



BANGKO SENTRAL NG PILIPINAS

OFFICE OF THE DEPUTY GOVERNOR
FINANCIAL SUPERVISION SECTOR

CIRCULAR LETTER NO. CL-2020-046

To : **All BSP-Supervised Financial Institutions**

Subject : **Anti-Money Laundering Council (AMLC) Regulatory Issuance (ARI) No. 5 - Enforcement Action Guidelines**

The AMLC, in its Resolution No. 98 dated 19 August 2020, approved ARI No. 5, Series of 2020 (copy attached) adopting the Enforcement Action Guidelines. This is intended for use by the AMLC as Anti-Money Laundering/Countering Terrorism Financing (AML/CTF) supervisor, pursuant to the 2018 Implementing Rules and Regulations, as amended.

The Guidelines supplement the Rules of Procedure in Administrative Cases (RPAC) of the AMLC by providing procedures for the early resolution of administrative cases at the level of the Compliance and Supervision Group (CSG) prior to the filing of a Formal Charge under the RPAC. Hence, the procedures therein are separate and distinct from the proceedings outlined in the RPAC.

Further, the Guidelines do not preclude the Bangko Sentral ng Pilipinas, the Securities and Exchange Commission and the Insurance Commission from imposing their own enforcement actions and sanctions for AML/CTF violations or weaknesses.

For information and guidance.

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CHUCHI G. FONACIER
Deputy Governor

Att.: A/S

01 October 2020



Republic of the Philippines
ANTI-MONEY LAUNDERING COUNCIL

AMLC REGULATORY ISSUANCE NO. 5
Series of 2020

Subject: Enforcement Action Guidelines

By the authority vested upon the Anti-Money Laundering Council (AMLC) to implement measures as may be necessary and justified to counteract money laundering and terrorism financing, in accordance with Section 7(7) of Republic Act No. 9160, also known as the Anti-Money Laundering Act of 2001, as amended (AMLA), the Council, in its Resolution No. 98, dated 19 Aug 2020, approved the adoption of the *Enforcement Action Guidelines* intended for use by the AMLC as Anti-Money Laundering/Countering Terrorism Financing (AML/CTF) Supervisor pursuant to the 2018 Implementing Rules and Regulations (2018 IRRs), as amended.

These Guidelines supplement the Rules of Procedure in Administrative Cases (RPAC) by providing procedures for the early resolution of administrative cases at the level of the Compliance and Supervision Group (CSG) prior to the filing of a Formal Charge under the RPAC. Hence, the procedures herein are separate and distinct from the proceedings outlined in the RPAC.

Further, these Guidelines do not preclude the Supervising Authorities [i.e., Bangko Sentral ng Pilipinas (BSP), Insurance Commission (IC) and Securities and Exchange (SEC)] from imposing their own enforcement actions and sanctions for AML/CTF violations/weaknesses.

I. Introduction

Sections 7(11) and 14(f) of the AMLA provide for the power of the AMLC to impose administrative sanctions. Corollary to the said power, Section 1 in relation to Sections 2.2(f) and 2.2(g) of Rule 7 of the 2018 Implementing Rules and Regulations (2018 IRR), authorize the Supervising Authorities to take enforcement actions and necessary measures to correct AML/CTF deficiencies, as well as escalate their findings to the AMLC for possible administrative sanctions.

The AMLC, through the CSG of the Detection and Prevention Department (DPD), AMLC Secretariat monitors compliance of all Covered Persons (CPs) with the AMLA, the Terrorism Financing Prevention and Suppression Act (TFPSA), their respective IRRs, as well as other issuances and orders of the AMLC. Consistent with the policy to exact compliance with these laws and issuances, and to impose proportionate and dissuasive sanctions for non-compliance, the AMLC may use enforcement actions to require CPs to take timely actions to correct deficient practices.

These Guidelines describe the AMLC's approach to exhaust, whenever appropriate, enforcement actions at the level of the CSG. Such approach shall allow the AMLC and the CPs to save resources and the CPs' Board and Senior management to take timely actions to correct the violations/deficiencies.

II. Scope

These Guidelines cover the CSG's assessment procedures and enforcement actions for any AML/CTF non-compliance issues of CPs, including, but not limited, to the following:

- a. Absence of, or inadequate, Board of Directors and Senior Management Oversight;
- b. Absence of, or deficiencies in, Money Laundering and Terrorism-Financing Prevention Program (MTPP);
- c. Absence of, or inadequate, Internal Audit and Control;
- d. Violations on Risk Profiling and Customer Due Diligence (CDD) or Know-Your-Customer (KYC) procedures;
- e. Non-submission or delayed submission to the AMLC of KYC documents pursuant to the exercise of its functions under Sec. 7(2) of the AMLA, as amended;
- f. Deficiencies on customers, accounts, and transactions monitoring;
- g. Non-filing or late filing, or deficiencies on completeness and accuracy, of Covered Transaction Reports and Suspicious Transaction Reports (CTRs/STRs);
- h. Non-submission or delayed submission to the AMLC of CTRs/STRs pursuant to an order under Sec. 7(1) of the AMLA, as amended;
- i. Failure to comply with record-keeping/retention requirements;
- j. Absence of, or inadequate, continuing education and training program;
- k. Violations of Freeze Orders issued by (i) the Court of Appeals under Sec. 10 of the AMLA, as amended; or (ii) the AMLC under Sec. 11 of the TFPsA;
- l. Violations of Bank Inquiry Orders issued by the AMLC or by the Court of Appeals under Sec. 11 of the AMLA, as amended, including non-submission or delays in the submission of pertinent documents in the implementation of Bank Inquiry Orders;
- m. Violations of Provisional Asset Preservation Orders (PAPOs) and Asset Preservation Orders (APOs) issued by the Regional Trial Court (RTC) under Sec. 12 of the AMLA, as amended;
- n. Delays in the implementation of Freeze Orders, Bank Inquiry Orders, PAPOs and APOs under the AMLA, as amended;
- o. Failure to register with the AMLC as a CP within the period prescribed by the AMLC;
- p. Operating/performing functions of a CP under the AMLA, as amended, without the necessary license from the Supervising Authorities (SAs) [i.e., Bangko

- Sentral ng Pilipinas (BSP), Insurance Commission (IC), Securities and Exchange Commission (SEC), Philippine Amusement Gaming Corporation (PAGCOR));
- q. Such other violations under the AMLA, as amended, the TFPSA and their respective IRRs, as well as issuances of the AMLC; and
 - r. Failure to comply with any order or directive issued by the AMLC.

III. Sources of Information

The CSG may take action on any non-compliance issue upon information from any of the following:

- a. Compliance issues discovered during on-site or off-site compliance checking or testing, as well as during the course of monitoring of compliance conducted by CSG;
- b. Investigation/Intelligence Report or referrals from the different units of the AMLC;
- c. Complaints from industry stakeholders, Law Enforcement Agencies (LEAs) or whistleblowers;
- d. Voluntary Disclosures of non-compliance by CPs;
- e. Reports of Examination (ROEs), Compliance Checking Reports (CCRs), or referrals from Supervising Authorities (SAs);
- f. Media Reports from reputable sources;
- g. Reports and complaints from the general public; and
- h. Other reliable sources of information.

IV. General Provisions on Enforcement Actions

A. Definition

Enforcement Actions are supervisory measures that are used when circumstances surrounding the non-compliance warrant a less severe form of supervisory action and the CPs exhibit willingness to voluntarily address compliance issues within a reasonable period of time and without the necessity of referral of an ROC to the LEG under the RPAC. Enforcement Actions before the CSG are informal in nature, confidential, and neither published nor publicly available.

B. Objective

The Enforcement Actions are meant to ensure compliance by CPs with the AMLA, as amended, the TFPSA, their respective IRRs, as well as issuances, orders and directives of the AMLC by providing a mechanism by which measures are exhausted at the level of the CSG to immediately correct AML/CTF violations/deficiencies and possibly defer, if not totally avoid the

filing of a Formal Charge under the RPAC. This allows the AMLC and the CPs to save resources and the CPs' Board and Senior management to take timely actions to correct the violations/deficiencies.

C. Types of Enforcement Actions

The AMLC may impose any, or all of the following Enforcement Actions, as warranted:

- i. **Warning** - An enforcement action involving a letter addressed to the President or Chief Executive/Operating Officer (CEO/COO), or its equivalent, of the CP, that effectively puts the covered person on guard against the consequence of impending or future violations.
- ii. **Compliance Letter (CL)** - Generally used to correct minor violations or to request periodic reports addressing certain aspects of a CP's AML operations. Through the CL, CSG formally informs the CP, through its President or CEO/COO, or its equivalent, of the matters that need attention, or may require the CP to take actions such as reviewing its internal systems or transactions for a certain period, conducting enhanced AML/CTF training for employees, etc.
- iii. **Notarized Compliance Commitment (NCC)** - An Enforcement Action of moderate severity. It generally represents a number of notarized commitments made by the CP's Board of Directors (BoD), or its equivalent, and incorporated into the CP's minutes of the meeting as certified by the corporate secretary or its equivalent. The commitments will often require the CP's BoD, or its equivalent, to develop plans, procedures, or policies to facilitate corrective action. An NCC does not constitute a contract between the CP and AMLC, but is a means to initiate corrective action.
- iv. **Look-Back** - On a case-to-case basis, the CP may be required to conduct a thorough review of all business transactions covering a certain period not to exceed five (5) years. The requirement for a look-back shall include a directive to the CP to furnish the AMLC with a detailed report under oath that sufficiently describes how the review was conducted and the result of the exercise or findings.
- v. **Compliance Testing** - This Enforcement Action requires a CP to conduct compliance testing of its systems, processes and procedures to check their effectiveness and efficiency. Corollary to

such requirement, the CP should furnish the AMLC with a detailed report under oath on the results of such compliance testing.

- vi. **Audit by an Independent External Auditor** – The CP may be required to engage the services of an external auditor to conduct an independent audit of the systems, processes and procedures to determine the extent and severity of the issues therein and prescribe recommendations to address the same. The AMLC shall be furnished a copy of the Audit Report in this case.
- vii. **Restitution of Funds or Property** – In the event of a freeze order issued by (i) the Court of Appeals under Sec. 10 of the AMLA, as amended; or (ii) the AMLC under Sec. 11 of the TFPSA, or a PAPO/APO issued by the RTC under Sec. 12 of the AMLA, as amended, a CP may be ordered to reimburse funds withdrawn or dissipated, or restore/replace the value of property transferred, removed, converted or concealed, which are subject of a freeze order or PAPO/APO, after receipt of notice thereof.
- viii. **Public Advisory** – this Enforcement Action involves the issuance by the AMLC of an advisory on its official website in relation to the non-compliance by a CP with the provisions of the AMLA, as amended, the TFPSA and their respective IRRs (e.g, non-registration by a CP with the AMLC, operating/performing the functions of a CP under the AMLA, as amended, without the necessary license from the SAs, etc.)

V. Enforcement Actions Procedures

A. Detailed Procedure

Flowchart attached as Annex A

1. Preliminary Assessment

Within fifteen (15) working days from receipt of information from any of the sources in Item III, the CSG shall conduct an initial assessment, based solely on available information and documents on hand, on the non-compliance of the CP to ascertain the reliability and validity of relevant details (e.g. dates, number and types) of the violations. Considering risk and materiality of the findings from the initial assessment relative to the size of the CP or its risk profile, CSG shall prepare a Memorandum to the DPD Director recommending either to:

- a. Open an Enforcement Action Proceeding based on reasonable ground that the CP has not complied with the regulatory requirements; or
- b. Archive the information and take no further action.

2. Validation and Evaluation

a. Request for Comment (RFC)

Within ten (10) working days from opening an Enforcement Action Proceeding, CSG shall prepare an RFC addressed to the CP and signed by the DPD Director. The RFC shall indicate the alleged violations committed or non-compliance issues. The CP will be given ten (10) working days from receipt of the RFC to submit its Comment, attaching all pertinent documents supporting the same. Failure of the CP to file its Comment within the prescribed period shall be deemed a waiver by the CP to file the same.

b. Clarificatory Meeting

The CSG may, on its own initiative or upon request of the CP, call a meeting with the concerned CP to discuss and clarify the issues, and any request for consideration in the CP's Comment to the RFC. At this stage, the CP may also raise the possibility of paying a Reduced Assessment.

c. Application of Reduced Assessment or Voluntary Disclosure

Determine if Reduced Assessment Procedures or Voluntary Disclosure Procedures shall apply under Items VI and VII, respectively, of these Guidelines.

d. Conduct of Validation and Evaluation Procedures

Within thirty (30) working days from receipt of the Comment from the CP or lapse of the period to Comment, CSG may perform any or all of the following:

- 1) Issue invitation to the CP and/or its representative/s for a meeting to be conducted by CSG, and to require such person to provide records relevant to a matter which is subject of assessment;

- 2) Conduct on-site visit or inspection/examination of the CP to confirm or validate its compliance efforts as claimed in the Comment to the RFC;
- 3) Conduct compliance testing to determine or verify the existence of an AML/CTF Violation; and
- 4) Review reports submitted to the AMLC.

e. Recommendation to take no further action and terminate the Enforcement Action proceedings

Based on its validation and evaluation, CSG may take no further action and terminate the Enforcement Action in the following instances:

- 1) There is no/insufficient factual or legal basis;
- 2) The Enforcement Action would have low impact on the CP's efforts in combating ML/TF;
- 3) The complaint, on which the Enforcement Action is based upon, is deemed merely intended to harass the CP;
- 4) The complaint, on which the Enforcement Action is based upon, will expose the AMLC to violate any law, rules or regulations;
- 5) The Enforcement Action is beyond the AMLC's jurisdiction; and
- 6) Any other similar or analogous circumstance as the foregoing.

In any of the foregoing instances, CSG shall, within ten (10) working days from conclusion of the validation and evaluation, recommend the termination of the Enforcement Action, with the concurrence of the DPD Director, through a Memorandum to the Executive Director, citing the reason for such action.

f. Discovery of new AML/CTF issues/violations during the evaluation

Any new regulatory issues which are discovered during the evaluation may be subject to a separate Enforcement Action or Reduced Assessment Proceeding.

3. Preparation of Report of Compliance (ROC)

The CSG, after having considered all relevant facts and the CP's representations in the RFC and clarificatory meeting/s, if any, shall prepare the ROC within twenty (20) working days from conclusion of the validation and evaluation.

a. Type of Enforcement Action to be imposed

In the preparation of the ROC, CSG shall consider the following in recommending the type of Enforcement Action to be imposed:

- i. The nature and gravity of the alleged violations committed by the CP;
- ii. Management's actions towards complying with laws and regulations, and correcting violations;
- iii. Whether violations were intentional, repetitive, material, or numerous;
- iv. The CP's history of committing violations;
- v. Management's history of instituting timely remedial or corrective actions;
- vi. Whether management already initiated corrective actions;
- vii. Whether management established procedures to prevent future deficiencies or violations;
- viii. The extent of harm caused, or likely to be caused, by the violations
- ix. Information from the CP's latest examination or assessment conducted by the relevant SAs; and
- x. The severity of the CP's deficiencies, ratings, and level of risk.

b. Approval of the ROC

If the recommendation in the ROC is for imposition of the following enforcement actions, the ROC shall be subject to approval of the Executive Director, or in his absence the Officer-in-Charge of the AMLC Secretariat:

- a. Warning;
- b. Compliance Letter;
- c. Notarized Compliance Commitment;
- d. Look Back;
- e. Compliance Testing;

- f. Audit by an Independent External Auditor; and
- g. Public Advisory.

In the event that the recommendation in the ROC is for imposition of the enforcement action of Restitution of Funds or Property, or for approval of the proposal for Reduced Assessment under Item VI of these Guidelines, the ROC shall be subject to approval of either the:

- Executive Director, or in his absence the Officer-in-Charge of the AMLC Secretariat - for Enforcement Action involving Restitution of Funds or Property, or Reduced Assessments involving a total amount of up to Php5 Million;
- AMLC – for Enforcement Action involving Restitution of Funds or Property, or Reduced Assessments involving a total amount exceeding Php5 Million.

In the event that the recommendation in the ROC is for issuance of a Formal Charge, the ROC shall be approved by the DPD Director and forwarded to the LEG based on the provisions of the RPAC.

c. Grant, Denial or Withdrawal of the Reduced Assessment

Actions taken on the request of the CP for Reduced Assessment under Item VI of these Guidelines shall also be covered in the ROC.

4. Notice to Covered Persons

a. Notice of Non-Compliance (NNC) in case of issuance of Enforcement Action

Within ten (10) working days from approval of the ROC recommending the imposition of an enforcement action, the CSG shall prepare a **Notice of Non-Compliance (NNC)** to the concerned CP, signed by the DPD Director. The NNC shall contain the following:

- i. A statement of the facts;
- ii. Legal basis – specific AML/CTF rules and regulations violated;
- iii. The assessment findings;
- iv. The Enforcement Action; and
- v. Timeline to comply with the Enforcement Action.

b. Notice of Grant/Denial of Reduced Assessment

Notice of the Grant/Denial of Reduced Assessment shall be governed by Item VI of these Guidelines.

5. Monitor Compliance

CSG shall monitor the CP's progress in complying with the enforcement action as laid out in the NNC, or the actions taken to address the alleged violations or compliance issues after the grant of the Reduced Assessment, through onsite examinations, offsite monitoring, or visitations. In the conduct of monitoring activities, CSG may coordinate with the relevant SAs.

6. Preparation of Follow-up Report of Compliance (FROC)

The CSG shall assess the adequacy of a CP's response to the enforcement actions, or actions taken after the Reduced Assessment, and prepare an FROC.

If the CP fails to comply with the Enforcement Actions, or address the alleged violations or compliance issues after the grant of the Reduced Assessment, CSG shall endorse its ROC, and FROC, (if any) to the LEG for possible filing of a Formal Charge. The procedures laid down under the RPAC shall apply.

7. Termination of an Enforcement Action Proceeding

The Enforcement Action Proceeding should be terminated promptly when:

- i. The CP has substantially complied with the actions prescribed in the NNC;
- ii. The CP's condition has improved sufficiently and the Enforcement Action is no longer necessary;
- iii. A new Enforcement Action is issued that supersedes the previous Enforcement Action and addresses all areas of concern; or
- iv. The CP has been dissolved or its operations have been closed, shut down, phased out or terminated.

In any of the foregoing cases, CSG shall prepare a memorandum addressed to the Executive Director, or in his absence, the Officer-in-Charge, recommending the termination of the Enforcement Action Proceedings.

- B. Coordination with, and referral to the SAs** – at any stage of the Enforcement Action proceedings, CSG may coordinate with the SAs in the validation and evaluation of the AML/CTF violations of the CPs. CSG may also furnish the SAs

with a copy of the ROC/FROC for compliance monitoring subject to the provisions of the Memorandum of Agreement/Understanding, if any, with the SAs, or the AMLC's rules on sharing of information.

- C. **Report to the Council** – The CSG shall prepare semestral reports to the Council in relation to the ROCs released, the Enforcement Actions taken, the Reduced Assessments availed, the Voluntary Disclosures received, and the status of compliance of the CPs. The said report shall be included in the agenda of the February and August Council meetings for the second and first semesters, respectively, reporting.

VI. **Reduced Assessment**

Flowchart attached as Annex B

It is the AMLC's aim to assist CPs in addressing the compliance issue/s or violation/s as effectively and as swiftly as possible while judiciously allocating scarce government resources. Consistent therewith, the AMLC developed the Reduced Assessment rates which take into consideration the time and resources that the government would otherwise expend in pursuing a Formal Charge for compliance issues under Item II of these Guidelines.

Reduced Assessment refers to the option of the CP to pay an assessment lower than what would otherwise be computed pursuant to the RPAC if Formal Charge is filed. The rates will be considered on a case-by-case basis. However, the following reduced rates may be considered as a benchmark:

- **General Rule** - 75% reduction. Thus, a CP may opt to settle for a Reduced Assessment during the assessment process and pay only 25% of the supposed penalty under Sec. 2, Rule IV of the RPAC.
- **Exception** - In the case of Voluntary Disclosure, the CP may be entitled to a reduction of up to 90% of the supposed penalty under Sec. 2, Rule IV of the RPAC. Thus, the CP will pay only up to 10% of the supposed penalty under Sec. 2, Rule IV of the RPAC if it voluntarily informs the AMLC of a possible violation prior to the discovery by, or notice from, the AMLC.

In addition, the following factors may be considered in determining appropriate reduction rate:

1. Corrective measures made by the CP;
2. The CP's active cooperation with the AMLC during the assessment process;

3. Good faith efforts to comply with the pertinent law, but failed otherwise due to circumstances beyond its control;
4. Timeliness and adequacy of corrective actions taken by the CP;
5. History of instituting timely remedial or corrective actions and establish procedures to prevent future deficiencies or violations; and
6. AML Risk Rating.

The CP may choose to settle for a Reduced Assessment at any time during the enforcement action, but prior to the approval of the Report of Compliance (ROC) by submitting a request in writing signifying its intention to avail of such assessment. The CSG shall evaluate the request and if found acceptable, shall incorporate the Reduced Assessment in the preparation of the ROC.

In order to qualify for a Reduced Assessment, a CP should comply with all of the following conditions:

- 1) Commit within a reasonable period of time to take appropriate action in order to address the alleged violations or compliance issues, subject to the submission of progress report in such frequency as may be determined by the CSG;
- 2) Take measures to ensure that the violation/s do not persist from the date it avails of the Reduced Assessment, and refrain from engaging again in the acts which led to the same or similar violation; and
- 3) Confirm that it will pay the assessment and take steps to comply with the relevant regulatory requirement/s and to remedy the consequences of the contravention (if relevant).

A. Grant of the Request for Reduced Assessment

If CSG finds the written request for Reduced Assessment acceptable, CSG will prepare an ROC, within twenty (20) working days from receipt of the request, recommending the grant of the request addressed to: (i) the AMLC; or (ii) the Executive Director, or in his absence the Officer-in-Charge of the AMLC Secretariat, based on the approving authority cited in Item V.A.3.b of these Guidelines.

B. Denial of the Request for Reduced Assessment

Within twenty (20) days from receipt of the request for Reduced Assessment, CSG may recommend to the AMLC, or the Executive Director, or in his absence the Officer-in-Charge of the AMLC Secretariat, as the case may be based on

the approving authority cited in Item V.A.3.b of these Guidelines, the denial of the request based on the following grounds:

- 1) Failure to comply with any of the requirements for Reduced Assessment under Item V.A.2 of these Guidelines;
- 2) Determination by the AMLC, or the Executive Director, or in his absence the Officer-in-Charge of the AMLC Secretariat, as the case may be, of systemic failure/s in the CP to address the compliance issue/s or violation/s; and
- 3) Other justifiable reasons as may be determined by the AMLC, or the Executive Director, or in his absence the Officer-in-Charge of the AMLC Secretariat, as the case may be.

The CSG will proceed with the assessment process and thereafter, prepare an ROC, which shall then be referred to the LEG for evaluation on whether a Formal Charge will be filed. Any additional documentary evidence provided in the request for Reduced Assessment will be taken into account for the purpose of such evaluation.

C. Withdrawal of the Request for Reduced Assessment

The CP may withdraw the request for Reduced Assessment at any time before receiving notice from the AMLC on the grant/denial of such request. The procedure laid out above on the denial of the request for Reduced Assessment shall likewise be applicable in this case

D. Notice of Grant/Denial of Request for Reduced Assessment

Within ten (10) working days from approval by the AMLC, or the Executive Director, or in his absence the Officer-in-Charge, as the case may be, of the ROC recommending the grant or denial of the request for Reduced Assessment, CSG shall inform the CP of either the:

- 1) Grant of the request for Reduced Assessment, including the details for the payment of the Reduced Assessment.
- 2) Denial of the request for Reduced Assessment, and that the proceedings under the RPAC shall be observed.

E. Payment of the Reduced Assessment

Within ten (10) working days from receipt of the Notice of Grant of the Request for Reduced Assessment, the CP shall pay the Reduced Assessment. Payment of the Reduced Assessment shall be in the form of Manager's Check payable to the account of the "Anti-Money Laundering Council", or through direct debit to the Demand Deposit Account, at the option of the CP. In cases of Restitution

of Funds or Property, the CP shall submit proof of compliance within the same period.

F. Applicability of Items IV and V of these Guidelines

The provisions of Items IV and V of these Guidelines shall likewise be applicable to Voluntary Disclosures, namely:

- Item IV.C – Types of Enforcement Action;
- Item V.A.4 – Notice of Non-Compliance (NNC);
- Item V.A.5 – Monitoring of the NNC or actions taken after the grant of Reduced Assessment;
- Item V.A.6 – Preparation of Follow-up Report on Compliance (FROC);
- Item V.A.7 – Termination of an Enforcement Action or Reduced Assessment Proceedings;
- Item V.B – Coordination with, and Referral to the SAs; and
- Item V.C – Report to the Council

G. Termination of a Reduced Assessment Proceeding

The Reduced Assessment Proceeding should be terminated promptly when:

- 1) The CP has substantially addressed the alleged violations or non-compliance issues after the grant and full payment of the Reduced Assessment;
- 2) The CP's condition has improved sufficiently and the violations or non-compliance issues have been fully addressed after the grant and full payment of the Reduced Assessment;
- 3) A new Reduced Assessment is issued that supersedes the previous Enforcement Action and addresses all areas of concern; or
- 4) The CP has been dissolved or its operations have been closed, shut down, phased out or terminated.

In any of the foregoing cases, CSG shall prepare a memorandum addressed to the Executive Director, or in his absence, the Officer-in-Charge, recommending the termination of the Reduced Assessment Proceedings.

VII. Voluntary Disclosure

In line with the policy of the AMLC to enhance compliance with AML/CTF laws and regulations, CPs are encouraged to voluntarily disclose to the AMLC possible violation/s of the AMLA, as amended, the TFPsA, their respective IRR and other AMLC issuances, in order to ascertain the root cause of the issues involved and resolve them at the earliest possible time.

A. Voluntary Disclosure Procedure

Flowchart attached as Annex C

1. Initial Notice of Voluntary Disclosure

Within twenty (20) working days from discovery of possible violation/s of the AMLA, as amended, the TFPSA, their respective IRR and other AMLC, the CP should immediately notify the AMLC through formal correspondence (e.g, letter, email, etc.)

The initial notification should be in writing and shall include the following:

- a. A brief description of the possible violation/s, such as
 - i. **Reporting issues:** *the number of reports involved, type, and the time period during which the issues occurred, as well as the reason why the reports were not submitted, late, or incorrect, and other related details;*
 - ii. **Other issues:** *the time period during which the issues occurred, the reason for their occurrence, and other related details;* and
 - iii. Supporting documents pertinent and relevant to the allegation.
- b. An **Action Plan** to resolve the issues, including the submission of all outstanding (or incorrect/incomplete) reports, as well as measures and timelines for corrective action.

The President or CEO/COO, or its equivalent, of the CP must certify that:

- i. all the representations made in connection with the Voluntary Disclosure are true and correct; and
- ii. the BOD and management have been apprised of the items for Voluntary Disclosure.

The initial notice of voluntary disclosure may also include a request for reduced assessment.

2. Validation and Evaluation

Upon receipt of the Voluntary Disclosure, CSG shall make an initial evaluation to determine if the Voluntary Disclosure met the following criteria:

- a. The CP disclosed the possible violation/s prior to an imminent threat of discovery or the AMLC assessment process or investigation;
- b. The disclosure was promptly made within twenty (20) working days from discovery of possible violation/s;
- c. The disclosure included all relevant facts known to the CP; and
- d. The disclosure was not made after the CP had been notified of an upcoming assessment process or investigation.

CSG shall then evaluate the information and documents attached to the voluntary disclosure to ascertain the reliability and validity of relevant details (e.g. dates, number and types) of the violations.

Considering risk and materiality of the voluntary disclosure relative to the size of the CP or its risk profile, CSG shall recommend to the DPD Director whether to open an Enforcement Action Proceeding or terminate the non-compliance issue for archiving.

The CSG may, on its own initiative or upon request of the CP, call a meeting with the concerned CP to discuss and clarify the issues. At this stage, the CP may also raise the possibility of paying a Reduced Assessment.

3. Applicability of Item V of these Guidelines

In the event that CSG recommends the opening of an Enforcement Action Case, it shall prepare an ROC based on the provisions of Item V.A.3 of these Guidelines on Enforcement Actions. A CP voluntarily disclosing possible violation/s may be given a warning or reprimand, or may be eligible for an exemption from monetary penalty, or significantly reduced assessment, provided that it took steps to immediately correct the possible violation/s, and after showing that the root cause had been effectively addressed.

As stated in Item V.A.2 of these Guidelines, the CP performing Voluntary Disclosure may be entitled to a reduction of up to 90% of the supposed penalty under Sec. 2, Rule IV of the RPAC. Thus, the CP will pay only up to 10% of the supposed penalty under Sec. 2, Rule IV of the RPAC if it voluntarily informs the AMLC of a possible violation prior to the discovery by, or notice from, the AMLC.

The provisions of Items IV and V of these Guidelines shall likewise be applicable to Voluntary Disclosures, namely:

- Item IV.C – Types of Enforcement Action;
- Item V.A.4 – Notice of Non-Compliance (NNC);
- Item V.A.5 – Monitoring of the NNC or actions taken after the grant of Reduced Assessment;
- Item V.A.6 – Preparation of Follow-up Report on Compliance (FROC);
- Item V.A.7 – Termination of an Enforcement Action or Reduced Assessment Proceedings;
- Item V.B – Coordination with, and Referral to the SAs; and
- Item V.C – Report to the Council

B. Voluntary Disclosure in the course of complying with an Enforcement Action

If in the course of complying with an enforcement action, or addressing or correcting a noted violation, the CP discovered other possible violations/infractions that are similar to the violations/infractions previously noted by the AMLC, the CP may voluntarily disclose the same, provided the following criteria are met:

- i. The disclosure was promptly made within twenty (20) working days from discovery of the possible violation/infraction;
- ii. The AMLC failed to discover the same prior to such disclosure; and
- iii. The newly-discovered violations/infractions are included in the Action Plan.

If the above conditions are met, the CP may be entitled to a reprieve insofar as the newly-discovered violations/infractions are concerned, provided that such violations/infractions and the actions taken thereon shall be subject to monitoring, and the reprieve may only be availed of once.

VII. Transitory Provision – These Guidelines apply to existing compliance issues submitted to the AMLC prior to its effectivity, except those already subject of Formal Charges.

VIII. Effectivity - These Guidelines shall take effect fifteen (15) days after its publication in a national newspaper of general circulation.

FOR THE AMLC:

(ORIGINAL SIGNED)
MEL GEORGIE B. RACELA
Executive Director
AMLC Secretariat

19 August 2020