.1 Scope of Application

### *Scope*

#### MIE-B.1.1

This Module shall apply to:

- (a) Any conduct or behaviour occurring within Bahrain; or any transaction or expected transaction done by or on behalf of any person(s) within Bahrain in relation to securities offered, issued or listed in Bahrain or elsewhere;
- (b) Any conduct or behaviour occurring outside Bahrain or any transaction or expected transaction done by or on behalf of any person(s) outside Bahrain in relation to securities offered, listed or issued in Bahrain;
- (c) Any conduct or behaviour occurring within Bahrain; or any transaction or expected transaction done by or on behalf of any person(s) within Bahrain in relation to:
  - (i) futures contracts, whether traded on a futures market in Bahrain or elsewhere; or
  - (ii) leveraged foreign exchange trading contracts, whether in Bahrain or elsewhere; and
- (d) Any conduct or behaviour occurring outside Bahrain; or any transaction or expected transaction done by or on behalf of any person(s) outside Bahrain in relation to:
  - (i) futures contracts traded on a futures market in Bahrain;
  - (ii) leveraged foreign exchange trading contracts in Bahrain; or
  - (iii) leveraged foreign exchange trading contracts that are accessible from Bahrain.

#### MIE-B.1.2

This Module contains the CBB's Directive relating to Market Surveillance, Investigation and Enforcement and is issued under the powers available to the CBB under Article 38 of the CBB Law, read with the abovementioned provisions of the CBB Law. The Directive under this Module is applicable to all market participants and relevant persons, including but not limited to issuers of securities or any person acting on their behalf, licensed exchanges, licensed market operators, licensed clearing houses, depositories, **crypto-asset licensees**, investment firms, collective investment undertakings, business trusts, listed companies, any person acting for or on behalf of listed companies, shareholders of listed companies, share registrars, lead managers, underwriters, professional advisors, listing agents, auditors, financial analysts, credit rating agencies and any other person who engages or encourages others to engage in any acts of commission or omission covered by the scope of this Module, irrespective of whether such person is a market participant or not. These rules are issued by way of a legally-binding Directive.





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CHAPTER	MIE-B: Scope of Application

## **MIE-B.2—Definitions**[This Section has been deleted in February 2021].

For the purpose of this Module, the following definitions shall apply:

MIE-B.2.1—“Capital Market Service Provider” means any financial institution or person involved in providing by itself or as agent, any activity specified under Article 80 of the CBB Law.

MIE-B.2.2—“CMSD” means the Capital Markets Supervision Directorate of the Central Bank of Bahrain.

MIE-B.2.3—“Enforcement Decision Committee (EDC)” means the committee constituted by the CBB for the purpose of taking enforcement decisions of material significance, on behalf of the CBB. The EDC exercises enforcement powers on behalf of the CBB and acts independently from the CBB’s executive management structure.

MIE-B.2.4—“Enforcement order” means an order issued by the CBB for imposing penalty or other enforcement actions pursuant to a decision made by the EDC after considering the alleged contraventions and the representations, if any, made by the recipient of a warning notice.

MIE-B.2.5—“Inspection” means an inspection undertaken by official(s) of the CMSD to inspect SRO’s, capital market service providers, listed companies and members of SROs, as per Article 114 of the CBB Law.

MIE-B.2.6—“Investigation” means a formal investigation or preliminary investigation undertaken by any official(s) of the CMSD or any professional firm appointed by the CBB, as per Article 121 of the CBB Law.

MIE-B.2.7—“Investigator” means any official(s) of the CMSD or any professional firm appointed by the CBB under Article 121 of the CBB Law to conduct an investigation.

MIE-B.2.8—“Person” means unless the context requires otherwise, a natural or legal person.

MIE-B.2.9—“Securities” means shares or bonds issued by shareholding companies, government debt instruments and the following financial instruments:

- (a) Shares in companies and other securities equivalent to shares in companies or other entities, and depositary receipts in respect of shares;
- (b) Bonds or other forms of debt, including depositary receipts in respect of such securities;
- (c) Warrants;
- (d) Units, rights or interests (however described) of the participants in a collective investment scheme;
- (e) Options, futures and any other derivative contracts relating to commodities that must be settled in cash, or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);
- (f) Options, futures and any other derivative contract relating to commodities that can be physically settled;





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CHAPTER	MIE-B: Scope of Application

## **MIE-B.2 Definitions (continued)**

- (g) Units to Real Estate Investment Trusts (REITs);
- (h) Index tracking products including Islamic indices;
- (i) Any other financial instrument approved as a financial instrument by the CBB for the purpose of trading such instrument on an exchange; and
- (j) Islamic securities, being those financial instruments that are Shari'a compliant.

MIE-B.2.10 "Self Regulatory Organizations (SROs)" means any organization licensed by the CBB under the Markets and Exchanges (MAE) Module, or the Clearing, Settlement and Central Depository (CSD) Module, or any other organization recognized as an SRO by the CBB.

MIE-B.2.11 "Warning Notice" means a notice issued by the CBB pursuant to the EDC's decision and contains the contraventions committed by the recipient with respect to the CBB Law, rules and regulations and other applicable laws, rules and regulations and accompanied by the evidence that convinced the EDC that such contravention had occurred.



MODULE	MIE: Market Surveillance, Investigation & Enforcement
CHAPTER	MIE-1: Market Surveillance

## MIE-1.1 Market Surveillance

### *Market Surveillance*

MIE-1.1.1 The CBB's surveillance function is focused on identifying potential breaches of the relevant laws, rules and regulations and those responsible for the potential breaches. The surveillance function includes the following:

- a) Policy formulation for introducing the surveillance systems that bring integrity, safety and stability to the securities market in the Kingdom of Bahrain;
- b) Gather and analyze information for the purpose of spotting abnormal situations in the market;
- c) Detect potential contraventions of relevant laws, rules and regulations and identify those responsible for such contraventions;
- d) Prepare initial analysis report; Conduct preliminary investigations;
- e) Take interim enforcement actions, if warranted;
- f) Pursue preventative action, if required, and avoid market disruptions at the earliest possible time;
- g) Initiate formal investigations. [This Subparagraph has been deleted in February 2021].

MIE-1.1.2 The Market Surveillance, Investigation and Enforcement Department of the Capital Markets Supervision Directorate (CMSD) within the CBB is responsible for the market surveillance function relating to the securities market in the Kingdom of Bahrain.

MIE-1.1.3 The CBB may apply, adopt, determine and implement various measures, mechanisms and requirements, as may be required from time-to-time.

**MIE-1.1.4** Licensed exchanges and market operators, licensed clearing houses and depositories, members of SROs and other capital market service providers and members of SROs must have appropriate systems and procedures for the detection of potential cases of unlawful transactions and contraventions of the CBB Law, rules and regulations and report to the CBB at the earliest stage possible.



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## MIE-1.2 Information Gathering for Market Surveillance

### MIE-1.2.1

~~As part of the market surveillance function, the~~ The CBB may exercise its powers under Part 7 and Part 9 of the CBB Law for obtaining information, data, documents and explanations from:

- ~~Self-Regulatory Organizations (SROs)~~, including licensed exchanges, licensed clearing houses and depositories, and related parties;
- ~~Capital market service providers and Members of SROs~~ and related parties;
- Listed companies and issuers of securities;
- Any other person who is in the possession of information or documents relevant for the purpose of conducting specific preliminary investigations by the CBB.

#### *Type of Information*

### MIE-1.2.2

For the purpose of this Module, information includes:

- Any books, records or registers required to be maintained by ~~an SRO or a capital market service provider, or a member of an SRO~~ (including members of SROs, listed companies and issuers of securities) and related parties under the CBB Law, rules and regulations and any other law, rules and regulations;
- Information, books, records or documents known to or in the possession of a ~~capital market service provider, or a member of an SRO~~ (including members of SROs, listed companies and issuers of securities) and related party;
- ~~Any books, records or registers required to be maintained by a listed company and issuers of securities under the CBB Law, rules and regulations and any other law, rules and regulations;~~ [This Subparagraph has been deleted in February 2021]
- ~~Information, books, records or documents known to or in the possession of a listed company and issuers of securities;~~ [This Subparagraph has been deleted in February 2021]
- Information, books, records or documents maintained by or known to or in the possession of any other relevant person in respect of a preliminary investigation.

### MIE-1.2.3

In this Module, a reference to disclosing information includes, in relation to information that is contained in a document, a reference to producing the document.

### MIE-1.2.4

As per Articles 111 and 112 of the CBB Law, the CBB may demand any information, documents, statistics or reports from any licensee ~~or licensed exchange or licensed clearing house, depository,~~ listed company or any person who has issued debt instruments in the ~~Kingdom and issuers of securities~~ within ~~the~~ a specified time.



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## MIE-1.2 Information Gathering ~~for Market Surveillance~~ (continued)

### *Acquisition and Disposal of Securities or Futures Contract*

#### MIE-1.2.5

Without prejudice to the generality of rule MIE-1.2.4:

- (a) The CBB may, where it considers it necessary for the protection of investors, require a capital market service provider ~~or a member of an SRO, or licensed exchange, or licensed clearing house and depository~~ to disclose to the CBB in relation to any acquisition or disposal of securities or futures contracts:
  - (i) the name of the person from or through whom or on whose behalf the securities or futures contracts were acquired; or
  - (ii) the name of the person to or through whom or on whose behalf the securities or futures contracts were disposed of; and the nature of the instructions given to the licensee or licensed exchange, or licensed clearing house and depository in respect of the acquisition or disposal.
- (b) The CBB may require a person who has acquired, held or disposed of securities or futures contracts to disclose to the CBB whether he acquired, held or disposed of those securities or futures contracts, as the case may be, as custodian or trustee for, or on behalf of, another person (whether or not as a nominee), and if so:
  - (i) the name of that other person; and
  - (ii) the nature of any instructions given to the first-mentioned person in respect of the acquisition, holding or disposal.
- (c) The CBB may require a licensed exchange to disclose to the CBB in relation to an acquisition or disposal of securities, or futures contracts on the licensed exchange, the names of the members of that licensed exchange who acted in the acquisition or disposal.
- (d) The CBB may require a licensed clearing house and/or depository for a securities market or futures market to disclose to the CBB in relation to any dealing in securities on that securities market, or trading in futures contracts on that futures market, the names of the members of the licensed clearing house and/or depository who were concerned in any act or omission in relation to the dealing or trading.

### *Exercise of Certain Powers in Relation to Securities*

#### MIE-1.2.6.1

Where the CBB considers that:

- (i) it may be necessary to prohibit under the Markets & Exchanges (MAE) Module dealing in securities of, or made available by, a company or an issuer of securities;



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## MIE-1.2 Information Gathering ~~for Market Surveillance~~ (continued)

- (ii) a person may have contravened any of the provisions of the Prohibition of Market Abuse and Market Manipulation (MAM) Module in relation to securities of, or made available by, a company; or
- (iii) a person may have contravened any of the provisions of the Disclosure Standards Module or Take-overs, Mergers, & Acquisitions and Share Repurchases (TMA) Module in relation to securities in a company;

The CBB may require an officer of a company, or an issuer of securities, ~~referred to in paragraph (a)~~ to disclose to the CBB any information of which he is aware and which may have affected any dealing that has taken place, or which may affect any dealing that may take place, in securities of or made available by, the company or the issuer of securities.

**MIE-1.2.6.2** Where the CBB believes on reasonable grounds that a person is capable of giving information concerning any of the following matters:

- (i) any dealing in securities of, or made available by, a company or an issuer of securities ~~referred to in paragraph (a)~~;
- (ii) any advice given or any report or analysis issued or published concerning such securities, by any capital market service provider ~~or a member of an SRO~~ to deal in securities, or a representative of such a holder;
- (iii) the financial position of any business carried on by a person who is or has been (either alone or together with another person or other persons) the holder of a capital market service provider ~~and member of an SRO~~ to deal in securities and who has dealt or given advice or issued or published a report or an analysis concerning such securities;
- (iv) the financial position of any business carried on by a nominee controlled by a person referred to in paragraph (iii) or jointly controlled by two or more persons at least one of whom is a person referred to in that paragraph; or
- (v) an audit of, or any report of an auditor concerning any book of the capital market service provider ~~or the member of an SRO~~ to deal in securities, being a book relating to dealings in such securities.

The CBB may require the person to disclose to the CBB the information that the person has about the matter.



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## MIE-1.2 Information Gathering ~~for Market Surveillance~~ (continued)

### *Exercise of Certain Powers in Relation to Futures Contracts*

#### MIE-1.2.7

- (a) Where the CBB considers that:
- (i) it may be necessary to give a direction or take any action in relation to any trading in futures contracts under the Markets & Exchanges (MAE) Module;
  - (ii) a person may have contravened any of the provisions of the Prohibition of Market Abuse & Market Manipulation (MAM) Module in relation to futures contracts.
- (b) Where the CBB believes on reasonable grounds that a person is capable of giving information concerning the following matters:
- (i) any trading in futures contracts;
  - (ii) any advice given publicly or privately, or any report or analysis issued or published concerning such futures contracts by the capital market service provider, ~~or the member of an SRO~~, to trade in futures contracts, or a representative of such a holder;
  - (iii) the financial position of any business carried on by a person who is or has been (either alone or together with any person or other persons) the capital market service provider ~~or the member of an SRO~~ to trade in futures contracts and has traded in or given advice or issued or published a report or an analysis concerning such futures contracts;
  - (iv) the financial position of any business carried on by a nominee controlled by a person referred to in paragraph (iii) or jointly controlled by two or more persons, at least one of whom is a person referred to in that paragraph; or
  - (v) an audit of, or any report of an auditor concerning any book of the capital market service provider ~~or the member of an SRO~~ to trade in futures contracts, being a book relating to trading, clearing or settlement in such futures contracts.
- The CBB may require the person to disclose to the CBB the information that the person has about that matter.



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## MIE-1.2 Information Gathering ~~for Market Surveillance~~ (continued)

### *Self-Incrimination*

- MIE-1.2.8** (a) A person is not excused from disclosing information to the CBB under a requirement made of him under rules MIE-1.2.4, MIE-1.2.5, MIE-1.2.6 or MIE-1.2.7, on the grounds that the disclosure of the information might tend to incriminate him.
- (b) Where a person claims before making a statement disclosing information that he is required to disclose by a requirement made of him under rules MIE-1.2.4, MIE-1.2.5, MIE-1.2.6 or MIE-1.2.7, that the statement might tend to incriminate him, that statement shall not be used by the CBB to support any CBB disciplinary measures against him.

### *Savings for Advocates and Solicitors*

- MIE-1.2.9** (a) Nothing in Section 1.2 shall compel the disclosure by an advocate and solicitor of information containing a privileged communication made by or to him in that capacity.
- (b) An advocate and solicitor who refuses to disclose the information referred to in paragraph (a) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

### *Immunities Under CBB Law*

- MIE-1.2.10** (a) The CBB shall not bring any civil or criminal proceedings, other than proceedings for an offence under rule MIE-1.2.11 against any person for disclosing any information to the CBB, if he had done so in good faith in compliance with a requirement of the CBB under rules MIE-1.2.4, MIE-1.2.5, MIE-1.2.6 or MIE-1.2.7.
- (b) Any person who complies with a requirement of the CBB under rules MIE-1.2.4, MIE-1.2.5, MIE-1.2.6 or MIE-1.2.7 shall not be treated by the CBB as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law, or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.





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## MIE-1.2 Information Gathering ~~for Market Surveillance~~ (continued)

### *Offences*

#### MIE-1.2.11

- (a) A person who, without reasonable excuse, refuses or fails to comply with a requirement of the CBB under rules MIE-1.2.4, MIE-1.2.5, MIE-1.2.6 or MIE-1.2.7, may be guilty of an offence of concealing information, or providing false information, or obstructing a current investigation, or an investigation likely to be conducted by the CBB in accordance with Part 9 of the CBB Law, punishable under Articles 163 and 170 of the CBB Law.
- (b) A person who, in purported compliance with a requirement of the CBB under rules MIE-1.2.4, MIE-1.2.5, MIE-1.2.6 or MIE-1.2.7, discloses information or makes a statement that is false or misleading in a material particular may be guilty of an offence punishable under Articles 163 and 170 of the CBB Law.
- (c) It may be a defence to prosecution for an offence under paragraph (b) if the defendant proves that he believed on reasonable grounds that the information or statement ~~was and~~ was not misleading.

### *Copies of ~~or~~ Extracts from Documents to be Admitted as Evidence*

#### MIE-1.2.12

- (a) The CBB shall treat copies of or extracts from a document produced under this Module that are provided to be a true copy of the document, or the relevant part of the document, as if they were the original document, or the relevant part of the original document.
- (b) For the purposes of paragraph (a), evidence that a copy of or extract from a document is a true copy of the document or of a part of the document may be given by a person who has compared the copy or extract with the document or the relevant part of the document and may be given orally or by an affidavit sworn, or by a declaration made before a person authorised to take an affidavit or statutory declarations.





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### MIE-1.3 Information from ~~Licensed Exchanges and Other~~ Self-Regulatory Organizations (SROs)

MIE-1.3.1 Without prejudice to the generality of rule MIE-1.2.4 and apart from using reports, notifications, communications, information, records, data and documents and explanations already provided to the CBB by the licensed exchanges, licensed market operators and licensed clearing houses, and central depositories, the CBB may also use methods of obtaining information mentioned in paragraph MIE-1.3.2, in addition to the usual methods of obtaining information from licensees.

MIE-1.3.2 The methods of obtaining information referred to in paragraph MIE-1.3.1, which may be used by the CBB, may include but not be limited to:

(a) Online connectivity

The CBB may require the licensed exchanges, licensed market operators, licensed clearing houses and central depositories to establish and maintain online connectivity with the CBB for the purpose of receiving on a continuous basis, as well as on a periodical basis (including real-time, intra-day, daily, weekly, monthly, quarterly and/or annually), such market transaction information, market referential information and any other data or information. For this purpose, the CBB may require a direct online connectivity to the trading system, clearing and settlement facilities and depository facilities. The CBB may collect, validate, transform, consolidate and load such information and other information received from various sources for the purpose of market surveillance, research and regulatory analysis into the CBB's systems and records.

(b) Periodic and Emergency Meetings

The CBB may, as part of its market surveillance function and/or overall regulatory oversight function, conduct periodic meetings and emergency meetings with the licensed exchanges, market operators, licensed clearing houses and central depositories. The CBB may obtain information, reports, documents and data during or pursuant to such periodical or emergency meetings, and use the same for to satisfy the supervisory objectives purposes of the market surveillance function of the CBB.

(c) Periodic and Event Based Reports (Electronic Form or Physical Form)

The CBB may stipulate periodic and event-based reports for the purpose of market surveillance, in addition to other reporting requirements applicable to licensed exchanges, market operators, licensed clearing houses and central depositories under the MAE Module and CSD Module respectively; and other rules and regulations. The CBB requires these reports either in electronic form or in physical form.

(d) Inspection

The CBB may conduct an inspection under the MAE Module or CSD Module, either an overall inspection or a special purpose inspection as part of the surveillance function of a licensed exchange or market operator, or licensed clearing house or central depository, and use the information, data, reports, records and documents obtained through such inspection for the purpose of the CBB's market surveillance, investigation and enforcement functions.

(e) Information Provided to Public Investors

The CBB may also use the information made available by licensed exchanges, market operators, licensed clearing houses or central depositories to the public investors for the purpose of market surveillance.



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### MIE-1.3 Information from ~~Licensed Exchanges and Other~~ Self-Regulatory Organizations (SROs) (continued)

(f) Referrals from SROs

If a licensed exchange, market operator, licensed clearing house or central depository (SRO) discovers any conduct in violation or contravention of the CBB Law, rules and regulations, business rules of such SRO, or any other applicable laws, rules and regulations, the concerned SRO shall, apart from taking action based on its own findings and investigations on the matter, refer the potential contraventions to the CBB via the Market Surveillance, Investigation & Enforcement Department within the CBB's Capital Markets Supervision (CMS) Directorate. Such referrals shall contain or be followed by a detailed investigation report on the matter and the evidence obtained by the SRO.

(g) Investigation Report

The CBB may require a licensed exchange, market operator, licensed clearing house or central depository to conduct an investigation on any matter considered appropriate by the CBB for the purpose of the CBB's market surveillance, investigation and enforcement functions, and to submit a detailed investigation report on the matter required by the CBB to be investigated, along with the evidence collected during the investigation, for the findings and conclusions of such investigation.

(h) Formal Request for Information

As part of the CBB's ongoing supervision, the CBB may, by direction, specifically request information or temporary or ad-hoc reporting from a licensee under Article 111 of the CBB Law, or from persons related to any licensee under Article 113 of the CBB Law, and the recipients of such request are bound to provide the information requested within the time specified by the CBB.



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## MIE-1.4 Information from **Members of SROs and Other Capital Market Service Providers** ~~and Members of SROs~~

MIE-1.4.1 Without prejudice to the generality of rule MIE-1.2.4 and apart from using reports, notifications, communications, information, records, data, documents and explanations already provided to the CBB by the capital market service providers ~~and members of an SRO~~, the CBB may also use the methods of obtaining information mentioned in paragraph MIE-1.4.2, in addition to the other ongoing obligations and reporting obligations of the respective capital market service provider ~~or the member of an SRO~~ for the purpose of the CBB's market surveillance, **investigation and enforcement** function.

MIE-1.4.2 The methods of obtaining information referred to in paragraph MIE-1.4.1 which may be used by the CBB may include, but not be limited to:

- (a) Formal Request for Information  
As part of the CBB's ongoing supervision ~~or specifically for the purpose of the market surveillance function~~, the CBB may, by direction, specifically request information or temporary or ad-hoc reporting from a licensee under Article 111 of the CBB Law, or from persons related to any licensee under Article 113 of the CBB Law, and the recipients of such request are bound to provide the information requested within the time specified by the CBB.
- (b) Meetings  
Apart from the normal meetings, periodical prudential meetings, or any other special purpose meeting, the CBB may convene a meeting with a CBB licensee for the purpose of **obtaining specific information discussing matters relating to the market surveillance function of the CBB**.
- (c) Periodic Reports and Event-Based Reports (in Electronic Form or Physical Form)  
The CBB may use the periodic reports and event-based reports submitted by a capital market service provider ~~or a member of an SRO~~ to the CBB, or to a self-regulatory organization (SRO) (including a licensed exchange or market operator and a licensed clearing house or central depository). For example, the CBB may use a Suspicious Transaction Report made by a capital market service provider ~~or a member of an SRO~~ under the Anti-Money Laundering and Combating Financial Crime Module (AML/~~CFC~~ Module), or the Prohibition of Market Abuse and **Market** Manipulation Module (MAM Module) for the purpose of obtaining information **relating to market surveillance**. The CBB may require these reports either in electronic form or physical form.
- (d) Inspection  
The CBB may conduct an inspection ~~as per the Inspection Module~~ and use the information obtained through such inspection ~~for the purpose of the CBB's market surveillance function~~.
- (e) Additional Responsibilities to Auditors  
As per Article 63 of the CBB Law, the CBB may request from the external auditors of a capital market service provider ~~or a member of an SRO~~ to increase the scope of audit and provide additional information to the CBB and the information and reports provided by the external auditors can be used by the CBB **for the CBB's market surveillance function**.



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**MIE-1.4 Information from Members of SROs and Other Capital Market Service Providers and Members of SROs (continued)**

- (f) Notifications, Registrations, Filings and other Communications  
The CBB may use any information contained in any of the notifications, registrations, filings and other communications received from the CBB licensees and related parties for the purpose of the market surveillance, investigation and enforcement functions.
- (g) Record of Telephone Conversations and Electronic Communications  
The CBB may also use the records of telephone conversations and electronic communications that are required to be maintained by a capital market service provider or a member of an SRO for the purposes of the CBB's market surveillance, investigation and enforcement functions.



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## MIE-1.5 Information from Listed Companies and Issuers of Securities

- MIE-1.5.1 As per Article 112 of the CBB Law, the CBB may require any listed company or issuer of securities, or any person acting on their behalf, to provide such information as the CBB deems necessary for discharging its duties and responsibilities under this Law.
- MIE-1.5.2 Without prejudice to the generality of paragraph MIE-1.5.1, the CBB may, in addition to using reports, notifications, announcements, annual reports, reports, communications, records, data and explanations received from any listed company or issuer of securities, also use methods mentioned in paragraph MIE-1.5.3 for obtaining information in addition to the usual methods of obtaining information from listed companies and issuers of securities.
- MIE-1.5.3 The methods of obtaining information referred to in paragraph MIE-1.5.2 which may be used by the CBB to obtain information from listed companies and issuers of securities include, but are not limited to:
- (a) Formal Request for Information  
The CBB may require any listed company or issuer of securities to provide such information as the CBB deems necessary, for the purpose of the CBB's market surveillance function within the time specified by the CBB.
  - (b) Inspection  
The CBB may conduct an inspection as per the Inspection Module and use the information obtained through such inspection in discharging its supervisory responsibilities, for the purpose of the CBB's market surveillance function.
  - (c) Additional Responsibilities to Auditors  
As per Article 63 of the CBB Law, the CBB may request from the external auditors of a listed company or issuer of securities to increase the scope of audit and provide additional information to the CBB, and the information and reports provided by the external auditors can be used by the CBB for the CBB's market surveillance function.
  - (d) Notifications, Registrations, Filings and other Communications  
The CBB may also use any information contained in any of the notifications, registrations, filings and other communications received from listed companies and issuers of securities and related parties for the purpose of discharging its supervisory duties the market surveillance function.
  - (e) Meetings  
The CBB may convene a meeting with any issuer or listed company for the purpose of discussing matters relating to the market surveillance, investigation and enforcement functions of the CBB.
  - (f) Periodic Reports  
The CBB may use the periodic and other reports submitted by the listed companies and issuers for the purpose of the CBB's market surveillance, investigation and enforcement functions.



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## MIE-1.6 Referrals from Other Domestic Authorities

- MIE-1.6.1 The CBB may use information contained in referrals received from other domestic authorities, including but not limited to the Ministry of Industry, & Commerce & Tourism (MOICT) and the Financial Intelligence Directorate, Unit (FIU) within the Ministry of Interior (MOI) based on the discovery made by them regarding potential cases of contravention of the CBB Law, rules and regulations and other applicable laws, rules and regulations.



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## MIE-1.7 Referrals from Overseas Authorities

- MIE-1.7.1 The CBB may receive referrals from overseas authorities, either pursuant to the International Organization of Securities Commissions (IOSCO) Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMoU), or other multilateral/bilateral arrangements, or otherwise, leading to potential cases of contravention of the CBB Law, rules and regulations, or any other applicable laws, rules and regulations, and such referrals can also be used by the CBB for the CBB's market surveillance function.



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## MIE-1.8 Complaints from the Public and Information from Other Sources

MIE-1.8.1 Complaints from the public and customers of the CBB licensees are received by the CBB in the complaint forms available on the CBB's official website and such complaints which relate to potential cases of contravention of the CBB Law, rules and regulations, or SROs' business rules are also used by the CBB for the purposes of the CBB's market surveillance, investigation and enforcement functions for the purpose of the CBB's market surveillance function.

The CBB's surveillance, investigation and enforcement functions also uses information disseminated through the media, including newspapers, television, newsletters, internet, research reports and other media.





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## MIE-1.9 Reports from Experts

### MIE-1.9.1

Article 121 of the CBB Law enables the CBB to appoint qualified investigators (including professional firms) and Article 63 of the CBB Law enables the CBB to request additional duties from external auditors.

The CBB may at its discretion, require a CBB licensee or a listed company or an issuer of securities, or any other relevant person to provide a report by an expert in order to support the CBB's market surveillance, investigation and enforcement functions. The costs associated with such appointment of an expert shall be borne by persons required to appoint an expert.

MIE-1.9.2 The factors the CBB will consider when deciding whether to use an expert include:

- If the CBB's objectives for making further enquiries are predominantly for the purposes of fact finding; i.e. gathering historic information or evidence for determining whether enforcement action may be appropriate, the CBB's information gathering and investigation powers under Part 7 of the CBB Law are likely to be more effective and more appropriate than appointing an expert.
- If the CBB's objectives include obtaining expert analysis or recommendations (or both) for say, the purposes of seeking remedial action, it may be appropriate to appoint an expert instead of or in conjunction with the CBB's other available powers.

MIE-1.9.3 The CBB shall normally make clear both to the persons referred to in rule MIE-1.9.1 and to the expert, the nature of the concerns that led the CBB to decide to appoint an expert, and the possible uses of the results of the report. A report the CBB commissions for purely diagnostic purposes may identify issues which could lead to the appointment of an investigator and/or enforcement action.

MIE-1.9.4 The CBB shall:

- Require persons referred to in rule MIE-1.9.1 to appoint experts only for specific purposes, rather than for general enquiry;
- Not use the procedure as a matter of routine in relation to particular persons;
- Use the procedure only after having considered the alternatives;
- Normally use the procedure because of the added value to be gained from use of an expert, because of their particular expertise or knowledge, not because of CBB's resource constraints;
- Take into account cost implications, including whether the likely cost of an expert's report is proportionate and will provide enough benefit, having regard to the issue in question and the resources of the persons referred to in rule MIE-1.9.1;
- Take into account the expected benefit to the persons referred to in rule MIE-1.9.1; and
- Use the procedure in a focused, proportionate way and ensure that reports are scoped accordingly.



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## MIE-1.9 Reports from Experts (continued)

This policy does not preclude the use of the same procedure for generically similar purposes in different cases, for example, to review systems and controls of persons referred to in rule MIE-1.9.1 or to obtain verification of information provided to the CBB.

### *Who the CBB will Nominate or Approve when Using Experts*

MIE-1.9.5 When considering whether to nominate or approve an expert to make a report, the CBB will have regard to such factors as whether the proposed person appears to have:

- a) The skills necessary to make a report on the matter concerned;
- b) The ability to complete the report within the time required;
- c) Relevant specialised knowledge on the matter to be reported on;
- d) Any professional difficulty or potential conflict of interest in reviewing the matters to be reported on, including but not limited to questions reflecting on the quality or reliability of work previously carried out by the expert;
- e) Independence, bearing in mind the closeness of any existing professional or commercial relationship, to give an objective opinion on such matters as:
  - (i) matters already reported on by the expert (e.g. on the firm's financial statements or in relation to a firm's systems and controls);
  - (ii) matters that are likely to be contentious and may result in disciplinary or other enforcement actions against the persons referred to in rule MIE-1.9.1, its management, shareholders or major shareholders; or
  - (iii) matters that the expert has been involved in, in another capacity.

MIE-1.9.6 In appropriate circumstances it may be cost effective for the CBB to nominate or approve the appointment of an expert who has already acted for, or advised the persons referred to in rule MIE-1.9.1. For example, the CBB may nominate or approve the appointment of a firm's auditor to prepare a report, taking into account where relevant, the considerations set out in paragraph MIE-1.9.2.



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### MIE-1.10 *Detection of Potential Cases of Contraventions*

- MIE-1.10.1 The ~~Market Surveillance Department at the CBB's~~ CMSD captures all the relevant information, reports, data and documents received from various sources and stores them in its records and systems for the purpose of regulatory analyses ~~and market surveillance function~~, and identifies potential cases of contravention of the CBB Law, rules and regulations, and other applicable laws, rules and regulations, ~~particularly contravention of the MAM Module~~. On-line and off-line alerts are generated based on the information available and analysis made of potential cases of contraventions and such alerts are further examined by the Market Surveillance Department at the CMSD, to evaluate the potential evidences indicating suspicions of contraventions.



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## MIE-1.11 Determination of Preliminary Investigation

MIE-1.11.1 If the analysis of the known facts and potential evidence indicates contraventions, ~~the Market Surveillance Department at~~ the CMSD shall consider whether a sufficient, credible source of facts and evidence suggests contravention of the CBB Law, rules and regulations and/or an enforcement action is warranted. Some of the factors that could be considered ~~by the market surveillance~~ include, but are not limited to:

- The laws, rules or regulations that could potentially be considered as having been contravened or violated;
- The severity and/or seriousness of such contravention or violation;
- The potential magnitude of such contravention or violation;
- The potential losses involved or harm to an investor or investors;
- Whether the affected group is particularly vulnerable or at risk;
- Whether the conduct is ongoing;
- Whether the conduct can be investigated efficiently;
- Whether SROs or other authorities might be better suited to investigate the conduct.

MIE-1.11.2 After conducting an analysis referred to in paragraph MIE-1.11.1, the ~~Market Surveillance Department shall consult with the~~ Director of the CMSD ~~shall be consulted~~ regarding any further analysis that should be undertaken, before determining whether a preliminary investigation of the potential cases of contravention shall be undertaken. ~~Based on such further analysis, the Market Surveillance Department shall seek the final Approval of the Director of the CMSD shall be sought for opening a preliminary investigation as part of the market surveillance function.~~



MODULE	MIE: Market Surveillance, Investigation & Enforcement
CHAPTER	MIE-1: Market Surveillance

## MIE-1.12 Preliminary Investigation

### *Information from Third Parties During Preliminary Investigation*

**MIE-1.12.1** As per Article 123 of the CBB Law, the CBB may require any person who is in possession of information or documents relevant to an investigation conducted by the CBB, to promptly present such information and documents to the CBB.

**MIE-1.12.2** Pursuant to a preliminary investigation referred to in section MIE-1.11, the CMSD, or any official of the CBB authorised in this regard, may take copies or extracts from such documents referred to in rule MIE-1.12.1 and also require the person producing such a document, or any other relevant person to provide an explanation, including written explanations, of the contents of the document.

**MIE-1.12.3** If a person required under rule MIE-1.12.1 to produce the document required fails to produce such a document, but he has information about the whereabouts of such a document, then he must indicate to the CMSD, or any official of the CBB authorised in this regard, where the document is located and who is in possession of the document.

### *Access to Premises, Information and Documents*

**MIE-1.12.4** As per Articles 114 and 124 of the CBB Law, the CMSD, or any other CBB staff who are authorised to undertake a preliminary investigation referred to in section MIE-1.11, may enter and inspect the premises, offices, or locations of any capital market service provider SRO, or member of an SRO or capital market service provider to obtain any information or necessary documents or data.

**MIE-1.12.5** If necessary, the CMSD or the authorised CBB staff may retain any documents obtained by virtue of the provisions of the previous paragraph for a period not exceeding six months. However, if the procedures of a trial of any person commenced in connection with committing a crime within the period of the specified six months and the procedures of the said trial continued beyond this period, and the mentioned documents prove to be of relevance to such procedures, then the CMSD or the authorised CBB staff may retain such documents up to the end of the said trial procedures, or to any other date determined by the Competent Court.



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## MIE-1.12 Preliminary Investigation (continued)

### MIE-1.12.6

As per Article 123 of the CBB Law, it shall be the duty of every person who is in possession of information or documents relevant to a preliminary investigation conducted by the CBB to:

- (a) Allow the staff of the CMSD or the authorised CBB staff to have access to the premises, offices and locations occupied by such persons at all reasonable times for the purpose of preliminary investigation.
- (b) Extend the staff of the CMSD or the authorised CBB staff facilities for examining any books, accounts and other documents in the custody or control (whether kept manually or in a computer, or in any other form) of such person, required for the purposes of the preliminary investigation.
- (c) Provide to such staff of the CMSD or the authorised CBB staff copies of any books, records, documents, information, data and explanation which in the opinion of the staff of the CMSD are relevant to the preliminary investigation.

### MIE-1.12.7

If the staff of the CMSD or the authorised CBB staff fail to enter and inspect the premises, offices, or locations of any SRO, or member of an SRO or any other capital market service provider, to obtain any information, or documents, or data, then the CMSD shall seek approval for formal investigation, and the CMSD investigator appointed to conduct the formal investigation may seek a court order, as per Article 124 of the CBB Law, to carry out the following:

- (a) Entering and inspecting specific premises and obtaining relevant information, data, or documents.
- (b) Copying or taking extracts of any relevant document, information or data.
- (c) Compelling any person employed by any SRO, or member of an SRO or any other capital market service provider, to give an explanation, or to specify the whereabouts of any documents, information, or data.

Compelling force may be used, where necessary.

### MIE-1.12.8

The CMSD should evaluate the facts and evidence gathered during the preliminary investigation to determine whether it is appropriate to:

- (a) Open a formal investigation considering the factors mentioned in section MIE-1.13 2.2.4; or
- (b) Close the preliminary investigation without any recommendation for enforcement actions; or
- (c) Initiate appropriate enforcement actions, without opening up a formal investigation, based on the findings of the preliminary investigation, and facts and evidence of the case.



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## MIE-1.12 Preliminary Investigation (continued)

- MIE-1.12.9 In respect of cases where it is determined to open a formal investigation and if it is considered appropriate to initiate appropriate interim enforcement measures swiftly, before further damage is done and remedial actions are taken as early as possible, the CMSD shall evaluate and initiate appropriate interim enforcement measures that are required to be taken, pending the outcome of the formal investigations on the case.
- MIE-1.12.10 After determining the outcome of the preliminary investigation and recommended course of interim or final enforcement measures, the CMSD staff authorised to conduct the preliminary investigation shall submit the preliminary investigation report containing the findings of the preliminary investigation, facts and evidence of the case along with the recommended course of action, based on the outcome of the preliminary investigation mentioned in rule MIE-1.12.7 and paragraph MIE-1.12.8. The said report shall be submitted to the CMSD within 30 days from the date of approval of the opening of the preliminary investigation.
- MIE-1.12.11 The CMSD shall decide on the course of action of the preliminary investigation mentioned in rule MIE-1.12.7 and also, if required, decide on the interim or final enforcement actions and seek the approval of H.E. the Governor for the same.
- MIE-1.12.12 The procedure and proceedings of the enforcement actions shall be governed by chapter MIE-3 of this Module.





MODULE	MIE: Market Surveillance, Investigation & Enforcement
CHAPTER	MIE-1: Market Surveillance

### MIE-1.13 Preventive Surveillance Actions

MIE-1.13.1 The CBB seeks to proactively prevent contraventions or unfair practices or improper conduct and protect the interests of the public investors and securities market at the earliest possible time and the CBB may take preventive surveillance measures. Such preventive surveillance measures may include but not be limited to:

(a) Interim Enforcement Actions

Interim enforcement actions can be taken based on the information, facts and evidence available to the CMSD and such action can be initiated at the earliest possible time as part of the market surveillance function. Details of such interim enforcement actions are given in chapter MIE-3 of this Module.

(b) Directives Under Article 38

The CBB may issue directives to the licensed exchanges, market operators or licensed clearing houses or depositories, or any member of an SRO or any capital market service provider, or any listed company or any issuer of securities, or any market participant, or any other relevant person as a preventive surveillance measure. Such directives under Article 38 of the CBB Law may be issued where the CBB believes that it is necessary or expedient in the interest of the public investors or securities market, or for the protection of investors, to take such action as it considers necessary, and such preventive surveillance measures can be imposed either market-wide or be made available to individual securities or issuers or an SRO, or any member of an SRO or any other capital market service provider, or market participants or any relevant persons.

(c) Imposition of Trading Limits, Margins and Trading Restrictions

The CMSD may, as a pro-active surveillance measure in emergency situations, impose limits or restrictions or measures. Such measures may include but not be limited to trading limits, position limits, additional margins, trading restrictions, suspending trading of any securities, freezing of accounts, suspending clearing/settlement of any transaction(s), or off-setting the suspected transactions, or any other prudential limits for the purposes of protecting the interests of investors and the securities market.





MODULE	MIE: Market Surveillance, Investigation & Enforcement
CHAPTER	MIE-2: Formal Investigation

## MIE-2 Formal Investigation

### MIE-2.1 Scope of Investigation

#### MIE-2.1.1

Notwithstanding anything in this Module, or any other rules and regulations of the CBB, the Governor of the CBB may, if he thinks fit and it is in the public interest to do so, order an investigation as per Article 121 of the CBB Law.

- (a) The CBB may conduct such investigation as it considers necessary or expedient for any of the following purposes:
- (i) to exercise any of its powers or to perform any of its functions and duties under the CBB Law;
  - (ii) to ensure compliance with the CBB Law, rules, regulations, directives, or any written direction issued under the CBB Law;
  - (iii) to investigate an alleged or suspected contravention of any provision of the CBB Law, rules, regulations, or directives, or any written direction issued under the CBB Law;
  - (iv) to investigate whether the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market in violation of the CBB Law, rules and regulations; or
  - (v) to investigate whether any SRO, or member of an SRO or capital market service provider, or listed company or issuer of securities, or any person associated with the securities market, or any other person has violated any of the provisions of the CBB Law, or the rules, regulations or directives issued thereunder.
- (b) A requirement imposed by the CBB in the exercise of its powers under Parts 7 or 9 of the CBB Law shall be deemed to have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.
- (c) Any person who complies with a requirement imposed by the CBB in the exercise of its powers under Parts 7 or 9 of the CBB Law shall not be treated by the CBB as being in breach of any restriction upon the disclosure of information, or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.
- (e) In this Module, “requirement by the CBB” includes a requirement imposed by the CMSD or an investigator appointed by the CBB to conduct a formal investigation.



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CHAPTER	MIE-2: Formal Investigation

## MIE-2.1 Scope of Investigation (continued)

### MIE-2.1.2

When necessary, the CMSD may appoint one or more qualified investigators to conduct an investigation with respect to the following, in accordance with Chapter 1 of Part 9 (Articles 121- 124) of the CBB Law:

- (a) Nature or position of the business of an SRO, or a member of an SRO or capital market service provider;
- (b) A particular aspect of the businesses of an SRO, or a member of an SRO or capital market service provider;
- (c) The ownership or control of an SRO, or a member of an SRO or capital market service provider;
- (d) Whether the SRO, or a member of an SRO or capital market service provider is practicing the very business licensed thereto, and assessing to what extent the SRO, or a member of an SRO or capital market service provider is abiding, in providing the said business, by the provisions of the law and the terms and conditions of the licence.
- (e) Whether an SRO, or a member of an SRO or capital market service provider is carrying out unlicensed business;
- (f) Whether the listed companies are abiding by the procedures and principles of listing referred to in paragraph (c) of Article (86) of the CBB Law.

The investigator may conduct an investigation, where necessary, on the business of any member of a group or company to which the SRO, or a member of an SRO, or capital market service provider under investigation is a party. The SRO, or a member of an SRO or capital market service provider under investigation must be notified in writing of the decision to investigate its business.

### MIE-2.1.3

In exercise of powers available to the CBB under Article 38 of the CBB Law, the CBB implements the scope referred to in rule MIE-2.1.2 above for the purpose of achieving the objectives of the CBB stated in Article 3 of the CBB Law, and discharging duties and responsibilities mandated to the CBB vide Article 4 of the CBB Law, the matters referred to in rule MIE-2.1.2 (a)-(f) shall include the following:

- (i) Investigation of matters considered expedient for the purpose of ensuring compliance with the CBB Law, or any rules or regulations issued thereunder.
- (ii) Alleged or suspected contravention of any provision of the CBB Law or rules and regulations made thereunder, or any directive issued by the CBB.
- (iii) Whether the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market in violation of the CBB Law, rules and regulations; or



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## MIE-2.1 Scope of Investigation (continued)

- (iv) Whether a SRO, or a member of an SRO or capital market service provider or listed company or issuer of securities, or any person associated with the securities market, or any other person has violated any of the provisions of the CBB Law, or the rules, regulations or directives issued thereunder or business rules of SROs.

### *Self-Incrimination and Savings for Advocates and Solicitors*

- MIE-2.1.4** (a) A person is not excused from disclosing information to the CBB or, as the case may be, an investigator appointed by the CBB to conduct a formal investigation, under paragraph (b) under a requirement made of him under in any provision of this Module, on the grounds that the disclosure of the information might tend to incriminate him.
- (b) Where a person claims, before making a statement disclosing information that he is required to under any provision of this Module to the CBB or, as the case may be, an investigator appointed by the CBB to conduct a formal investigation, that the statement might tend to incriminate him, that statement shall not be used by the CBB to support any CBB disciplinary measures against him.
- (c) Nothing in this Module shall:
- compel an advocate and solicitor to disclose or produce a privileged communication, or a document or other material containing a privileged communication, made by or to him in that capacity; or
  - authorise the taking of any such document or other material which is in his possession.
- (d) An advocate and solicitor who refuses to disclose the information to produce the document or other material referred to in paragraph (c) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.



MODULE	MIE: Market Surveillance, Investigation & Enforcement
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## MIE-2 Investigation

### MIE-2.2 Ordering a Formal Investigation

#### *Appointment of Investigator*

- MIE-2.2.1** (a) The CMSD may, at any time by order in writing, direct any official of the CMSD specified in the order to conduct a formal investigation into the affairs of any SRO, or member of an SRO or capital market service provider, or listed company or issuer of securities, or any other capital market service provider or persons associated with the securities market or any other person, and to report thereon to the CBB, as per Article 121 of the CBB Law.
- (b) The CMSD may also appoint, with the approval of the Governor, any professional firm to conduct such formal investigation referred to in paragraph (a) of this rule.

MIE-2.2.2 Before it proceeds with an investigation, the CMSD will satisfy itself that there are grounds to investigate under the statutory provisions that give the CBB powers to appoint investigators. If the statutory test is met, it will decide whether to carry out an investigation after considering all the relevant circumstances. To assist its consideration of cases, the CMSD will apply a set of assessment criteria stated in paragraph MIE-2.2.4. Not all of the criteria will be relevant to every case and there may be other considerations which are not mentioned in the list, but which are relevant to a particular case. The CMSD's assessment will include considering whether using alternative procedures is more appropriate, taking into account the overall circumstances of the person concerned and the wider context. Another consideration will be whether the CBB is under a general duty to take action on behalf of, or otherwise to provide assistance to another domestic or overseas authority.

MIE-2.2.3 Formal investigation can be ordered in three ways. Firstly, it can be when a preliminary investigation opened under section MIE-1.11 can be converted into a formal investigation based on the findings, facts and evidence gathered during the preliminary investigation. Secondly, prior to completion of the preliminary investigation, it may be determined that it would be appropriate to order a formal investigation on the case. Thirdly, a formal investigation can also be ordered without any history of a preliminary investigation on the matter.

#### *Factors Considered while Deciding on a Formal Investigation*

MIE-2.2.4 Without prejudice to the generality of the powers of the CBB to order formal investigations, the factors that may be considered by the CBB, while deciding to order a formal investigation, include but are not limited to:

- (a) Whether the subject matter is a CBB priority in the context of the CBB's objectives and responsibilities, as per Articles 3 and 4 of the CBB Law.
- (b) Whether an action would address a problematic industry practice.
- (c) Whether the conduct undermines the fairness or integrity of the Kingdom's securities market.



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## MIE-2.2 Ordering a Formal Investigation (continued)

- (d) Whether an action would provide an opportunity for the CBB to address violative conduct targeted to a specific market participant, or group of persons that might not otherwise be familiar with the CBB, or the protections afforded by the securities laws.
- (e) Whether an action would present a good opportunity to coordinate with other regulators or authorities in the Kingdom and overseas authorities.
- (f) Whether the conduct can be addressed by other regulators or authorities.
- (g) Whether an action would alert the investing public of a new type of securities fraud or misconduct.
- (h) The magnitude of the potential violations involved in the investigation, considering:
  - (i) the severity and seriousness of the conduct;
  - (ii) the length of time the conduct continued, or whether it is ongoing;
  - (iii) the number of violations;
  - (iv) whether recidivists were involved;
  - (v) whether violations were repeated;
  - (vi) the amount of harm or potential harm to victims;
  - (vii) the amount of ill-gotten gains to the violators;
  - (viii) whether victims were specifically targeted based on personal or affinity group characteristics;
  - (ix) for ~~issuers or members of an SRC or~~ capital market service providers, whether the conduct involved officers, directors, or senior management;
  - (x) whether gatekeepers (such as accountants or attorneys) or securities industry professionals are involved.
- (i) The resources required to investigate the potential violations, considering:
  - (i) the complexity of the potential violations;
  - (ii) the approximate staff man days required over the course of the investigation;
  - (iii) the duration of the relevant conduct;
  - (iv) the number of potential violators;
  - (v) the number and location of potential witnesses;
  - (vi) the volume of evidence that the staff must collect and review, such as trading records, corporate documents and email correspondence;
  - (vii) the level of analysis required for complex data and evidence, such as auditor workpapers, bluesheets, or financial data;
  - (viii) the number and location of witnesses and the scheduling of the examination of persons;
  - (ix) travel requirements.
- (j) Whether there is an urgent need to file an enforcement action, such as an investigation into ongoing fraud or conduct that poses a threat of imminent harm to investigators.



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## MIE-2.2 Ordering a Formal Investigation (continued)

### *Investigation of Certain Cases*

- MIE-2.2.5 The combination of the priority given to certain types of misconduct over others and the CBB's risk-based approach to enforcement means that certain cases will be subject to enforcement action and others **will** not, even where they may be similar in nature or impact. The CBB's choice as to the use of the enforcement tool is therefore a question of how the CBB uses its resources effectively and efficiently and how it ensures that it is an effective regulator.
- MIE-2.2.6 Where unauthorised business poses a significant risk to the investor protection objective or to the CBB's other regulatory objectives, unauthorised activity will be a matter of serious concern for the CBB. The CBB deals with cases of suspected unauthorised activity in a number of ways and it will not use its investigation powers and/or take enforcement action in every single instance.
- MIE-2.2.7 The CBB's primary aim in using its investigation and enforcement powers in the context of suspected unauthorised activities is to protect the interests of investors. The CBB's priority will be to confirm whether or not a regulated activity has been carried on in the Kingdom of Bahrain by someone without licensed authorisation or exemption, and if so, the extent of that activity and whether other related contraventions have occurred. It will seek to assess the risk to investors' assets and interests arising from the activity as soon as possible.
- MIE-2.2.8 The CBB often takes a different approach to that described above where members of SROs or capital market service providers no longer meet the licensing conditions. The CBB views the licensing conditions as being fundamental requirements for licensing and authorisation and it will generally take action in all such cases which come to its attention and which cannot be resolved through the use of supervisory tools. The CBB does not generally appoint investigators in such cases. Instead, members of SROs or capital market service providers **may are** first **be** given an opportunity to correct the failure. If the CBB licensee does not take the necessary remedial action, the CBB will consider whether its license to carry out regulated businesses should be varied and/or cancelled. However, there may be cases where the CBB considers that a formal investigation into a licensing condition concern is appropriate.
- MIE-2.2.9 When the CBB has information regarding possible contravention of the Issuing and Offering of Securities Module, or listing rules, or the Disclosure Standards (DIS) Module, or any violation or contravention relating to the primary market, the CBB will use its investigative powers and/or take enforcement action, as deemed fit.





MODULE	MIE: Market Surveillance, Investigation & Enforcement
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## MIE-2.2 Ordering a Formal Investigation (continued)

### *Cases where other Authorities or SROs have an Interest*

MIE-2.2.10 Action before or following an investigation may include, for example, referring some issues or information to other authorities or SROs for consideration, including where another authority or SRO appears to be better placed to take action. For example, when considering whether to use its powers to conduct formal investigations into market misconduct, the CBB will take into account whether another regulatory authority or an SRO is in a position to investigate and deal with the matters of concern (as far as a licensed exchange or market operator or licensed clearing house and depository is concerned, the CBB will consider the extent to which the licensed exchange or market operator, or licensed clearing house and depository has adequate and appropriate powers to investigate and deal with a matter itself). Equally, in some cases the CBB may investigate and/or take action in parallel with another domestic or international authority or SRO.

### *Sources of Cases*

MIE-2.2.11 The CBB may be alerted to possible contraventions or breaches by complaints from the public or CBB licensees, or listed companies or issuers of securities by referrals from other authorities, or through its own enquiries and supervisory activities. CBB licensees or listed companies, or issuers of securities may also bring their own contraventions to the CBB's attention, as they are obliged to do so under the CBB Law, rules and regulations.

### *Assisting Overseas Regulators*

**MIE-2.2.12** Providing assistance upon request by an overseas authority will be governed by Article 122 of the CBB Law and the Cooperation and Exchange of Information with Overseas Authorities (ICO) Module.



MODULE	MIE: Market Surveillance, Investigation & Enforcement
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## MIE-2 Investigation

### MIE-2.3 Investigation Proceedings

#### *Request for Information and Documents*

##### MIE-2.3.1

##### (a) As per Article 123 of the CBB Law:

“(i) Any person who is in possession of information or documents relevant to an investigation conducted by the Central Bank or its duly appointed investigator, should promptly present such information or documents upon request by the Central Bank or its duly appointed investigator.

(ii) If the Central Bank or its duly appointed investigator receives a document according to the requirement imposed under this Chapter, it may:

- Take copies or extracts from such document.
- Require the person producing the document, or any other relevant person, to provide an explanation of the contents of the document.

(iii) If the person fails to produce the document required, but he has information about the whereabouts of such document, then he should, upon the request of the Central Bank or its appointed investigator, indicate where the document is located.”

##### (b) Examination of Persons

As per Article 124 of the CBB Law:

“(i) If the Central Bank or its authorised person, for any reason, fails to enter and inspect the premises, offices, or locations of the licensee to obtain any information or necessary documents and data, or if the powers conferred to the Central Bank are not sufficient for it to practice its supervision tasks over the business of the licensee, then the Central Bank may seek a court order upon a petition to enable the authorised investigators to carry out the following:

- Entering and inspecting specific premises and obtaining relevant information, data or documents.
- Copying or taking extracts of any relevant document information or data.
- Compelling any person employed by the licensee to give explanation respecting, or to specify the whereabouts of, any documents, information or data.

Compelling force may be used, where necessary.





MODULE	MIE: Market Surveillance, Investigation & Enforcement
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### MIE-2.3 Investigation Proceedings (continued)

(ii) If necessary the Central Bank may retain any documents obtained by virtue of the provisions of the previous paragraph for a period not exceeding six months. However, if the procedures of a trial of any person commenced in connection with committing a crime within the period of the specified six months and the procedures of the said trial continued beyond this period, and the mentioned documents prove to be of relevance to such procedures, then the Central Bank may retain such documents up to the end of the said trial procedures, or to any other date determined by the Competent Court.”

#### *Requirement to Appear for Examination*

##### MIE-2.3.2

- (a) Pursuant to Articles 123 and 124 of the CBB Law and for the purpose of an investigation under this Module, the CMSD or its duly appointed investigator may, in writing, require a person:
- (i) to give the CMSD or its duly appointed investigator all reasonable assistance in connection with the investigation; and
  - (ii) to appear before an officer of the CMSD or its duly appointed investigator for examination under oath and to answer questions under oath.
- (b) A requirement in writing imposed under paragraph (a) shall state the general nature of the matter referred to in paragraph (a).

#### *Proceedings at Examination*

##### MIE-2.3.3

The provisions of section MIE-2.3 shall apply where, pursuant to a requirement made under rule MIE-2.3.2 for the purposes of an investigation under this Module, a person (referred to in this Module as the examinee) appears before another person (referred to in this Module as the investigator) for examination.

## MIE-2.3 Investigation Proceedings (continued)

### *Requirements Made of Examinee*

- MIE-2.3.4** (a) Pursuant to the powers provided under Article 123(b) of the CBB Law, the investigator may examine the examinee on oath or affirmation and may, for that purpose, administer an oath or affirmation to the examinee.
- (b) The oath or affirmation to be taken or made by the examinee for the purposes of the examination is an oath or affirmation that the statements that the examinee will make are true.
- (c) The investigator may require the examinee to answer a question that is put to the examinee at the examination and is relevant to a matter that the CMSD is investigating, or is to investigate, under this Module.

### *Examination to Take Place in Private*

- MIE-2.3.5** (a) The examination shall take place in private and the investigator may give directions as to who may be present during the examination or part thereof.
- (b) A person shall not be present at the examination unless he is:
- (i) the investigator or the examinee;
  - (ii) a person approved by the CMSD to be present; or
  - (iii) entitled to be present by virtue of a direction under rule MIE-2.3.5 (a).

### *Record of Examination*

- MIE-2.3.6** (a) The investigator may, and shall if the examinee so requests, cause a record to be made of statements made at the examination.
- (b) If a record made under rule MIE-2.3.6 (a) is in writing, or is reduced to writing:
- (i) the investigator may require the examinee to read the record, or to have it read to him, and may require him to sign it; and
  - (ii) the investigator shall, if requested in writing by the examinee to give to the examinee a copy of the written record, comply with the request without charge but subject to such conditions as the investigator may impose.

### *Giving Copies of Record to Other Persons*

- MIE-2.3.7** (a) The CBB may give a copy of a written record of the examination, or such a copy together with a copy of any related record, or document, or book, to an advocate and solicitor acting on behalf of a person who is carrying on, or is contemplating in good faith, a proceeding in respect of a matter to which the examination relates.

## **MIE-2.3 Investigation Proceedings (continued)**

- (b) If the CBB gives a copy to a person under rule MIE-2.3.7 (a), the person, or any other person who has possession, custody or control of the copy, or a copy of it, shall not except in connection with preparing, beginning or carrying on, or in the course of any proceedings:
  - (i) use the copy or a copy of it; or
  - (ii) publish or communicate to a person, the copy, a copy of it, or any part of the copy's contents.
- (c) The CBB may, subject to such conditions or restrictions as it may impose, give to a person a copy of a written record of the examination, or such a copy together with a copy of any related record, or document, or book.

### *Copies Given Subject to Conditions*

**MIE-2.3.8**

If a copy of a written record, or document, or book is given to a person under rules MIE-2.3.6 (b) or MIE-2.3.7 (c), subject to conditions or restrictions imposed by the CBB, the person and any other person who has possession, custody or control of the copy or a copy of it, shall comply with the conditions.

### *Record to Accompany Report*

**MIE-2.3.9**

- (a) If, in the CBB's opinion a statement made at an examination is relevant to any other investigation conducted under this Module;
- (b) If a record of the statement was made under rule MIE-2.3.6; and
- (c) A report about the other investigation is prepared under this Module, a copy of the record shall accompany the report relating to such other investigation submitted to the CBB.

### *Offences*

**MIE-2.3.10**

- (a) A person who refuses or fails to comply with the rules MIE-2.3.2 or MIE-2.3.4 (c) may be guilty of an offence punishable under Articles 163 and 170 of the CBB Law.
- (b) A person who:
  - (i) refuses or fails to take an oath or make an affirmation when required to do so by an investigator examining him under this Module;
  - (ii) refuses or fails to comply with a requirement of an investigator under rule MIE-2.3.6 (b) (i); or
  - (iii) refuses or fails to comply with rules MIE-2.3.7 (b) or MIE-2.3.8;

## MIE-2.3 Investigation Proceedings (continued)

- (c) A person who, in purported compliance with the provisions of this Module, or in the course of examination of the person, furnishes information or makes a statement that is false or misleading in a material particular may be guilty of an offence punishable under Articles 163 and 170 of the CBB Law.
- (d) It may be a defence to prosecution for an offence under paragraph (c) if the defendant proves that he believed on reasonable grounds that the information or statement was true and was not misleading.
- (e) A person who obstructs or hinders the CBB or another person in the exercise of any power under this Module or the CBB Law, may be guilty of an offence punishable under Articles 163 and 170 of the CBB Law.

### *Powers to Obtain Information*

#### MIE-2.3.11

##### Power of Authority to order Production of Records, or Documents or Books

Without prejudice to rule MIE-2.3.1 and for the purpose of an investigation under this Module, the CBB may in writing, require any person at a specified time and place to provide information or produce records, or documents, or books relating to any matter under investigation, and such person shall comply with that requirement.

#### MIE-2.3.12

##### Application for Warrant to Seize Records, or Documents, or Books Not Produced

- (a) Where the CBB has reasonable grounds to suspect that there is, on any particular premises, any record, or document, or book the production of which has been required under rule MIE-2.3.11, and:
  - (i) which has not been produced in compliance with that requirement; or
  - (ii) which the CBB has reasonable grounds to believe will not be produced in compliance with that requirement, the CBB may apply to a court for the issue of a warrant authorising the CBB to search the premises for such record, or document, or book, with or without compelling force:
  - (iii) to enter and search the premises and to break open and search anything, whether a fixture or not, in the premises; and
  - (iv) to take possession of or secure against interference, any record, or document, or book that appears to be a record, or document, or book, the production of which was so required.

## MIE-2.3 Investigation Proceedings (continued)

- (b) The powers conferred under paragraph (a) are in addition and not in derogation of any other powers conferred by any other written law or rule of law.
- (c) In this Module, “premises” includes any structure, building, aircraft, vehicle or vessel.

**MIE-2.3.13**

**Powers Where Records, or Documents, or Books are Produced or Seized**

- (a) This rule shall apply where:
- (i) records, or documents, or books are produced to the CBB under a requirement made under rule MIE-2.3.11;
  - (ii) under a warrant issued under rule MIE-2.3.12, the CBB or a person named therein:
    - takes possession of records, or documents, or books; or
    - secures records, or documents, or books against interference; or
  - (iii) under a previous application of rule MIE-2.3.13 (f) of this section, records, or documents, or books are delivered into the possession of the CBB or a person authorised by it.
- (b) If paragraph (a) (i) applies, the CBB may take possession of any of the records, or documents, or books.
- (c) The CBB or, where applicable, a person referred to in paragraph (a) (ii) may:
- examine, and may make copies of or take extracts from, any of the records, or documents, or books;
  - use or permit the use of any of the records, or documents, or books for the purposes of any proceedings; and
  - retain possession of any of the records, or documents, or books for so long as is necessary.
- (i) for the purposes of exercising a power conferred by this rule (other than paragraph (e));
- (ii) for a decision to be made about whether or not any proceedings to which the records, or documents, or books concerned would be relevant should be instituted; or
- (iii) for such proceedings to be instituted and carried on.
- (d) No person shall be entitled as against the CBB or, where applicable, a person referred to in paragraph (a) (ii) to claim a lien on any of the records, or documents, or books, but such a lien is not otherwise prejudiced.
- (e) While the records, or documents, or books are in the possession of the CBB or where applicable, the person referred to in paragraph (a) (ii) the CBB or person:

**MIE-2.3 Investigation Proceedings (continued)**

- (i) shall permit another person to inspect at all reasonable times such of the records, or documents, or books (if any) as the

second-mentioned person would be entitled to inspect if they were not in possession of the CBB or the first-mentioned person; and

- (ii) may permit any other person to inspect any of the records, or documents, or books.
- (f) Unless paragraph (a) (ii) applies, a person referred to in paragraph (a) (ii) may deliver any of the records, or documents, or books into the possession of the CBB or of a person authorised by the CBB to receive them.
- (g) Where paragraphs (a) (i) or (ii) applies, the CBB, a person referred to in paragraph (a) (ii), or a person into whose possession the records, or documents, or books are delivered under paragraph (f) may require:
  - (i) if paragraph (a) (i) applies, a person who so produced any of the records, or documents, or books; or
  - (ii) in any other case, a person who was a party to the compilation of any of the records, or documents, or books, to explain to the best of his knowledge and belief any matter about the compilation of any of the records, or documents, or books, or to which any of the records, or documents, or books relate.

#### MIE-2.3.14

##### Powers where Records, or Documents, or Books are not Produced

Where a person fails to comply with a requirement imposed by the CBB under rule MIE-2.3.11 to produce any record, or document, or book, the CBB may require the person to state to the best of his knowledge and belief:

- (a) The place where such record, or document, or book may be found; and
- (b) The person who last had possession, custody or control of such record, or document, or book and the place where that person may be found.

#### MIE-2.3.15

##### Copies of or Extracts from Records, or Documents, or Books to be Admitted in Evidence

- (a) Subject to this rule, a copy of or extract from a record, or document, or book referred to in this rule that is proved to be a true copy of the record, or document, or book, or of the relevant part of the record, or document, or book is admissible in evidence as if it were the original record, or document, or book or the relevant part of the original record, or document, or book.

### MIE-2.3 Investigation Proceedings (continued)

- (b) For the purposes of paragraph (a), evidence that a copy of or extract from a record, or document, or book is a true copy of the record, or document, or book, or of a part of the record, or document, or book, may be given by a person who has compared the copy or extract with the record, or document, or book, or the



relevant part of the original record, or document, or book and may be given orally or by an affidavit sworn, or by a declaration made before a person authorised to take affidavits or statutory declarations.

**MIE-2.3.16**

**Offences**

- (a) A person who refuses or fails to comply with any requirement imposed under rules MIE-2.3.11, MIE-2.3.13 (g), or MIE-2.3.14 may be guilty of an offence punishable under Articles 163 and/or 170 of the CBB Law.
- (b) A person who in purported compliance with a requirement under this rule, furnishes information or makes a statement that is false or misleading in a material particular may be guilty of an offence punishable under Articles 163 and/or 170 of the CBB Law.
- (c) It may be a defence to the prosecution for an offence under paragraph (b) if the defendant proves that he believed on reasonable grounds that the information or statement was true and not misleading.
- (d) Any person who conceals, destroys, mutilates or alters any record, or document, or book relating to a matter that the CBB is investigating or about to investigate under this Module, or who, where such a record, or document, or book is within the territory of the Kingdom of Bahrain, takes or sends the record, or document, or book out of Bahrain, may be guilty of an offence punishable under Articles 163 and/or 170 of the CBB Law.
- (e) A person who, obstructs or hinders the CBB in the exercise of any power under this rule, or obstructs or hinders a person who is executing a warrant issued under rule MIE-2.3.12, may be guilty of an offence punishable under Articles 163 and/or 170 of the CBB Law.
- (f) The occupier or the person in charge of the premises that a person enters under a warrant issued under rule MIE-2.3.12 who fails to provide to that person all reasonable facilities and assistance for the effective exercise of his powers under the warrant may be guilty of an offence punishable under Articles 163 and/or 170 of the CBB Law.

## MIE-2.3 Investigation Proceedings (continued)

### *Information and records from telecommunications operators*

#### **MIE-2.3.17** Access to Records of Telecommunication Companies and Internet Service Providers

As per Article 123 of the CBB Law, if it appears to the CMSD or its duly appointed investigator that the records, information, documents and data recorded in electronic format or otherwise is available, or likely to be available with the telecommunications service providers or internet service providers, and these are relevant to an investigation conducted by the CMSD, then the CMSD or its duly appointed investigator may request the Telecommunications Regulatory Authority of the Kingdom of Bahrain to use its powers under the telecommunication laws, rules and regulations to obtain such records or information, or documents or data. Such records, information, documents or data should be provided by such telecommunications service providers or internet service providers, who should promptly present such records, information, documents and data for the purpose of the CMSD's investigation.





MODULE	MIE: Market Surveillance, Investigation & Enforcement
CHAPTER	MIE-2: Formal Investigation

## MIE-2.4 Investigation Report

- MIE-2.4.1 The investigator appointed by the CBB to conduct an investigation shall, on completion of the investigation, after taking into account all relevant findings, conclusions, facts and evidence, submit a report to the CBB, provided that the investigator shall submit an interim report pending completion of investigations if he considers necessary in the interest of investors and the securities market, or as directed by the CBB.
- MIE-2.4.2 The investigation report shall be submitted to the CMSD.
- MIE-2.4.3 The CMSD may, after considering the investigation report and the facts and evidence of the case and if satisfied that there is contravention of the CBB Law, rules and regulations, or any other applicable laws, rules and regulations, decide to initiate appropriate enforcement actions. This is without prejudice to the powers of the CBB to take interim and other enforcement actions before conducting formal investigations, or before receipt of a final investigation report.
- MIE-2.4.4 Apart from initiating appropriate enforcement actions referred to in paragraph MIE-2.4.3, the CMSD may make referrals to SROs or other regulators and authorities in the Kingdom of Bahrain, as well as to the overseas regulators and authorities, particularly in respect of contraventions which can be addressed by such other domestic or overseas regulators/authorities.



MODULE	MIE: Market Surveillance, Investigation & Enforcement
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## MIE-2.5 Judicial Investigation

- MIE-2.5.1 Article 115 of the CBB Law states that: “The officers of the Central Bank who are appointed by a resolution issued by the Minister of Justice and Islamic Affairs in agreement with the Governor, shall have the capacity of Judicial Investigation Officers with respect to criminal offences that fall under their jurisdiction and relevant to the duties assigned to them. The verbal process of such crimes prepared by the said officials should be referred to the public prosecution pursuant to a resolution to be issued by the Governor or any person he may authorise”.
- MIE-2.5.2 The CBB may suggest that ~~the~~ the Minister of Justice and Islamic Affairs appoint any of the officers of the CMSD as Judicial Investigation Officers with respect to criminal offences relating to the securities market or the offences covered by the scope of this Module. Judicial investigation undertaken by the officials of the CMSD, either jointly with the officers of the Ministry of Justice and Islamic Affairs, or otherwise, shall submit an investigation report to the CMSD, giving details of contraventions and offences of the CBB Law, rules and regulations, along with all relevant information and evidence.
- MIE-2.5.3 The CMSD may, after considering the investigation report submitted to the CMSD officers who conducting the judicial investigation, and if satisfied that there is a contravention of the CBB Law, rules and regulations, decide to initiate appropriate enforcement actions.



MODULE	MIE: Market Surveillance, Investigation & Enforcement
CHAPTER	MIE-3: Enforcement

## MIE-3.1 Enforcement

### *The CBB's General Approach to Enforcement*

- MIE-3.1.1 This section sets out the CBB's approach to enforcement, and the measures used by the CBB to address failures and contraventions by various market participants, including capital market service providers, members of SROs, issuers, investors or any other persons involved in the non-compliance or contravention. The purpose of such measures is to encourage high standards of compliance by all those involved in the capital market, thus reducing risk to the Kingdom's financial sector in general, and the capital market in particular.
- MIE-3.1.2 Since most of the CBB's enforcement powers are derived from the CBB Law, this Module contains a large number of references to the Law. Users of the Module should therefore refer to the Law as well as to the Module where necessary. In the event of a dispute on interpretation between the Law and the description of an enforcement power in this Module, the provisions of the Law prevail.
- MIE-3.1.3 The CBB's effective and proportionate use of its enforcement powers plays an important role in the pursuit of its regulatory objectives of protecting investors, maintaining confidence in the financial system, promoting public awareness and reducing risks and financial crime. For example, using enforcement helps to contribute to the protection of investors and to deter future contraventions of the CBB Law and other application requirements and market abuse. It can also be a particularly effective way, through publication of enforcement outcomes, of raising awareness of regulatory standards.
- MIE-3.1.4 There are a number of principles underlying the CBB's approach to the exercise of its enforcement powers:
- The effectiveness of the regulatory regime depends to a significant extent on maintaining an open and cooperative relationship between the CBB and those it regulates.
  - The CBB will seek to exercise its enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with its publicly stated policies.
  - The CBB will seek to ensure fair treatment when exercising its enforcement powers.
  - The CBB will aim to enhance the market discipline of the person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance, and where appropriate, to remedy the harm caused by the non-compliance.
  - The CBB will seek to exercise its enforcement powers in a non-discriminatory manner with an effort to treat similarly situated persons and entities in a similar manner.

<b>MODULE</b>	<b>MIE: Market Surveillance, Investigation &amp; Enforcement</b>
<b>CHAPTER</b>	<b>MIE-3: Enforcement</b>

### **MIE-3.1 Enforcement (continued)**

- MIE-3.1.5 Where a person has failed to comply with the requirements of the CBB Law, rules and regulations, or other relevant laws, rules and regulations, it may be appropriate to deal with this without the need for formal disciplinary or other enforcement action. The proactive supervision and monitoring of the capital market and an open and cooperative relationship between market participants and their regulators, will in some cases where a contravention has taken place, lead the CBB to decide against taking formal disciplinary action. However, in those cases, the CBB will expect the market participant or relevant person to act promptly in taking the necessary remedial action agreed with its regulators or SROs, to deal with the CBB's concerns. If the market participant or relevant person does not do this, the CBB may take disciplinary or other enforcement action in respect of the original contravention.
- MIE-3.1.6 The CBB favours an open, pragmatic and collaborative relationship with market participants, within the boundaries set by the CBB Law and Rulebook. Whilst the CBB wishes to avoid a legalistic and confrontational style of supervision, it believes that effective supervision requires effective and timely enforcement of its requirements.
- MIE-3.1.7 The CBB's approach is not to prescribe in detail the exact regulatory response for each and every contravention, as there may be several types of contraventions. Moreover, individual circumstances are unlikely to be identical in all cases, and may warrant different responses.
- MIE-3.1.8 In deciding any given regulatory and enforcement response, the CBB will nonetheless consistently assess the individual circumstance of each contravention against the CBB Law and this Module. The CBB's overall approach is to take into account:
- (a) The seriousness of the contravention concerned (including the risks posed to the capital market);
  - (b) The compliance track record of the person concerned (including the extent to which the contravention reflects systemic weaknesses, reckless conduct, or wilful violation); and
  - (c) The measures that are most likely to achieve the desired result of remedying the contravention and preventing future contraventions.
- MIE-3.1.9 Such an approach reduces the risk of inappropriate enforcement actions, by allowing regulatory measures to be tailored to individual circumstances. By taking into account a person's compliance record and attitude, it also creates positive incentives and encourages an open and collaborative approach. By assessing individual cases against the same broad principles, the CBB also aims to achieve an overall consistency in its regulatory actions.

<b>MODULE</b>	<b>MIE: Market Surveillance, Investigation &amp; Enforcement</b>
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### **MIE-3.1 Enforcement (continued)**

MIE-3.1.10 Underlying the CBB's approach in paragraph MIE-3.1.8 is the fundamental principle of proportionality. The enforcement measures contained in this Module are of varying severity, and will be used accordingly in keeping with the CBB's assessment of the contravention. Thus, the CBB will reserve its most serious enforcement measures – such as initiating prosecution for imposing criminal sanctions, cancellation of license or withdrawal of “fit and proper” status – for the most serious contraventions.

MIE-3.1.11 Where a significant element of judgement is required to assess compliance with a requirement, the CBB will usually discuss the matter with the person concerned, before using one of this Module's enforcement mechanisms. Conversely, where there are clear-cut contraventions of CBB requirements, then the CBB will usually move immediately to one or more of the enforcement mechanisms outlined in this Module. In most such cases, though, the CBB also expects to continue an active dialogue with the person concerned, aimed at remedying the contravention.

MIE-3.1.12 Except in the limited circumstances outlined below, the CBB will usually only apply an enforcement measure after the person concerned has been given a suitable opportunity to be heard and/or make representations.

#### ***Prohibition on Insurance***

MIE-3.1.12A To help the CBB achieve the purpose of this Module, licensees and listed companies may not enter into or make a claim under a contract of insurance that is intended to, or has the effect of, indemnifying them from the fines provided for in this Module.

#### ***Publicity***

MIE-3.1.12B The CBB will not as a matter of general policy publicise individual cases when it uses enforcement measures. However, in such cases the CBB may inform the licensee's or listed company's external auditor and – in the case of overseas operations – relevant overseas regulators.

MIE-3.1.12C In exceptional circumstances, as allowed by Article 132 of the CBB Law, the CBB may decide to publicise individual cases when the measures set out in MIE are used, where there is a strong case that doing so would help achieve the CBB's supervisory objectives. In such instances, the CBB will usually allow the licensee, listed company or individual concerned the opportunity to make representations to the CBB before a public statement is issued.

MIE-3.1.12D With respect to the financial penalties provided Chapter MIE-4, licensees and listed companies are required to disclose in their annual report the amount of any such penalties paid to the CBB, together with a factual description of the reason(s) given by the CBB for the penalty.

<b>MODULE</b>	<b>MIE: Market Surveillance, Investigation &amp; Enforcement</b>
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### **MIE-3.1 Enforcement (continued)**

**MIE-3.1.12E** Without prejudice to the above policy, the CBB may from time to time publish aggregate information on its use of measures set out in MIE, without identifying the licensees, listed companies or individuals concerned, unless their identities have previously been disclosed as provided for in Paragraphs MIE-3.1.12C or MIE-3.1.12D.

**MIE-3.1.12F** By their nature, penalties relating to placing licensees under administration and/or amending or cancelling of a license, are public acts, once applied. The CBB will in these instances generally issue a public statement explaining the circumstances of the case.

#### ***Senior Management Responsibility***

**MIE-3.1.13** The CBB is committed to ensuring that senior managers of CBB licensees, listed companies, issuers of securities and other persons fulfil their responsibilities. The CBB expects senior management to take responsibility for ensuring their organizations identify risks, develop appropriate systems and controls to manage those risks and ensure that the systems and controls are effective in practice. Where senior managers are themselves responsible for misconduct, the CBB will where appropriate, bring cases against individuals as well as organizations. The CBB believes that deterrence will most effectively be achieved by bringing home to such individuals the consequences of their actions.

**MIE-3.1.14** The CBB recognises that cases against individuals are very different in their nature from cases against corporate entities and the CBB is mindful that an individual will generally face greater risks from enforcement action in terms of financial implications, reputation and livelihood than would a corporate entity. However, taking action against individuals sends an important message about the CBB's regulatory objectives and priorities and the CBB considers that such cases have important deterrent values. The CBB is therefore committed to pursuing appropriate cases robustly, and will dedicate sufficient resources to them to achieve effective outcomes.

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## **MIE-3.1 Enforcement (continued)**

### ***Cooperation***

MIE-3.1.15 An important consideration before an enforcement investigation and/or enforcement action is taken forward is the nature of a capital market service provider's, or member of an SRO's or listed company's, or issuer's or other person's overall relationship with the CBB and whether, against that background, the use of enforcement procedures is likely to further the CBB's aims and objectives. So, for any similar set of facts, using enforcement procedures will be less likely if a capital market service provider, or a member of an SRO, or a listed company or an issuer, or any other person has built up over time a strong track record of taking its senior management responsibilities seriously and been open and communicative with the CBB.

In addition, a person's conduct in response to the specific issue which has given rise to the question of whether enforcement procedures should be used will also be relevant. In this respect, relevant matters may include whether the person has self-reported, helped the CBB establish the facts and/or taken remedial action such as addressing any systems and controls issues and compensating any consumers who have lost out. Such matters will not, however, necessarily mean that enforcement procedures will not be used. The CBB has to consider each case on its merits and in the wider regulatory context, and any such steps cannot automatically lead to an enforcement sanction. However, they may in any event be factors which will mitigate the penalty.

MIE-3.1.16 In those cases where enforcement action is not taken and/or a formal investigation is not commenced, the CBB will expect the capital market service provider or members of an SRO, or listed company, or issuer or other person to act promptly to take the necessary remedial action agreed with its regulators to deal with the CBB's concerns. In cases of failure to take prompt remedial action, the CBB may take disciplinary or other enforcement action in respect of the original contravention.

### ***Late Reporting or Non-submission of Reports to the CBB***

MIE-3.1.17 The CBB attaches considerable importance to the timely submission of reports by capital market service providers or members of SROs, issuers and other market participants. This is because the information contained in such reports is essential to the CBB's assessment of whether a market participant is complying with the requirements and standards of the regulatory system. So in the majority of cases involving non-submission of reports or repeated failure to submit complete reports in time, the CBB considers that it will be appropriate to initiate enforcement actions.

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## **MIE-3.2 Interim Measures and Actions**

MIE-3.2.1 In order to pursue the CBB's objectives and perform the duties specified by Articles 3 and 4 of the Law, the CBB needs to initiate appropriate enforcement measures swiftly before further damage is done and take remedial actions as early as possible, in order to protect the interest of the investors and the capital market.

**MIE-3.2.2** The CBB's enforcement measures are intended to achieve compliance and therefore may, in certain cases, have to be applied in a timely and prompt manner without waiting for the investigation to be completed. In such cases, pending the receipt of a final investigation report, the CMSD will resort to interim enforcement actions in order to restrain future violation and also act as a remedial, so that the past unlawful conduct may be reversed at the earliest.

MIE-3.2.3 Interim enforcement actions may be taken, based on the information/documents/reports available with the CMSD, analysis and findings of the surveillance function at the CMSD, interim findings of the investigation initiated by the CMSD, and reports from licensed exchanges and the Clearing, Settlement and Central Depository System and the clearing house, or any other appropriate source of documents or information or reports.

MIE-3.2.4 In cases where the CMSD takes interim measures, usually the CMSD will provide a post-decisional opportunity of a hearing to the persons affected by such interim actions within a reasonable period of time, as expeditiously as possible. The CMSD may, after taking into account the submissions made by the persons concerned both during the hearing and in writing, modify or reconfirm or cancel or reverse the enforcement action, as may be deemed fit by the CBBMSD's Enforcement Decision Review Committee (EDRC).

**MIE-3.2.5** Interim enforcement actions shall be decided by the CMSD, based on the available information, facts and evidence, including the preliminary investigation report or interim investigation report, or any other information, data, report, facts or evidence available to the CMSD. Interim enforcement actions can also be decided by the Enforcement Decisions Review Committee (EDC) on a reference made to it by the CMSD.

MIE-3.2.6 Interim enforcement actions shall be applicable without prejudice to any further investigation and enforcement actions that may be decided by the CMSD or the Enforcement Decisions Review Committee (EDC).



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## MIE-3.2 Interim Measures and Actions (continued)

### *Procedure*

MIE-3.2.7 Based on the facts and evidence available, the CMSD may at its discretion, decide on an interim enforcement action.

MIE-3.2.8 In the course of the CMSD's case examination or in- during the course of carrying out an formal investigation, if it appears to the official of the CMSD conducting the examination or investigation, or the appointed investigator that an interim enforcement action is warranted, he shall submit the facts and evidence of the case to the CMSD, along with the proposal for interim enforcement action.

MIE-3.2.9 If the CMSD, during the course of its normal supervisory functions, finds that interim enforcement action is warranted, the CMSD shall evaluate the information, documents, data and evidence available, and initiate interim enforcement action, as may be deemed fit.

MIE-3.2.10 The CMSD shall issue the order to all the parties against whom interim enforcement action is taken and other relevant parties involved in the implementation of the order, including capital market service providers, members of SROs, licensed exchanges, licensed clearing houses and depositories, listed companies or issuers of securities, investors or any other relevant parties.

MIE-3.2.11 ~~The CMSD shall provide a post-decisional opportunity of a hearing to the persons affected by the interim enforcement action order within a period not exceeding 7 days, unless it has been decided otherwise for reasons to be recorded in such interim enforcement action. [This Paragraph has been deleted in February 2021]~~

MIE-3.2.12 ~~Any person who has been affected by interim enforcement actions may make a request for a hearing before the Enforcement Decisions Committee (EDC), but such request shall not affect the validity of the interim enforcement action so taken. [This Paragraph has been deleted in February 2021]~~

MIE-3.2.13 ~~The CMSD shall fix a date and time, as expeditiously as possible, for an opportunity to be heard before the EDC. [This Paragraph has been deleted in February 2021]~~

MIE-3.2.14 ~~A person to whom an opportunity to be heard is given, or his duly authorised employee or an advocate and solicitor acting on his behalf can avail such opportunity to be heard and make oral submissions and written statement before the EDC, along with relevant documents in support of the representations made. [This Paragraph has been deleted in February 2021].~~

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### MIE-3.2 Interim Measures and Actions (continued)

MIE-3.2.15 The EDC may, after taking into account the submissions and written statements made, modify or reconfirm or cancel or reverse the interim enforcement action, as may be deemed fit. The CMSD shall convey the decision of the EDC to the persons who were given an opportunity to be heard. [This Paragraph has been deleted in February 2021].

MIE-3.2.16 The CMSD shall implement an order issued by the EDC, as per the terms of the order, with effect from the date specified in the order, or if it is not specified, with immediate effect. [This Paragraph has been deleted in February 2021].

MIE-3.2.17 Interim enforcement actions shall be applicable without prejudice to any further enforcement actions that may be decided by the CMSD or EDRC, and to any further investigation and enforcement proceedings and actions.

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### **MIE-3.3 Final Enforcement Actions**

- MIE-3.3.1** When there is clear-cut evidence to confirm contraventions of the CBB Law, CBB Rulebook or other related laws, rules and regulations, the CBB may implement one or more appropriate enforcement measures.
- MIE-3.3.2 The CBB may implement one or more appropriate enforcement measures, where the CBB has evidence in the form of findings of the CMSD investigation done by the investigators appointed by the CBB under Articles 121 or 115 of the CBB Law, along with the information, documents, statements of explanation and other evidence obtained during investigation and also in the form of findings of the market surveillance function at the CMSD and when there is clear-cut evidence available, even without a formal investigation.
- MIE-3.3.3 If considered appropriate, the CBB may also rely on the documents and information obtained through other means such as information, reports, documents, statements of explanation obtained from the SROs, members of SROs, listed companies, issuers of securities, any other capital market service providers, listed companies, issuers of securities and other third parties, as per Articles 111, 112 and 113 of the CBB Law, inspection conducted under Article 114 of the CBB Law, and references received from other regulatory authorities with complete evidence etc., to initiate final enforcement actions.
- MIE-3.3.4 However, the CBB will usually apply a final enforcement action only after the concerned person has been given notice of the charges of contravention and an opportunity to make his submissions in writing and/or during a personal hearing.

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## MIE-3.4 Enforcement Proceedings

### *Enforcement Decisions **Review** Committee (**EDRC**)*

**MIE-3.4.1** For the purpose of taking enforcement decisions that are of material significance, the CBB has set up the Enforcement Decisions **Review** Committee (**EDC**).

The **EDRC** shall be as constituted by a Directive of the Governor.

**MIE-3.4.2** The **EDRC** exercises enforcement powers on behalf of the CBB and is separate from the CBB's executive management structure.

**MIE-3.4.3** The **EDRC** may take the assistance of the CMSD staff, but they shall be separate from the staff who were involved in conducting the investigations and making recommendations to the **EDRC**. The **EDRC** may also decide to take the assistance of SROs and outside experts, if warranted.

### *Scope of Work of the EDC*

**MIE-3.4.4** The **EDC** shall make independent decisions on matters relating to final enforcement actions, or on matters arising out of representations made against interim enforcement actions, or on matters referred to the **EDC** by the Governor. [This Paragraph has been deleted in February 2021].

**MIE-3.4.5** The scope of work and role of the **EDC** is different from the Arbitration Committee or Disciplinary Committee of the SROs. The **EDC** exercises enforcement powers on behalf of the CBB and takes enforcement decisions as per the CBB Law, rules and regulations. The Arbitration Committee of SROs are responsible for settling all disputes relating to transactions concluded on the SROs. The Disciplinary Committees of the SROs are responsible for deciding on violations of business rules of SROs by the members of the SROs, listed companies and issuers of securities. [This Paragraph has been deleted in February 2021].

### *The Operation of the EDC*

#### *EDC Meetings and Composition of Panels*

**MIE-3.4.6** The **EDC** meets as often as necessary to discharge its functions. It may do so, in appropriate cases, in writing or by telephone or email or other electronic means. The **EDC** meets in private. [This Paragraph has been deleted in February 2021].

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### MIE-3.4 Enforcement Proceedings (continued)

MIE-3.4.7—Each meeting of the EDC shall have a quorum of 3 members as follows:  
 (a) Its Chairman, or vice chairman in his absence (who will chair the meeting); and  
 (b) At least two other members.

The CMSD shall maintain the minutes of the meetings and record the proceedings of the EDC. The minutes of the meetings shall be signed by the Chairman of the EDC. [This Paragraph has been deleted in February 2021].

#### *Conflicts of Interest*

MIE-3.4.8—The EDC will seek not to continue participation of a member to join the panel to consider a matter in which he has a potential conflict of interest. [This Paragraph has been deleted in February 2021].

MIE-3.4.9—(a) If a member of the EDC has a potential conflict of interest in any matter in which he is asked to participate, he will disclose the conflict to the EDC Chairman.

(b) If the Chairman of the EDC has received a disclosure in accordance with rule (a) and considers it reasonable and appropriate, he will require the member of the EDC to stand down from consideration of that matter. [This Paragraph has been deleted in February 2021].

MIE-3.4.10—The CMSD will record and document all disclosures of potential conflicts of interest and the steps taken to manage them. [This Paragraph has been deleted in February 2021].

#### *Procedure: General*

MIE-3.4.11—The EDC will follow the procedure described in this Module, but subject to that it will conduct itself in the manner the EDC Chairman considers suitable, in order to enable the EDC to determine fairly and expeditiously the matter which it is considering. [This Paragraph has been deleted in February 2021].

MIE-3.4.12—Each member of the EDC present is entitled to vote on the matter under consideration. The Chairman of the meeting will have a vote as a member of the EDC and will also have the casting vote in a tie. [This Paragraph has been deleted in February 2021].

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#### **MIE-3.4 Enforcement Proceedings (continued)**

MIE-3.4.13—The EDC Chairman may, acting alone, decide matters relating to the arrangements for an EDC meeting, including its timing. [This Paragraph has been deleted in February 2021].

MIE-3.4.14—If the EDC considers it relevant to its consideration, it may ask the CMSD staff to explain or provide any or all of the following:

- (a) Additional information about the matter (which CMSD staff may seek by further investigation); or
- (b) Further explanation of any aspect of the CMSD staff recommendation or accompanying papers; or
- (c) Information about CBB priorities and policies (including as to the CBB's view on the law or on the correct legal interpretation of provisions of the CBB Law, rules and regulations). [This Paragraph has been deleted in February 2021].

##### *Procedure: Warning Notices*

MIE-3.4.15—If the CMSD considers that action is appropriate, in a matter for which the EDC is the decision-maker, and that a warning notice should be given, a reference shall be made to the EDC. [This Paragraph has been deleted in February 2021].

MIE-3.4.16—If the EDC decides that the CMSD should give a warning notice:

- (a) The EDC will settle the wording of the warning notice and will ensure that the notice complies with the relevant provisions of the CBB Law, rules and regulations;
- (b) The EDC will make any associated decisions;
- (c) The CMSD staff will make appropriate arrangements for the notice to be given; and
- (d) The CMSD staff will make appropriate arrangements for the disclosure of the substantive communications between the EDC and the CMSD staff who made the recommendation, and on which the EDC's decision is based. This may include providing copies in electronic format.

Warning notices shall be sent by registered mail. [This Paragraph has been deleted in February 2021].

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### MIE-3.4 Enforcement Proceedings (continued)

MIE-3.4.17—A warning notice shall be accompanied by the following:

- (a) The CMSD's or the investigator's findings and conclusions that lead to the warning notice;
- (b) Relevant extracts from the investigation report, if there is one;
- (c) Documents and evidence submitted to the EDC based on which the decision was made by the EDC;
- (d) The alleged contraventions of the CBB Law, rules and regulations, or other applicable laws, rules and regulations. [This Paragraph has been deleted in February 2021].

#### Procedure: Representations

MIE-3.4.18—(a) A warning notice will specify the time allowed for making representations. This will not be less than 15 days.

(b) The CMSD will also, when giving a warning notice, specify a time within which the recipient is required to indicate whether he wishes to make oral representations. [This Paragraph has been deleted in February 2021].

MIE-3.4.19—(a) The recipient of a warning notice may request an extension of the time allowed for another 15 days (i.e. for a maximum period of 30 days from the date of the warning notice) for making representations. Such a request must normally be made within 14 days of the notice being given.

(b) If a request is made, the Chairman of the EDC will decide whether to allow an extension and if so, how much additional time is to be allowed for making representations. In reaching his decision he may take account of any relevant comments from the CMSD staff responsible for the matter.

(c) The CMSD will notify the relevant party and the CMSD staff responsible for the matter of the decision in writing. [This Paragraph has been deleted in February 2021].

MIE-3.4.20—(a) If the recipient of a warning notice indicates that he wishes to make oral representations, the CMSD staff in conjunction with the Chairman of the EDC will fix a date or dates for a meeting at which the relevant EDC members will receive those representations.

(b) In making those arrangements, the CMSD staff will draw the Chairman's attention to any particular issues about the timing of the meeting which have been raised by the recipient of the notice or the relevant CBB staff. [This Paragraph has been deleted in February 2021].

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### MIE-3.4 Enforcement Proceedings (continued)

MIE-3.4.21—The Chairman of the relevant meeting will ensure that the meeting is conducted so as to enable:

- (a) The recipient of the warning notice to make representation;
- (b) The relevant CMSD staff to respond to those representations;
- (c) The EDC members to raise with those present any points or questions about the matter (whether in response to particular representations or more generally about the matter); and
- (d) The recipient of the notice to respond to points made by CMSD staff or the EDC;

but the Chairman may ask the recipient of the notice or CMSD staff to limit their representations or response in length, or to particular issues arising from the warning notice. [This Paragraph has been deleted in February 2021].

MIE-3.4.22—The recipient of the warning notice may wish to be legally represented at the meeting, but this is not a requirement. [This Paragraph has been deleted in February 2021].

MIE-3.4.23—In appropriate cases, the Chairman of a meeting for oral representations may ask those present to provide additional information in writing after the meeting. If he does so, he will specify the time within which that information is to be provided. [This Paragraph has been deleted in February 2021].

MIE-3.4.24—The EDC will not, after the CMSD has given a warning notice, meet with or discuss the matter whilst it is still ongoing with the CMSD staff responsible for the case, without other relevant parties being present or otherwise having the opportunity to respond. [This Paragraph has been deleted in February 2021].

#### *Procedure: Enforcement orders*

MIE-3.4.25—If no representations are made in response to the warning notice, the CMSD will regard as undisputed the allegations or matters set out in the notice and the default procedure will apply. [This Paragraph has been deleted in February 2021].

#### *Default Procedures*

MIE-3.4.26—If the CMSD receives no response or representations within the period specified in a warning notice, the EDC may regard as undisputed the allegations or matters in that notice and an enforcement order will be given accordingly. [This Paragraph has been deleted in February 2021].



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### MIE-3.4 Enforcement Proceedings (continued)

MIE-3.4.27—If the CMSD receives no response or representations within the period specified in a warning notice, the CMSD will not give a second warning notice. The outcome depends on when the relevant action took or takes effect (as stated in the notice). If the action:

- (a) Took effect immediately or on a specified date which has already passed, it continues to have effect; or
- (b) Was to take effect on a specified date which is still in the future, it takes effect on that date; or
- (c) Was to take effect when the matter was no longer open for review, it takes effect when the period to make representations expires. [This Paragraph has been deleted in February 2021].

MIE-3.4.28—A person who has received an enforcement order and has not previously made any response or representations to the EDC, may nevertheless refer the EDC's decision to the Enforcement Decisions Review Committee (EDRC). [This Paragraph has been deleted in February 2021].

MIE-3.4.29—In exceptional cases, the EDRC may permit representations from a person who has received an enforcement order (or a second warning notice) or against whom action, detailed in a first warning notice, has taken effect, and shows on reasonable grounds that he did not receive the warning notice, or that he had reasonable grounds for not responding within the specified period. In these circumstances, the EDRC may decide to give a further warning notice or enforcement order. [This Paragraph has been deleted in February 2021].

MIE-3.4.30—If representations are made, the EDC will consider whether it is right in all the circumstances to give an enforcement order, then the EDC will:

- (a) Review the material before it;
- (b) Consider any representations made (whether written, oral or both) and any comments by CMSD staff or others in respect of those representations;
- (c) Decide whether to give the notice, and the terms of any notice given. [This Paragraph has been deleted in February 2021].

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### MIE-3.4 Enforcement Proceedings (continued)

MIE-3.4.31—If the EDC decides that the CMSD should give an enforcement order:

- (a) The EDC will settle the wording of the order which will include a brief summary of the key representations made and how they have been dealt with, and will ensure that the order complies with the relevant provisions of the CBB Law, rules and regulations. The enforcement order shall contain:
  - (i) the nature of the offence;
  - (ii) the representations made before the EDC;
  - (iii) the decision by the EDC;
  - (iv) the penalty or other enforcement action;
  - (v) EDC's recommendation if a criminal prosecution shall be launched.
- (b) The EDC will make any relevant statutory notice associated decisions, including whether the CMSD is required to give a copy of the order to a third party;
- (c) The EDC will decide the manner of publication and circulation of the enforcement action;
- (d) The CMSD staff will make appropriate arrangements for the order to be issued for the implementation of the decisions of the EDC contained in the enforcement order;
- (e) The enforcement order shall be sent to the recipients by registered mail; and
- (f) The enforcement order or decisions shall not be issued during the market hours of the licensed exchanges. [This Paragraph has been deleted in February 2021].

MIE-3.4.32—If the EDC decides that the CMSD should not give an enforcement order, the CMSD staff will notify the relevant parties (including the relevant CMSD staff) in writing of that decision. [This Paragraph has been deleted in February 2021].

MIE-3.4.33—CMSD staff responsible for recommending action to the EDC will continue to assess the appropriateness of the proposed action in the light of new information or representations they receive and any material change in the facts or circumstances relating to a particular matter. It may be therefore that CMSD may decide to advise the EDC to consider whether or not to give a notice of discontinuance to a person to whom a warning notice or enforcement order has been given. [This Paragraph has been deleted in February 2021].

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## MIE-3.4 Enforcement Proceedings (continued)

### *Court Proceedings*

MIE-3.4.34 — A decision by the EDC to give an enforcement order may lead to a reference to the Public Prosecutor's office and to the Court. The conduct of proceedings before the Court is not however a matter for the EDC. [This Paragraph has been deleted in February 2021].

### *Review Proceedings*

MIE-3.4.35 Where an enforcement order is issued by the EDRC, a party may appeal such decision to the Appeals Committee of the CBB Enforcement Decisions Review Committee (EDRC).

MIE-3.4.36 The EDRC Appeals Committee shall be as constituted by a Directive of the Governor.

MIE-3.4.37 — The EDRC shall be operated on the same basis as the EDC, with the exception that a new panel shall be appointed which may include the Governor as Chairman of the EDRC. [This Paragraph has been deleted in February 2021].

MIE-3.4.38 The scope of the EDRC Appeals Committee shall include but not be limited to determining:

- (a) Whether the EDRC followed the correct procedures of the EDRC;
- (b) Whether the penalty imposed by the EDRC is justified.
- (c) Evaluating any appeals to enforcement measures submitted, in conjunction with supporting evidence and documentation received from the relevant CBB Directorate and utilize experts internal or external to the CBB.
- (d) Issuing recommendations following an evaluation of the appeal and within 30 days of its referral to the Appeals Committee.

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## MIE-3.5 Settlement

### *Introduction*

- MIE-3.5.1**
- (a) A person subject to enforcement action may agree to a financial penalty or other outcome, rather than contest formal action by the CBB.
  - (b) The fact that he does so will not usually obviate the need for an enforcement order recording the CBB's decision to take that action. Where, however, the person subject to enforcement action agrees not to contest the content of a proposed enforcement order, the decision to issue that order will be taken by the EDRC on matters which are before the EDRC, or by the CMSD on matters which have not been referred to or being considered by the EDRC.

### *Procedure: General*

**MIE-3.5.2** A person who is or may be subject to enforcement action may wish to discuss the proposed action with the CMSD through settlement discussions. The CMSD shall refer the matter to the EDRC if the matter is subject to proceedings before the EDRC and decide on its own on other matters.

**MIE-3.5.3** Settlement discussions may take place at any time during the enforcement process if both parties agree. This might be before the giving of a warning notice, before an enforcement order, or even after referral of the matter to the Court. But the CMSD would not normally agree to detailed settlement discussions until it has a sufficient understanding of the nature and gravity of the suspected misconduct or issue to make a reasonable assessment of the appropriate outcome. Settlement after an enforcement order is not encouraged.

**MIE-3.5.3A** The CBB reserves the right not to enter into settlement discussions where its examination of the nature of the contravention and/or the contravening party discourages this or where the matter was previously rejected under the settlement proceedings.

**MIE-3.5.3B** Entering into settlement discussions shall not prohibit the initiation of any proceedings, in so far as may be deemed necessary by the CBB for the purpose of issuance of interim measures to protect the interests of investors and to maintain the integrity of the securities markets.

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### MIE-3.5 Settlement (continued)

**MIE-3.5.4** The CMSD CBB and the person concerned may agree that neither the CBBMSD nor the person concerned would seek to rely against the other on any admissions or statements made in the course of their settlement discussions, if the matter is considered subsequently by the EDC or the Court.

#### *Procedure: Participation of Decision-Makers in Discussions*

**MIE-3.5.5** (a) The EDRC may, but need not, participate in the discussions exploring possible settlement.  
 (b) If the EDRC has not been involved in the discussions, but an agreement has been reached, they may ask to meet the relevant CMSD staff or the person concerned, in order to assist in the consideration of the proposed settlement.

**MIE-3.5.6** The terms of any proposed settlement:  
 (a) Will be put in writing and be agreed by CMSD staff and the person concerned;  
 (b) May refer to a draft of the proposed warning notices (if any) setting out the facts of the matter and the CMSD's conclusions;  
 (c) May, depending upon the stage in the enforcement process at which agreement is reached, include an agreement by the person concerned to:  
 (i) waive and not exercise any rights under the CBB Law or otherwise to take notice of, or access to material relied upon by the CMSD any secondary material which might undermine the CMSD decision to give the warning notice;  
 (ii) waive and not exercise any rights under the CBB Law or otherwise to make representations to the CBBEDC in respect of a warning notice;  
 (iii) not object to the giving of an enforcement order before the expiry of the 30 day period after the giving of a warning notice;  
 (iv) not dispute with the CMSD the facts and matters set out in a warning notice, or enforcement order, and to waive and not exercise any right under the CBB Law to refer the matter to the Court.  
 (d) Will include that the person subject to the enforcement action accepts that it contravened relevant requirements and admits relevant facts regarding those contraventions in the settlement.

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### MIE-3.5 Settlement (continued)

- (e) Where the settlement pertains to a person who committed any of the violations provided for in the CBB Law, the CBB may offer reconciliation with or accept such, in consideration for an amount which is not less than the minimum amount of the prescribed fine and not more than the maximum amount of that fine. In addition to paying the amounts referred to, the amount of any benefit achieved or losses avoided must be refunded to the affected parties, where identifiable.
- (f) Will vary depending on the circumstances of the matter and the CBB settles only if the agreed terms of the settlement result in an acceptable policy and regulatory outcomes.

#### MIE-3.5.7

The EDRC may:

- (a) Accept the proposed settlement by deciding to give an enforcement order based on the terms of the settlement; or
- (b) Decline the proposed settlement; or
- (c) Recommend other terms.

~~Whether or not the EDC have met with the relevant CMSD staff or the person concerned.~~

#### MIE-3.5.8

- (a) In a matter where the CMSD is engaged in settlement discussions and ~~Where the EDRC subsequently declines to issue an enforcement order despite~~ the proposed settlement, they may invite CMSD staff and the person concerned to enter into further discussions to try to achieve an outcome the EDRC would be prepared to endorse.
- (b) However, if the ~~matter for settlement has been proposed action by the CMSD has been~~ submitted to the EDRC for consideration, it will be for the EDRC to decide:
  - (i) whether to extend the period for representations in response to a warning notice; or
  - (ii) if representations have been made in response to a warning notice, whether to proceed to give an enforcement order.

#### MIE-3.5.9

The ~~CMSD-CBB~~ and other parties may agree to mediation as a way of facilitating settlement in appropriate cases.



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## MIE-3.6 Enforcement Measures and Actions

MIE-3.6.1 As it is neither practical nor effective to prescribe in detail the exact enforcement measures for each and every type of potential non-compliance or violation, the CBB will consistently apply the principles stated in paragraph MIE-3.1.4 to assess the individual circumstance of each contravention and decide on the appropriate type or types of enforcement actions that may be resorted to in respect of each case.

MIE-3.6.2 The type of enforcement actions, both interim and final, that can be applied on different categories of persons involved could include but not be limited to the enforcement actions and measures specified in paragraphs MIE-3.6.3 to MIE-3.6.9.

### MIE-3.6.3 **Capital Market Service Providers and Members of SROs and Other Capital Market Service Providers**

Enforcement actions in respect of the members of SROs and other capital market service providers and members of SROs will mainly be governed by the CBB Law and the relevant volume of the CBB Rulebook and enforcement actions thereunder include:

- 1) Formal warnings;
- 2) Directions as per Article 38 of the CBB Law;
- 3) Financial penalties as per Article 129 of the CBB Law;
- 4) Placing a licensee under administration as per Article 136 of the CBB Law;
- 5) Cancellation or amendment of license as per Article 48 of the CBB Law;
- 6) Taking enforcement action(s) directly against Approved Persons Cancellation of 'fit and proper' approval under Article 65 of the CBB Law;
- 7) Criminal sanctions under Articles 163, 169, 170 and 171 of the CBB Law.

In addition to the above, the CBB may also resort to the following enforcement actions under the CBB Law:

#### **(a) Directives under Article 38**

##### **i. Cease and Desist Order**

An order prohibiting members of SROs or other capital market service providers and members of SROs from continuing an activity. Cease and desist orders can be used as an emergency measure to prevent possible or potential irreparable harm as an interim and temporary injunction, or it can also be used as the outcome of the final investigation and/or enforcement proceedings as a permanent injunction.

##### **ii. Freezing Accounts**

An order restricting a securities or securities cash account of a member of an SRO or other capital market service provider and member of an SRO with the licensed exchanges, clearing houses, central depositories, banks, brokerage firms, etc. This measure generally will be used as an interim measure.

##### **iii. Specific Directives**

An order requiring a capital market service provider and member of an SRO to implement specific measures or checks and balances, to ensure implementation of the CBB Law, rules and regulations.





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## MIE-3.6 Enforcement Measures and Actions (continued)

### iv. Private Warnings

In certain cases despite concerns about a person's conduct or evidence of a breach, the CBB may decide that it is not appropriate, having regard to all the circumstances of the case, to bring formal action for a financial penalty or public censure. This is consistent with the CBB's risk-based approach to enforcement. In such cases, the CBB may give a private warning to make the person aware that they came close to being subject to formal action. Typically, the CBB might give a private warning rather than take formal action where the matter giving cause for concern is minor in nature or degree, or where the person has taken full and immediate remedial action. But there can be no exhaustive list of the conduct or the circumstances which are likely to lead to a private warning rather than more serious action. The CBB will take into account all the circumstances of the case before deciding whether a private warning is appropriate.

### (b) Amendment or Revocation of License Under Article 48(e)

The CBB may amend or revoke a license of a member of an SRO or other capital market service provider, or member of an SRO for contravention of the CBB Law, rules and regulations and the terms and conditions of a license.

### (c) Imposing Restrictions under Article 128

The CBB may impose administrative restrictions upon members of SROs or other capital market service providers, or members of SROs, in order to secure the compliance with the CBB Law, rules and regulations and the terms and conditions of a license.

### (d) Imposing Financial Penalties under Article 129 of the CBB Law

The CBB may impose financial penalties as an enforcement action for contravention of the CBB Law, rules and regulations and the terms and conditions of a license.

### (e) Appointing an Observer Member on the Board of the Licensee under Article 130

If imposing administrative restrictions prove to be futile, then the CBB may appoint an observer member on the Board of Directors of the member of an SRO or other capital market service provider, or member of an SRO, for a specified period.

### (f) Suspension of a Licensee under Article 131

The CBB may suspend a member of an SRO or other capital market service provider, or member of an SRO, who contravenes the provisions of the CBB Law, rules and regulations and terms and conditions of a license for a period not exceeding 12 months.

### (g) Public Censure under Article 132

The CBB may issue a public statement on breach of the provision of the CBB Law, rules and regulations and terms and conditions of a license.



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### MIE-3.6 Enforcement Measures and Actions (continued)

**(h) Criminal Sanction under Article 166**

The CBB may initiate proceedings for imposing criminal sanctions in respect of offences which result in the violation of Articles 81 or 85 of the CBB Law, if members of SROs or other capital market service providers, or members of SROs, are involved in such violations.

**(i) Criminal Sanction under Article 167**

The CBB may initiate proceedings for imposing criminal sanctions in respect of market manipulation offences which result in the violation of Article 100 of the CBB Law; i.e. abuse of inside information.

**(j) Criminal Sanction under Article 168**

Article 168 of the CBB Law states that “Without prejudice to any greater penalty prescribed under the Penal Code or any other law, a person who contravenes Article (106) of this law is guilty of an offence of market manipulation and shall be liable to imprisonment for a term not exceeding six months and a fine not exceeding Bahraini Dinars ten thousand (10,000) or either penalty.”

**(k) Criminal Sanction under Article 169**

Article 169 of the CBB Law states that “Without prejudice to any greater penalty stated under the Penal Code or any other law, a punishment by imprisonment and a fine not exceeding twenty thousand (20,000) Bahraini Dinars, or by either penalty, shall be imposed upon any official or employee of the licensee who acts or permitted an action in violation of Article (134) of this Decree, if he knows or should have known that the licensee is insolvent”.

**(l) Criminal Sanction under Article 170**

Article 170 of the CBB Law states that “Without prejudice to any greater penalty prescribed under the Penal Code or any other law: (1) A person shall be liable to imprisonment for a term not exceeding five years and a fine not exceeding twenty thousand (20,000) Bahraini Dinars, or by either penalty, if he falsifies, conceals, destroys or otherwise disposes of a document which he knows or he should know that such document is relevant or shall be of relevance to a current investigation or an investigation likely to be conducted in accordance with Chapter (1) of Part 9 of this Law. Any person participates in such an offence shall be liable to the same penalty of the principal offender. (2) A person shall be liable to imprisonment for a term not exceeding three months, or a fine not exceeding three thousand (3,000) Bahraini Dinars, or either penalty, if he intentionally obstructed any investigation carried out by the Central Bank or an investigator appointed by the Central Bank.”



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## MIE-3.6 Enforcement Measures and Actions (continued)

### (m) Criminal Sanction under Article 171

Article 171 of the CBB Law states that “Without prejudice to any greater penalty prescribed under the Penal Code or any other law, a person who discloses in bad faith any Confidential Information in contravention of the provisions of Part (8), shall be liable to imprisonment and a fine not exceeding Bahraini Dinars ten thousand (10,000), or either penalty.” This criminal sanction is applicable to members of SROs or other capital market service providers, or members of SROs who violate Part 8 of the CBB Law.

### (n) Criminal Sanction under Article 172

Article 172 of the CBB Law states that “Any legal person shall be liable and punished under criminal law by a fine not exceeding two hundred thousand Bahraini Dinars, if any of the crimes stated in this Decree are committed in the name or for his account or by means of any of his facilities, and this was a result of any action or gross negligence or by the approval or under covering of any member of the board of directors or any other official of that legal person or any person who acts in such capacity.”

### (o) Criminal Sanction under Article 163

Article 163 of the CBB Law states that “Without prejudice to any greater penalty prescribed under the Penal Code or any other law, any officer or employee of a licensee or a listed company shall be punished by imprisonment and a fine not exceeding twenty thousand (20,000) Bahraini Dinars, or by either penalty, if he: (1) Concealed any records, information or documents relevant to the activities of the licensee, requested by the Central Bank or any person appointed by the Central Bank to conduct an investigation or inspection on the business of the licensee or the listed company, or provides any of them, in a bad faith, with statements or information which proves to be false or misleading or do not reflect the actual financial position of the licensee or the listed company. (2) Concealed from the external auditor any records, information or documents necessary for auditing the accounts of the licensee or the listed company, or provides him in a bad faith, with misleading or inaccurate statements or information which do not reflect the actual financial position of the licensee or the listed company.”

### ~~(p) Criminal Sanction under Article 169~~

~~Article 169 of the CBB Law states that “Without prejudice to any greater penalty prescribed under the Penal Code or any other law, a punishment by imprisonment and a fine not exceeding twenty thousand (20,000) Bahraini Dinars, or by either penalty, shall be imposed upon any official or employee of the licensee who acts or permitted an action in violation of Article (134) of this Decree, if he knows or should have known that the licensee is insolvent.”~~



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## MIE-3.6 Enforcement Measures and Actions (continued)

### MIE-3.6.4 Disciplinary Action through Licensed Exchanges and Licensed Clearing Houses/Central Depositories (SROs)

SROs are required to establish a Disciplinary Committee for the purpose of deciding violations by the members or listed companies, or issuers of SROs business rules. A Disciplinary Committee shall decide on cases relating to any violation of laws, rules and regulations which regulate the licensed exchanges. Enforcement measures that can be imposed on members of SROs and listed companies/issuers through the Disciplinary Committee of licensed exchanges may include:

- i. Warning;
- ii. Confiscation of all or part of the member's deposits with the licensed exchange;
- iii. Suspension of trading or clearing rights;
- iv. Suspension of membership rights;
- v. Cancellation of membership;
- vi. Financial penalties, fines and charges.

The CMSD may advise licensed exchanges, licensed clearing houses and central depositories within their scope of their respective powers, to take appropriate enforcement actions. These actions can be in addition to other enforcement actions which are taken by the CBB itself.

### MIE-3.6.5 Listed Companies

Listed companies are required to meet their obligations as per the CBB Law, rules and regulations and these obligations include the dissemination of information, filing of returns, notifications and periodic reports. For example, listed companies are required to monitor insiders' transactions and report to the CMSD regarding any suspected case of abuse of inside information and file reports regarding insiders' transactions. If a listed company or an issuer fails to comply with or contravenes the CBB Law, rules and regulations, or any other applicable laws, rules and regulations, the CBB may initiate appropriate enforcement actions. Such enforcement actions may include, but not be limited to:

#### **(a) Directives under Article 38:**

##### **i. Formal warning:**

An order issuing a formal warning may be issued to a listed company in order to clearly set out the CBB's concerns to a listed company to ensure that the matter is viewed by the recipient with appropriate seriousness.

##### **ii. Cease and Desist Order:**

An order prohibiting a listed company from continuing an activity. Cease and desist orders can be used as an emergency measure to prevent possible or potential irreparable harm as an interim and temporary injunction, or it can also be used as the outcome of the final investigation and/or enforcement proceedings as a permanent injunction.

##### **iii. Specific Directives:**

An order requiring a listed company to implement specific measures or checks and balances, to ensure implementation of the CBB Law, rules and regulations.



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## MIE-3.6 Enforcement Measures and Actions (continued)

### iv. Private Warnings

In certain cases despite concerns about a person's behaviour or evidence of a breach, the CBB may decide that it is not appropriate, having regard to all the circumstances of the case, to bring formal action for a financial penalty or public censure. This is consistent with the CBB's risk-based approach to enforcement. In such cases, the CBB may give a private warning to make the person aware that they came close to being subject to formal action. Typically, the CBB might give a private warning rather than take formal action where the matter giving cause for concern is minor in nature or degree, or where the person has taken full and immediate remedial action. But there can be no exhaustive list of the conduct or the circumstances which are likely to head to a private warning rather than more serious action. The CBB will take into account all the circumstances of the case before deciding whether a private warning is appropriate.

### (b) Restraining offering of securities using powers under Article 81:

The CBB may ~~by an order under Article 38 read with Article 81~~ direct a listed company or any other prospective issuer not to access the market for an offer or issue of securities in the Kingdom for a certain period or until certain conditions are satisfied.

### (c) Cancellation of listing and suspension of trading:

Article 87 (a) of the CBB Law states that: "The Central Bank may decide to cancel the listing of any securities that contravene the requirements of the Listing Rules, or to suspend the trading of any listed securities facing exceptional circumstances that the Central Bank considers as sufficient grounds for the suspension of the securities."

The cancellation of listing or the suspension of trading shall be decided by the Governor."

### (d) Imposing restrictions under Article 128

The CBB may impose administrative restrictions upon listed companies in order to secure the compliance with the CBB Law, rules and regulations and the terms and conditions of a license.

### (e) Public censure under Article 132

The CBB may issue a public statement on breach of the provision of the CBB Law, rules and regulations and terms and conditions of a license.

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### **MIE-3.6 Enforcement Measures and Actions (continued)**

**(f) Criminal sanction under Article 163**

Article 163 of the CBB Law states that “Without prejudice to any greater penalty prescribed under the Penal Code or any other law, any officer or employee of a licensee or a listed company shall be punished by imprisonment and a fine not exceeding twenty thousand (20,000) Bahraini Dinars, or by either penalty, if he: (1) Concealed any records, information or documents relevant to the activities of the licensee, requested by the Central Bank or any person appointed by the Central Bank to conduct an investigation or inspection on the business of the licensee or the listed company, or provides any of them, in a bad faith, with statements or information which proves to be false or misleading or do not reflect the actual financial position of the licensee or the listed company. (2) Concealed from the external auditor any records, information or documents necessary for auditing the accounts of the licensee or the listed company, or provides him in a bad faith, with misleading or inaccurate statements or information which do not reflect the actual financial position of the licensee or the listed company.”

**(g) Criminal Sanction under Article 166**

The CBB may initiate proceedings for imposing criminal sanctions in respect of violation of Articles 81 or 85 of the CBB Law.

**(h) Criminal Sanction under Article 167**

The CBB may initiate proceedings for imposing criminal sanctions in respect of market manipulation offences which result in the violation of Article 100 of the CBB Law; i.e. abuse of inside information.

**(i) Criminal Sanction under Article 168**

Article 168 of the CBB Law states that “Without prejudice to any greater penalty prescribed under the Penal Code or any other law, a person who contravenes Article (106) of this law is guilty of an offence of market manipulation and shall be liable to imprisonment for a term not exceeding six months and a fine not exceeding Bahraini Dinars ten thousand (10,000) or either penalty.”

**(j) Criminal Sanction under Article 170**

Article 170 of the CBB Law states that “Without prejudice to any greater penalty prescribed under the Penal Code or any other law: (1) A person shall be liable to imprisonment for a term not exceeding five years and a fine not exceeding twenty thousand (20,000) Bahraini Dinars, or by either penalty, if he falsifies, conceals, destroys or otherwise disposes of a document which he knows or he should know that such document is relevant or shall be of relevance to a current investigation or an investigation likely to be conducted in accordance with Chapter (1) of Part 9 of this Law. Any person participates in such an offence shall be liable to the same penalty of the principal offender. (2) A person shall be liable to imprisonment for a term not exceeding three months, or a fine not exceeding three thousand (3,000) Bahraini Dinars, or either penalty, if he intentionally obstructed any investigation carried out by the Central Bank or an investigator appointed by the Central Bank.”

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## **MIE-3.6 Enforcement Measures and Actions (continued)**

### **(k) Criminal Sanction under Article 172**

Article 172 of the CBB Law states that “Any legal person shall be liable and punished under criminal law by a fine not exceeding two hundred thousand Bahraini Dinars, if any of the crimes stated in this Decree are committed in the name or for his account or by means of any of his facilities, and this was a result of any action or gross negligence or by the approval or under covering of any member of the board of directors or any other official of that legal person or any person who acts in such capacity.”

### **(l) Imposing Financial Penalties under Article 129 of the CBB Law**

The CBB may impose financial penalties as an enforcement action for contravention of the CBB Law, rules and regulations.

#### **MIE-3.6.6**

### **Licensed Exchanges, Clearing Houses and Central Depositories**

As an SRO, the licensed exchanges, clearing houses and depositories are required to:

- Actively perform market surveillance as a front-line regulator;
- Take disciplinary action for contraventions by members and listed companies/issuers through the SRO's Disciplinary Action Committee;
- Identify potential cases of unlawful transactions and take preventative actions;
- Report suspected cases of market abuse and manipulation to the CBB;
- Implement enforcement actions determined by the CBB.

When an SRO contravenes the provisions of the CBB Law, rules and regulations, as CBB licensees, the enforcement action applicable to all other capital market service providers of the CBB will also be applicable to the licensed exchanges, clearing houses and central depositories. In addition to these enforcement actions, these market infrastructure institutions-SROs will be subject to other enforcement actions stated in the Markets & Exchanges Module and the Clearing, Settlement & Central Depository Module. Such enforcement measures include:

- Cancellation or amendment of license;
- ~~Directives under emergency situations;~~ [This Subparagraph has been deleted in February 2021]
- Removal of officers from his office or employment;
- Financial penalties as per Article 129 of the CBB Law.



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## MIE-3.6 Enforcement Measures and Actions (continued)

### MIE-3.6.7 Users of SROs, Capital Market Service Providers and Members of SROs and Persons other than Licensees and Listed Companies

Users of capital market service providers and persons other than licensees and listed companies may be subject to appropriate enforcement actions if it fails to comply with or contravenes the CBB Law, rules and regulations, or any other applicable laws, rules and regulations. Such enforcement actions may include, but not be limited to:

(a) Directives under Article 38

Article 38 of the CBB Law states “(a) The Governor shall issue the necessary directives to ensure the implementation of this Law, any regulations issued in accordance to this Law and the achievement of the objectives of the Central Bank. Such directives shall be legally supported and the intended addressees shall be identified.

(b) The Governor may issue directives that aim to facilitate the understanding and implementation of this law and any regulations thereof. He may also issue directives regarding other matters, as he deems appropriate to serve the objectives of the Central Bank.

(c) The directives shall be circulated through the means approved by the Governor. Once circulated to the intended addressees, the directives become binding.”

Directives under Article 38 of the CBB Law may also be issued against persons other than licensees and listed companies as an enforcement measure to ensure compliance with the CBB Law, rules and regulations. Such directives may include:

#### i. **Formal warning:**

An order issuing a formal warning may be issued to relevant persons in order to clearly set out the CBB’s concerns to such persons to ensure that the matter is viewed by the recipient with appropriate seriousness.

#### ii. **Cease and Desist Order:**

An order prohibiting a relevant person from continuing an activity. Cease and desist orders can be used as an emergency measure to prevent possible or potential irreparable harm as an interim and temporary injunction, or it can also be used as the outcome of the final investigation and/or enforcement proceedings as a permanent injunction.

#### iii. **Freezing Accounts:**

An order freezing an account of a relevant person with the financial institutions including licensed exchanges, clearing houses, central depositories, banks, brokerage firms, etc. This measure generally will be used as an interim measure.

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### MIE-3.6 Enforcement Measures and Actions (continued)

#### iv. **Specific Directives:**

An order requiring a relevant person to implement specific measures or checks and balances to ensure implementation of the CBB Law, rules and regulations.

#### v. **Imposing Restrictions:**

An order imposing restrictions on a relevant person as an enforcement measure to ensure compliance with the CBB Law, rules and regulations.

#### iv. **Private Warnings**

In certain cases despite concerns about a person's behaviour or evidence of a breach, the CBB may decide that it is not appropriate, having regard to all the circumstances of the case, to bring formal action for a financial penalty or public censure. This is consistent with the CBB's risk-based approach to enforcement. In such cases, the CBB may give a private warning to make the person aware that they came close to being subject to formal action. Typically, the CBB might give a private warning rather than take formal action where the matter giving cause for concern is minor in nature or degree, or where the person has taken full and immediate remedial action. But there can be no exhaustive list of the conduct or the circumstances which are likely to head to a private warning rather than more serious action. The CBB will take into account all the circumstances of the case before deciding whether a private warning is appropriate.

#### (b) **Criminal Sanction under Article 166**

The CBB may initiate proceedings for imposing criminal sanctions in respect of market manipulation offences which result in the violation of Articles 81 or 85 of the CBB Law.

#### (c) **Criminal Sanction under Article 167**

The CBB may initiate proceedings for imposing criminal sanctions in respect of market manipulation offences which result in the violation of Article 100 of the CBB Law; i.e. abuse of inside information.

#### (d) **Criminal Sanction under Article 168**

Article 168 of the CBB Law states that "Without prejudice to any greater penalty prescribed under the Penal Code or any other law, a person who contravenes Article (106) of this law is guilty of an offence of market manipulation and shall be liable to imprisonment for a term not exceeding six months and a fine not exceeding Bahraini Dinars ten thousand (10,000) or either penalty."

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### **MIE-3.6 Enforcement Measures and Actions (continued)**

**(e) Criminal Sanction under Article 170**

Article 170 of the CBB Law states that “Without prejudice to any greater penalty prescribed under the Penal Code or any other law: (1) A person shall be liable to imprisonment for a term not exceeding five years and a fine not exceeding twenty thousand (20,000) Bahraini Dinars, or by either penalty, if he falsifies, conceals, destroys or otherwise disposes of a document which he knows or he should know that such document is relevant or shall be of relevance to a current investigation or an investigation likely to be conducted in accordance with Chapter (1) of Part 9 of this Law. Any person participates in such an offence shall be liable to the same penalty of the principal offender. (2) A person shall be liable to imprisonment for a term not exceeding three months, or a fine not exceeding three thousand (3,000) Bahraini Dinars, or either penalty, if he intentionally obstructed any investigation carried out by the Central Bank or an investigator appointed by the Central Bank.”

**(f) Criminal Sanction under Article 171**

Article 171 of the CBB Law states that “Without prejudice to any greater penalty prescribed under the Penal Code or any other law, a person who discloses in bad faith any Confidential Information in contravention of the provisions of Part (8), shall be liable to imprisonment and a fine not exceeding Bahraini Dinars ten thousand (10,000), or either penalty.”

**(g) Criminal Sanction under Article 172**

Article 172 of the CBB Law states that “Any legal person shall be liable and punished under criminal law by a fine not exceeding two hundred thousand Bahraini Dinars, if any of the crimes stated in this Decree are committed in the name or for his account or by means of any of his facilities, and this was a result of any action or gross negligence or by the approval or under covering of any member of the board of directors or any other official of that legal person or any person who acts in such capacity.”

**(h) Criminal Sanction under Article 163**

Article 163 of the CBB Law states that “Without prejudice to any greater penalty prescribed under the Penal Code or any other law, any officer or employee of a licensee or a listed company shall be punished by imprisonment and a fine not exceeding twenty thousand (20,000) Bahraini Dinars, or by either penalty, if he: (1) Concealed any records, information or documents relevant to the activities of the licensee, requested by the Central Bank or any person appointed by the Central Bank to conduct an investigation or inspection on the business of the licensee or the listed company, or provides any of them, in a bad faith, with statements or information which proves to be false or misleading or do not reflect the actual financial position of the licensee or the listed company. (2) Concealed from the external auditor any records, information or documents necessary for auditing the accounts of the licensee or the listed company, or provides him in a bad faith, with misleading or inaccurate statements or information which do not reflect the actual financial position of the licensee or the listed company.”

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### **MIE-3.6 Enforcement Measures and Actions (continued)**

#### **(i) Criminal Sanction under Article 169**

Article 169 of the CBB Law states that “Without prejudice to any greater penalty prescribed under the Penal Code or any other law, a punishment by imprisonment and a fine not exceeding twenty thousand (20,000) Bahraini Dinars, or by either penalty, shall be imposed upon any official or employee of the licensee who acts or permitted an action in violation of Article (134) of this Decree, if he knows or should have known that the licensee is insolvent.”

#### **MIE-3.6.8 Restriction of Capital Market Service Providers, Auditors and Other Experts**

The CBB may in respect of auditors of CBB licensees, listed companies, issuers of securities or any other market participant, restrict the duties of such auditors and other experts, where the auditors and other experts failed to perform their duties specified under the CBB Law, rules and regulations. Any decision of the CBB in this regard may apply for a specified period or indefinite period until the CBB is satisfied that the person will in future comply with the duties and responsibilities in question.

MIE-3.6.9 The CBB may also restrict the activities that may be undertaken by capital market service providers, lead managers, share registrars, underwriters and other professionals involved in capital market activities.

<b>MODULE</b>	<b>MIE: Market Surveillance, Investigation &amp; Enforcement</b>
<b>CHAPTER</b>	<b>MIE-4: Financial Penalties</b>

## **MIE-4 Financial Penalties**

### **MIE-4.1 CBB Policy**

**MIE-4.1.1** Under Chapter 2 "Procedures to be taken before penalties or administrative proceedings are applied" and Chapter 3 "Penalties and administrative proceedings" of Part 9 of the CBB Law, the CBB may impose financial penalties on licensees or listed companies or persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law and its amendments (in particular Article 129). The CBB shall use judgement and will take into account relevant facts in determining the need to impose financial penalties. Financial penalties are thus normally preceded by the issuance of a written formal notice and/or Direction.

**MIE-4.1.2** The level of financial penalty applied is determined by the nature of the contravention and the amount of additional supervisory attention and resources taken up by licensees' or listed companies' or persons', referred to in paragraph (b) of Article (68 bis 1) of the CBB Law, behaviour and by limits set in the CBB Law. The CBB will apply the methodology set out in Appendix A to determine the size of the penalty. The CBB intends that the impact of a penalty should derive more from its signaling effect than from the actual amount of money involved.

**MIE-4.1.3** In accordance with Article 129 of the amendment to the CBB Law, the maximum financial penalty levied for failing to comply with CBB Law, Regulations, Directives and other requirements is BD 100,000 per violation. The CBB may opt to limit the amount of the financial penalty and use other enforcement measures as outlined in this Module, such as imposing restrictions on a licensee or listed company or limiting the scope of operations.

**MIE-4.1.4** As indicated in Paragraph MIE-3.1.12D, the CBB requires disclosure by licensees and listed companies in their annual report of any financial penalties served on them, together with a factual description of the reasons given by the CBB for applying the penalty. In addition, the CBB may publicise the issuance of a financial penalty notice, where there is a strong case that doing so would help achieve the CBB's supervisory objectives, as mentioned in Article 132 of the pre-mentioned Law.

<b>MODULE</b>	<b>MIE: Market Surveillance, Investigation &amp; Enforcement</b>
<b>CHAPTER</b>	<b>MIE-4: Financial Penalties</b>

## **MIE-4.1 CBB Policy**

**MIE-4.1.5** Examples of the types of compliance failings that may lead to the serving of a financial penalty notice are outlined in Part 11 of the CBB Law and may include (but are not limited to):

- (a) Failures to address persistent delays and/or significant inaccuracies in regulatory reporting to the CBB;
- (b) Repeated failures to respond to formal requests for information from the CBB, within the deadlines set;
- (c) The submission of information to the CBB known to be false or misleading; and
- (d) Major failures in maintaining adequate systems and controls in accordance with the CBB's requirements, subjecting investors to significant risk of financial loss.

**MIE-4.1.6** In assessing whether to serve a financial written penalty notice, the CBB takes into account the following criteria:

- (a) the seriousness of the contravention, in relation to the requirement(s) concerned;
- (b) the duration and/or frequency of the contravention, and the extent to which it reflects more widespread weaknesses in controls and/or management; the extent to which the contravention was deliberate or reckless;
- (c) the licensee's or listed company's past compliance record and conduct following the contravention; and
- (d) the scope of any other action taken by the CBB or other regulators against the licensee or listed company in response to the compliance failures in question.

Additional criteria are set out in Appendix A.

**MIE-4.1.7** The imposition of a financial penalty does not preclude the CBB from also using other enforcement measures to remedy the same violation (for instance, a Direction).

**MIE-4.1.8** A written notice of a financial penalty must be issued before imposing any financial penalty. The written notice must contain the following information:

- (a) The violations committed by the licensee or listed company with respect to CBB Law; or the prudential Rulebook; or any Directions, warnings or formal requests for information; or violations of the terms and conditions of the license issued to the licensee;
- (b) Evidence or proof to support the above;
- (c) The level of financial penalty to be imposed; and
- (d) The grace period to be allowed to the licensee or listed company for challenging the intended penalty (which will not be less than 30 days).

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<b>CHAPTER</b>	<b>MIE-4: Financial Penalties</b>

## **MIE-4.1 CBB Policy**

MIE-4.1.9 The licensee or listed company may either pay the penalty or object within the above period. The CBB will consider any objection and make a formal resolution within 30 days of receiving the objection. Thereafter, the formal resolution and any accompanying penalties are final and must be paid within 30 days.



<b>MODULE</b>	<b>MIE: Market Surveillance, Investigation &amp; Enforcement</b>
<b>CHAPTER</b>	<b>MIE-4: Financial Penalties</b>

## **MIE-4.2     Module AML (Anti-Money Laundering and Combating of Financial Crime)**

**MIE-4.2.1**     Any financial penalties applied by the CBB as regards the implementation of its requirements set out under Module AML, are without prejudice to the criminal sanctions available to the Bahraini courts under the Decree – Law No. 4 of 2001, with respect to the prevention and prohibition of the laundering of money. As with other financial penalties, the imposition of a financial penalty with regards to breaches of the requirements in Module AML does not prevent the CBB from also using other enforcement measures to remedy the same violation (for instance, a Direction).

<b>MODULE</b>	<b>MIE: Market Surveillance, Investigation &amp; Enforcement</b>
<b>CHAPTER</b>	<b>MIE-4: Financial Penalties</b>

### **MIE-4.3 Financial Penalties for Date Sensitive Requirements**

**MIE-4.3.1** Volume 6 (Capital Markets) Modules contain specific requirements where licensees and listed companies must comply with, by a precise date. As per MIE-3.1.17, the CBB attaches considerable importance to the timely submission of reports, and late reporting or non-submission of reports will prompt the CBB to consider initiating enforcement actions. In cases where a specific due date and licensees and listed companies are involved, the CBB will impose financial penalties which are based on a per diem basis.

**MIE-4.3.2** This Section applies to date sensitive requirements for:

- (a) Reporting requirements included in Volume 6 Modules;
- (b) Public disclosure requirements included in Volume 6 Modules and any related regulations pursuant thereto;
- (c) The report of the external auditor required as per Paragraph AML-3.3.1B (d);
- (d) Annual licensing fees required as per Volume 6 Modules, and
- (e) Conduct of Shareholders' Meetings requirements included in Section HC-7.4.

**MIE-4.3.3** For listed companies, financial penalties related to late filing or other date sensitive requirements are calculated as per the following per diem basis:

- (a) Where the listed company's total consolidated assets are less than or equal to BD 50 million, the financial penalty for late filing is BD 100 per day;
- (b) Where the listed company's total consolidated assets are greater than BD 50 million but less than BD 250 million, the financial penalty for late filing is BD 200 per day;
- (c) Where the listed company's total consolidated assets are greater than BD 250 million but less than or equal to BD 5 billion, the financial penalty is BD 400 per day;
- (d) Where the listed company's total consolidated assets are greater than BD 5 billion, the financial penalty is BD 800 per day; and
- (e) For new listed company who have yet to provide audited financial statements, the financial penalty is BD 100 per day.

**MIE-4.3.4** For SROs and members of SROs, the financial penalties related to late filing or other date sensitive requirements are calculated as per the following per diem basis:

- (a) For SROs under Module MAE and Module CSD, the financial penalty for late filing is BD 100 per day;
- (b) For members of SROs under Module MIR, the financial penalty for late filing is BD 50 per day.

<b>MODULE</b>	<b>MIE: Market Surveillance, Investigation &amp; Enforcement</b>
<b>CHAPTER</b>	<b>MIE-4: Financial Penalties</b>

### **MIE-4.3 Financial Penalties for Date Sensitive Requirements (continued)**

**MIE-4.3.5** For licensed crypto-asset service providers, the financial penalties related to late filing or other date sensitive requirements are outlined in Paragraph CRA-14.6.13 of the Crypto-Asset Module (CRA).

**MIE-4.3.6** The various deadlines for submission of reports and annual fees referred to in Volume 6 Modules are defined:

- (a) In terms of a specified number of days or months following a given date, such as the last date of a calendar quarter;
- (b) A specified number of days or months after the occurrence of a specific event; or
- (c) A specific date.

**MIE-4.3.7** In imposing financial penalties for date sensitive requirements, the following criteria apply:

- (a) Where the due date falls on a weekend or a holiday as designated by the CBB, the first business day following the weekend or holiday will be considered as being the due date;
- (b) Where a due date is not complied with by the end of the day on which it is due, holidays and weekend days are included in the number of days the item is considered late;
- (c) For returns and other filings, the date received is the date recorded by the CBB's systems in case of returns filed electronically;
- (d) In the case of returns filed in hard copy, the CBB stamp is the date received;
- (e) All returns are to be sent to the respective Supervision Directorate and the annual fees to the Accounts Directorate, on or before the due date, to be considered filed on time;
- (f) A day ends at midnight in the case of returns that must be filed electronically, or at the close of CBB business day, in the case returns are filed in hard copy; and
- (g) An incomplete return, where completeness is determined in relation to the requirements of the relevant instructions and Volume 6 Modules, is considered 'not filed' until the CBB receives all necessary elements of the return.

**MIE-4.3.8** The CBB does not require any particular method of delivery for returns and filings that are filed in hard copy. The use of the Bahrain postal services, private courier services or other methods of delivery is entirely at the discretion and risk of the licensee and listed company. For the payment of annual fees, licensees and listed companies must follow the requirements under Volume 6 Modules.

**MIE-4.3.9** A decision to impose a financial penalty for date sensitive requirements is unrelated to whether the CBB issues a reminder; it is the licensee's and listed company's responsibility to file and disclose on time as per the requirements of Volume 6 (Capital Markets) Rulebook.

<b>MODULE</b>	<b>MIE: Market Surveillance, Investigation &amp; Enforcement</b>
<b>CHAPTER</b>	<b>MIE-4: Financial Penalties</b>

## **MIE-4.4 Procedures for Financial Penalties**

**MIE-4.4.1** A written financial penalty notice will be addressed to the Chief Executive Officer or General Manager of the licensee or listed company or persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law concerned. This written notification will describe the contravention concerned, the CBB's evidence supporting a financial penalty, and the factors justifying the level of penalty proposed. Only a Director or more senior member of the CBB's management may sign the notification.

**MIE-4.4.2** The licensee or listed company or persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law has 30 days from the notification's date of issuance to submit any objections it wishes to make to the CBB, in writing and addressed to the issuer of the original notification. If the licensee or listed company or persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law decides not to submit objections, it has 30 calendar days from the notification's date of issuance in which to pay the penalty.

**MIE-4.4.3** Should the licensee or listed company or persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law make representations challenging the proposed penalty, the CBB has 30 days from the issuance of those representations in which to re-examine the facts of the case and its conclusions. If the CBB confirms application of a penalty, payment is required within 30 calendar days of a final notice being issued.

**MIE-4.4.4** Failure to pay penalties within the required deadlines will be considered a breach of the CBB's regulatory requirements, and will also result in other measures being considered, as described elsewhere in this Module.

**MIE-4.4.5** In instances where a licensee or listed company anticipates that it will be unable to meet any date sensitive requirements prescribed by the Rulebook, it must provide a written notification to the CBB at least one week prior to the prescribed due date outlining the date sensitive requirements which it will be unable to comply with, along with a well justified reason for the non-compliance.

<b>MODULE</b>	<b>MIE: Market Surveillance, Investigation &amp; Enforcement</b>
<b>CHAPTER</b>	<b>MIE-4: Financial Penalties</b>

## **MIE-4.5      Remedying a Compliance Failure**

**MIE-4.5.1**      Payment of a financial penalty does not by itself absolve a licensee or listed company or persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law from remedying the compliance failure concerned. The CBB will expect the licensee or listed company or persons referred to in paragraph (b) of Article (68 bis 1) of the CBB Law to address the contravention within a reasonable timescale, to be agreed on a case-by-case basis. Failure to do so will result in other measures being considered.

<b>MODULE</b>	<b>MIE: Market Surveillance, Investigation &amp; Enforcement</b>
<b>Appendix A</b>	<b>Methodology of Calculating Financial Penalties</b>

## **Appendix A Methodology of Calculating Financial Penalties**

### **I. Introduction**

This appendix sets out the Central Bank of Bahrain's Capital Market Supervision Directorate's approach in assessing and calculating/determining financial penalties.

The purpose of the financial penalties is to encourage a high standard of conduct and compliance by CBB licensees and listed companies, thereby reducing risk to investors and the rest of the financial sector.

The imposition of a financial penalty does not preclude the CBB from also using other enforcement measures to remedy the same violation.

### **II. The Scope of Application**

In assessing whether to serve a financial penalty upon a licensee or listed company, the CBB shall consider the following additional criteria:

- (a) The assessment of gain/benefit made or cost avoided and/or the level of risks posed to investors, financial position of the licensee or listed company, shareholders, stability of the financial sector and/or the reputation of the Kingdom.
- (b) If the licensee or listed company made any gain/benefit or avoided any costs by violating the CBB rules then the gain/benefit and/or the cost avoided will be used as a benchmark for calculating the fine amount subject to BD 100,000 cap for each violation. In addition, the customers impacted must be compensated in full. The scope of this section does not cover penalties for non-compliance with date sensitive requirements of Section MIE-4.3.
- (c) Fit and proper reassessment tests would take place for the approved persons deemed to be responsible for serious or repeated violations at the discretion and judgment of the CBB. The relevant approved person/(s) will be identified based on a review of relevant information including but not limited to the licensee's records before the final decision is made.
- (d) Each incident of breaching a rule (CBB Law, regulations, resolutions, and Rulebook directives) will be considered a stand-alone violation.
- (e) If the CBB discovers that one or more breaches had been committed by the licensee or listed company in the past and had gone un-detected, then the CBB has the right, at the point of detection, to impose penalties for each of these past breaches.
- (f) If the gain/benefit made and/or cost avoided cannot be quantified, then the table below will be used to determine the penalty amount based on the seriousness of violations as determined by the CBB.
- (g) The factors used to determine the seriousness of the violation include, but are not limited to, the level of risks posed to the licensee's or listed company's customers, financial position of the licensee or listed company, shareholders, stability of the financial sector and/or the reputation of the Kingdom. The CBB may consider other factors or circumstances as well.

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Table 1: Risk Rating of Violation and Related Penalty

	Risk Rating	Fine Amount (BD)
1	Low	1,000 to 10,000
2	Moderate	10,001 to 50,000
3	Serious	50,001 to 100,000

### III. Internal Assessment by the CMSD

In deciding which level of risk is most appropriate (which will then determine the penalty amount in relation to the violation), various factors will undergo comprehensive assessment including but not limited to the following:

- 1) Impact of the violation;
- 2) Nature of the violation;
- 3) Factors showing whether the violation was deliberate; and
- 4) Mitigating and aggravating factors.

#### 1. Impact of the violation

Factors relating to assessment of the impact of a violation include:

- (a) The level of benefit gained or loss avoided, or intended to be gained or avoided, by the licensee or listed company as a result of the violation, either directly or indirectly;
- (b) The loss or risk of loss, as a whole, caused to customers, investors or other market users in general;
- (c) The loss or risk of loss caused to individual customers, investors or other market users;
- (d) Whether the violation had an effect on particularly vulnerable people, whether intentionally or otherwise;
- (e) The inconvenience or distress caused to investors; and
- (f) Whether the violation had an adverse effect on the financial sector and, if so, how serious that effect was. This may include its impact on the confidence in or damage caused to the financial sector. A violation is generally more serious when it causes or may cause extensive financial damage, or when it is likely to be particularly detrimental to investor or customer confidence.

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### **2. Nature of the violation**

Factors relating to assessment of the nature of the violation include:

- (a) Whether the violation revealed serious or systemic weaknesses in the licensee's or listed company's procedures or in the management systems or internal controls relating to all or part of the licensee's or listed company's business;
- (b) Whether the licensee's or listed company's senior management was aware of the violation;
- (c) The nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the violation;
- (d) The scope for any potential financial crime to be facilitated, occasioned or otherwise occurred as a result of the violation;
- (e) Whether the licensee or listed company failed to conduct its business with integrity; and
- (f) Whether the licensee or listed company, in committing the violation, took any steps to comply with CBB Law, regulations, resolutions, Rulebook directives, and the adequacy of such steps.

### **3. Factors showing whether the violation was deliberate**

Factors relating to assessment of whether the violation was deliberate include:

- (a) The violation was intentional, in that the licensee's approved person(s), intended or foresaw that the likely or actual consequences of their actions or inaction would result in a violation and they failed to adequately mitigate that risk;
- (b) The licensee's approved person(s) knew that their actions were not in accordance with the licensee's internal policies and procedures;
- (c) The licensee's approved person(s) sought to conceal their misconduct;
- (d) The licensee's approved person(s) committed the violation in such a way as to avoid or reduce the risk that the violation would be discovered;
- (e) The licensee's approved person(s) were influenced to commit the violation by the belief that it would be difficult to detect;
- (f) The violation was repeated; and
- (g) In the context of a contravention of any rule or requirement imposed by or under CBB law, regulations, resolutions, Rulebook directives, the licensee or listed company obtained reasonable professional advice before the contravention occurred and failed to follow that advice. Obtaining professional advice does not remove a person's responsibility for compliance with applicable rules and requirements.



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### **4. Mitigating and aggravating factors**

Mitigation and aggravating factors include:

- (a) the conduct of the licensee or listed company in bringing (or failing to bring) quickly, effectively and completely the violation to the CBB's attention;
- (b) the degree of cooperation the licensee or listed company showed during the investigation of the violation. Correspondingly, if the licensee or listed company takes a passive stance towards the matter or avoids investigating the matter properly with the CBB, it is likely to increase the penalty payment and/or imposing other enforcement measures.
- (c) where the licensee's approved person(s) were aware of the violation or of the potential for a violation, whether they took any steps to stop the violation, and when these steps were taken;
- (d) any remedial steps taken by the licensee or listed company prior to the discovering of such violation by the CBB; for example, identifying whether customers or investors or other market users suffered loss and compensating them where they have; correcting any misleading statement or impression; taking disciplinary action against staff involved (if appropriate); and taking steps to ensure that similar problems do not arise in the future;
- (e) whether the licensee or listed company had previously been told about the CBB's concerns in relation to the issue, either by means of a written formal warning/notice and/or Direction;
- (f) whether the licensee or listed company had previously undertaken not to perform a particular act or engage in a particular behavior;
- (g) the previous disciplinary record and general compliance history of the licensee or listed company;
- (h) action taken against the licensee or listed company by other domestic or international regulatory authorities that is relevant to the violation in question.