IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD CAUSE NO. OF 2022 ( )

IN THE MATTER OF THE MONETARY AUTHORITY ACT (2020) AND THE MONETARY AUTHORITY (ADMINISTRATIVE FINES) REGULATIONS (2022)

BETWEEN

STERLING ASSET MANAGEMENT INTERNATIONAL LIMITED

APPLICANTS

AND

THE CAYMAN ISLANDS MONETARY AUTHORITY

RESPONDENTS

APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of applicant (s)	Sterling Asset Management International Limited C/O Travers Thorp Alberga Harbour Place 103 South Church Street Grand Cayman KY1-1106 (REF:S1022-003 IEH)
Judgment, order, decision or other proceeding in respect of which relief is sought	A Fine Notice sent to the Applicants by the Respondents on 6 May 2022 and which required them to pay a cumulative discretionary fine of CI$299,050 ("Decision").

TAKE NOTICE that the Applicants seek the following Relief against the Respondents, namely:

1. Leave pursuant to Order 53 Rule 3(1) of the Grand Court Rules and/or Regulation 19 of the Monetary Authority (Administrative Fines) Regulations (2022) to bring these proceedings by way of judicial review.

This **APPLICATION** is filed by Travers Thorp Alberga, Attorneys-at-law for the Applicant whose address for service is Harbour Place, George Town, KY1-1106, Grand Cayman, Cayman Islands (Ref: S1022-003 IEH)

2. A direction pursuant to Order 53 Rule 3(10)(a) and/or Regulation 22 of the Monetary Authority (Administrative Fines) Regulations (2022) that the grant of leave to bring these proceedings by way of judicial review shall operate as a stay of the Decision until further order of this Court

3. A declaration that the Decision was *ultra vires* of the powers granted to the Respondents by the Monetary Authority Act (2020) and the Monetary Authority (Administrative Fines) Regulations (2022).

4. An Order for Certiorari that the Decision be quashed.

5. Declarations pursuant to the Constitution that the Decision is incompatible with Article19 of the Bill of Rights.

6. Such further and other relief as this Honourable Court may deem just; and

7. Costs.

GROUNDS ON WHICH RELIEF IS SOUGHT

AND TAKE NOTICE THAT the grounds of this Application are as follows

The Applicants

1. The Applicants, Sterling Asset Management International Limited ("**SAMIL**"), are a boutique investment management firm that has been in operation for 18 years. They have some 600 clients, a large portion of whom consist of retired professionals, senior company executives and business people who are looking to generate income during their retirement or to build a nest egg for their retirement. SAMIL primarily provide medium to long term investment solutions for these investors. The majority of their clients could be considered "passive investors".

2. SAMIL trades primarily in United States dollar fixed income securities which it purchases through licensed brokers in the US and Europe. Additionally, due to the long-term nature

of the investments SAMIL offer, their client relationships tend to span a long time horizon. Most of SAMIL's clients are known to them personally and constitute a very low risk in terms of money laundering, terrorist financing and similar risks.

Summary of the Relevant Legislation

3. The Respondents, the Cayman Islands Monetary Authority ("**CIMA**"), have the power under Part VIA of the Monetary Authority Act (2020 Revision) (the "**Act**") to impose administrative fines on regulated entities who commit breach prescribed by regulatory law or the Anti-Money Laundering Regulations (2020 Revision (as amended) (the "**AMLR**"). The AMLR came into force in 2017.

4. Amongst other things, the AMLR require regulated entities to implement identity and similar checks on their customers before "onboarding" them. The regulations require entities to adopt a risk-based approach and, in particular, to maintain policies, procedures and systems that are appropriate to the level of risk involved. In particular, the AMLR provide:

> *"**Systems** and training to prevent money laundering*
> *5 A person carrying out relevant financial business shall not, in the course of the relevant financial business carried out by the person in or from the Islands, form a business relationship, or carry out a one-off transaction, with or for another person unless that person -*
> *(a) **maintains as appropriate, having regard to the money laundering and terrorist financing risks and the size of that business, the following procedures in relation to that business** —*
> *(i) identification and verification procedures in accordance with Part IV;*
> *(ii) **adoption of a risk-based approach as set out in Part III** to monitor financial activities, which would include categories of activities that are considered to be of a high risk;*
> *(iii) procedures to screen employees to ensure high standards when hiring;*
> *(iv) record-keeping procedures in accordance with Part VIII; Regulation 5 Anti-Money Laundering Regulations (2020 Revision) Page 18 Revised as at 31st December, 2019 c*
> *(v) **adequate systems to identify risk** in relation to persons, countries and activities which shall include checks against all applicable sanctions lists….*
>
> *PART III - Assessing and Applying a **Risk-Based Approach***
> *Assessment of risk*
> *8. (1) A person carrying out relevant financial business **shall take steps appropriate to the nature and size of the business to identify, assess,***

> ***and understand its money laundering and terrorist financing risks in relation*** *to —*
> *(a) a customer of the person;*
> *(b) the country or geographic area in which the customer under paragraph (a) resides or operates;*
> *(c) the products, services and transactions of the person; and*
> *(d) the delivery channels of the person.*
> *(2) A person carrying out relevant financial business shall –*
> *(a) document the assessments of risk of the person;*
> *(b) consider all the relevant risk factors before determining what is the level of overall risk and the appropriate level and type of mitigation to be applied;*
> *(c) keep the assessments of risk of the person current;*
> *(d)* ***maintain appropriate mechanisms*** *to provide assessment of risk information to competent authorities and self-regulatory bodies;*
> *(e)* ***implement policies, controls and procedures*** *which are approved by senior management, to enable the person to manage and mitigate the risks that have been identified by the country or by the relevant financial business…"* (emphasis added)

5. The Act is supplemented by the Monetary Authority (Administrative Fines) Regulations (2022) (the "**Regulations**") and CIMA's Enforcement Manual (the "**Manual**"). The Regulations, in particular Regulation 5, set out the criteria to which CIMA is to have regard when considering issuing a regulated entity with a fine following a prescribed breach of regulatory law or the AMLR.

6. Fines may be fixed at CI$5,000 for minor breaches. Serious breaches carry a maximum fine of CI$100,000 for a body corporate (see section 42B of the Act). Schedule 1 of the AMLR makes any breach of Section 5a (the requirement to implement systems to prevent money laundering, as set out above) automatically serious and therefore triggers the higher fine threshold.

7. SAMIL will say that the fact that any breach of section 5a is automatically treated as serious confirms that Section 5a and the AMLR regime more generally is concerned with ensuring that regulated entities implement adequate systems to prevent money laundering. CIMA accordingly has the power to issue fines for systemic and/or major breaches only. It has no power to issue fines in respect of discrete minor failings by a regulated entity whose systems are compliant and/or it is unreasonable for CIMA to impose fines for minor failures.

8. Before imposing a fine, CIMA is required to give the party a Breach Notice under Regulation 11 containing, amongst other things, a summary of the facts and circumstances CIMA believes constitute a breach of the applicable regulatory requirement. The regulated entity must be given at least 30 days to reply to the Breach Notice. CIMA is required by Regulation 12 to consider all matters raised in the reply before issuing a fine notice:

> ***"Duty to consider reply***
>
> *12. (1) This regulation applies only if —*
> *(a) a breach notice has been given for a fixed fine, fixed fine (continuing) or discretionary fine;*
> *(b) the reply period has ended; and*
> *(c) a reply has been given.*
>
> *(2) The Authority has a duty to —*
> *(a) reconsider whether it still holds the belief stated in the breach notice, in the light of all matters raised in the reply concerning that belief; and*
> *(b) if the notice was for a discretionary fine, consider the matters raised in the reply to the extent they are relevant to exercising fine discretions."*

9. It is only after having delivered a breach notice and considered a regulated entity's reply that CIMA can issue a fine notice. Regulation 15(4) sets out the requirements for a discretionary fine notice as follows:

> *"(4)If the specified fine is a discretionary fine, the fine notice shall state —*
> *(a) the prescribed provision for which the fine is imposed;*
> *(b) a description of the breach;*
> *(c) the reasons for the way in which fine discretions were exercised; and*
> *(d) that the party may, within thirty days after receiving the fine notice apply to the Grand Court for leave to appeal against the decision to impose the fine, its amount or both."*

10. Further Regulation 31 limits CIMA's power to issue fines to breaches of prescribed provisions which took place before 14 March 2018:

> ***"****31. The Authority shall not impose a fixed fine, fixed fine (continuing) or a discretionary fine or take any steps to do so under Part 3 in respect of the breach of a prescribed provision that took place before the 15th December, 2017 or within ninety days after that date."*

11. CIMA is also required, as a public body, to make its decisions in a lawful, rational, proportionate and procedurally fair manner. Article 19 of the Bill of Rights scheduled to the Cayman Constitution Order 2009 provides as follows:

> ***"Lawful administrative action***
> *19.—(1) All decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair. (2) Every person whose interests have been adversely affected by such a decision or act has the right to request and be given written reasons for that decision or act."*

Events leading up to the Fine Notice

12. On 28th July 2020, CIMA issued a letter notifying SAMIL that it was to conduct an onsite inspection commencing on 26th October 2020 and in which it requested certain preparatory documents and information by 31st August 2020 (CIMA subsequently gave an extension to 15th September 2020). Due to the COVID-19 protocols in effect, the onsite inspection was to be conducted by electronic means (allowing documents to be uploaded on an online portal) and by holding conference calls between the CIMA inspectors and SAMIL operating personnel (who are based in Jamaica).

13. After an initial information call when CIMA provided the upload link to SAMIL, SAMIL uploaded its response on 15th September 2020. In addition over the period 12th – 29th October 2020 SAMIL responded via the upload link to 5 supplementary information calls during the inspection process. SAMIL also participated in three meetings with the CIMA inspectors when CIMA held conference call (26th October 2020), when CIMA conducted an AMLCO/MLRO compliance walk-through meeting (28th October 2020) and when CIMA held a closing meeting (30th October, 2020).

14. On 21st December 2020, CIMA issued its draft inspection report for SAMIL's review and comments. On 8th January 2021, SAMIL provided comments. On 18th January 2021, CIMA issued its final inspection report ("**FIR**"), which incorporated SAMIL's comments and CIMA's responses thereto. The FIR contained a Table of Requirements setting out 12 Requirements for SAMIL to address arising from the inspection, with varying completion deadlines attached, the latest deadline being 30th June 2021. Under the FIR, SAMIL was required to submit monthly update reports to CIMA covering delivery on the Requirements.

15. Over the period February – June 2021, SAMIL duly submitted monthly update reports and carried out the associated tasks as required in the Table of Requirements scheduled to the FIR. In the context of its final update report of June 2021, SAMIL requested confirmation from CIMA as to whether or not it had responded to the Requirements to CIMA's satisfaction. On 29th September, 2021, CIMA responded as follows:

> *"Thank you for your diligence and cooperation during the remediation process. The Authority has no further questions at this time."*

16. On 5th November 2021, CIMA issued a Breach Notice for a Proposed Discretionary Fine (the "**Breach notice**") to Sterling alleging various breaches of the AMLR and a cumulative proposed fine of CI$299,050 and giving Sterling 30 days '….*within which to make written representations to the Authority about whether it should impose the fine, the proposed amount, or both*.'

17. Sterling filed written representations contesting both the breach allegations and the proposed amount of the fine on 3rd December 2021. On 6th May 2022, CIMA issued a Fine Notice for the Discretionary Fine as its final determination in respect of the Breach Notice, which determination was unchanged from the Breach Notice both as to the breaches alleged and the proposed fine (CI$299,050).

Summary of the Grounds on which the Decision is Challenged

18. The Decision to issue a Fine Notice was unlawful, irrational, disproportionate and procedurally unfair. In particular :

18.1 Four of the nine breaches alleged are for failure to comply with AMLR provisions that were not in force at the time of the alleged breach and were before the cut-off date of 14 March 2018 under Regulation 31. In one case (213-3) CIMA has fined SAMIL for failing to comply with a requirement to identify the beneficial owner of one client ("**Client 1**") when the latter's account was opened. The account was opened in 2012, 5 years before the requirement under the AMLR to identify beneficial ownership came into force and 6 years before the cut off point for fines under Regulation 31. There was accordingly no power to fine SAMIL for any of

these alleged breaches even if (which is denied) they were in breach of any regulatory requirement in the first place.

18.2 Breach No. 213-11 fines SAMIL for failing to check 17 customers against applicable sanctions lists prior to opening an account. 15 of these customer accounts were opened before the requirement in the AMLR to check clients against sanctions lists came into force in 2017 as well as the cut off point for fines of 14 March 2018 under Regulation 31. Some allegations were related to events as far back as 2004.

18.3 There was accordingly no power to fine SAMIL for any of these alleged breaches even if (which is denied) SAMIL was in breach of any AMLR requirement.

18.4 CIMA in levying fines ignored the fact that the requirement to check clients against sanctions lists is risk-based and not absolute in any event. SAMIL's alleged breaches and/or each of them did not give rise to genuine risk.

(i) Regulation 5(a) of the AMLRs requires sanctions checks to be undertaken *"as appropriate, having regard to the money laundering and terrorist financing risks and the size of that business"*.

(ii) SAMIL's clients that were not checked against sanctions lists at the onboarding stage included a church and a charity run by nuns.

(iii) There was no prospect of these clients appearing on sanctions lists. They are at no or very low risk of being involved in money laundering or terrorist financing. As such checking these entities against the sanctions lists would have been pointless and was in any event not required by law.

(iv) There was accordingly no basis on which to fine SAMIL for these alleged sanctions checking breaches. Alternatively if (which is denied) there were any breaches they were minor breaches and as such not indicative of any failings in SAMIL's systems and procedures which could give rise to a fine.

18.5 CIMA failed to comply with its duty under Regulation 12 to consider SAMIL's reply and then to "*reconsider whether it still holds the belief stated in the breach notice, in the light of all matters raised in the reply concerning that belief*" *(emphasis added).*

(i) In the event the Fine Notice was virtually identical to the Breach Notice. CIMA appears to have paid no regard whatsoever to any of the matters raised by SAMIL in its reply.

(ii) For example, the reply pointed out fatal flaws in the purported fining process such as CIMA's attempts to apply AMLR checks retrospectively years before they were in force and in breach of Regulation 31.

(iii) No public body in CIMA's position, acting reasonably, could have dismissed the matters raised by SAMIL in its reply. CIMA cannot have read the reply or paid it any regard because had they done so they would have been bound to withdraw the alleged breaches.

(iv) The pro forma statement on the Fine Notice to the effect that CIMA had reconsidered its position in the light of SAMIL's response cannot have been correct and was perfunctory in any event.

18.6 CIMA failed to comply with its duty under Regulation 15(4) to set out the reasons for the way in which the fine discretions were exercised.

(i) The content of the Fine Notice is formulaic, for example rehearsing the same alleged breach and same seemingly randomly determined fine amount multiple times in order to give the notice an appearance of substance.

(ii) No, alternatively no intelligible, reasons for the way in which CIMA had purported to exercise any discretion have ever been provided, leaving SAMIL wholly unable to understand what it is supposed to have been fined for, how and why.

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(iii) CIMA has accordingly acted in an unlawful, irrational, disproportionate and procedurally unfair manner towards its regulated entity, SAMIL.

18.7 CIMA failed to have any regard to the factors for fine setting set out in Regulation 5. As to each relevant factor:

18.7.1 The nature and seriousness of the breach. None of the alleged breaches was of a serious nature.

18.7.2 The degree of the party's inadvertence, intent or negligence in committing the breach. There has been no suggestion that any of the alleged breaches was committed other than inadvertently.

18.7.3 If the breach is a continuing one, its duration. None of the breaches is continuing.

18.7.4 The measures or precautions the party took to prevent the breach. SAMIL have fully complied with all requests from CIMA to remediate their AML and similar policies.

18.7.5 Evidence of intent by the party to conceal the breach or mislead the Authority. There is no such evidence.

18.7.6 Any financial or other damage or loss or other harm done or caused by the breach, including, for example, to — (i) the party's creditors, customers, investors, policyholders or shareholders; (ii) financial markets; or (iii) the performance of the Authority's functions. None is alleged by CIMA.

18.7.7 If the Authority has imposed a fine on the party in similar circumstances to the breach, the amount of that fine. SAMIL have never been fined before.

18.7.8 The party's history of compliance, in the five years before the breach, with the Anti-Money Laundering Regulations (2020 Revision) and similar laws in other jurisdictions. SAMIL have no history of non-compliance.

19. Many of the alleged breaches were for allegedly failing to provide documentation that CIMA did not actually request or that SAMIL could have directed them to amongst the large volume of soft copy material that was uploaded had clarification been asked for.

20. The Fine Notice (under the heading "**The Authority's reasons**") alleged that SAMIL had a history of non-compliance with the AMLR, had failed to remediate breaches identified during the 2020 inspection and similar findings during a 2019 audit by KPMG. As to each of these, there was no history of non-compliance; SAMIL remediated any and all breaches or potential breaches identified during the 2020 inspection and the KPMG audit. Any breaches identified in the latter would be time barred in any event under S. 42D of the Act.

Summary of SAMIL's position on individual alleged breaches

21. SAMIL will refer to its Response dated 3 December 2021 to the Breach Notice which sets out its position in relation to each and every alleged breach. In summary SAMIL will say the following in relation to the individual alleged breaches :

21.1 Breach No 213-03 imposes a fine of CI$24,150 for allegedly failing to identify the beneficial owner of a client, "Client 1". The account was opened on 3 February 2012, long before the requirement to identify beneficial ownership came into force in 2017 and even longer before the March 2018 cut off point for breaches mandated by Regulation 31. In any event SAMIL was and is able to demonstrate that the account was opened at a face to face meeting with the beneficial owner, a medical practitioner known to SAMIL personally.

21.2 Breach No 213-04 imposes a fine of CI$24,150 for allegedly failing to understand the beneficial ownership structure of the same customer, Client 1. This is essentially the same allegation as No 213-03 and the response is the same. The account was opened on 3 February 2012, long before the requirement to identify beneficial ownership came into force and long before the cut off point for breached in Regulation 31. Further, an account opening form, a risk based assessment form and identification documentation for this client was requested and provided to CIMA as part of the inspection process.

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21.3 Breach No 213-05 is another fine of CI$24,150 for allegedly failing to conduct regular monitoring of the beneficial ownership structure of Client 1. A set out above, an account opening form, a risk based assessment form and identification documentation for this client was requested and provided to CIMA as part of the inspection process.

21.4 Breach No 213-07 is another fine of CI$24,150 for allegedly failing to identify the beneficial owners of a client, "**Client 2**". This client was onboarded on 26th July 2018. As documented in the management comments at paragraph 5.2.36 of the CIMA inspection report ("**CIR**") issued to SAMIL on 18th January 2021, SAMIL provided evidence of the identity of the client's beneficial owner in the file upload prior to the start of the inspection and under its response to a CIMA 'discrepancy list' following inspection. SAMIL had complied with Regulation 12(1)(c)/12(3)(a) and took, as required, 'reasonable measures' to satisfy itself that it knew the identity of the beneficial owner of this client when the account was opened in person. The client's primary officer is SAMIL VP Marian Ross' father in law. The only missing piece at onboarding was written evidence on file of the shareholding. This was promptly corrected prior to the start of the inspection.

21.5 Breach Nos 213-08 and 213-9a are two more fines of exactly CI$24,150 each for allegedly failing to demonstrate an understanding of the identity the beneficial owners of Client 2. It is impossible to understand how these are in substance any different to Breach No 213-07, but in any event the answer is the same. SAMIL had clearly complied with Regulation 12(1)(c)/12(3)(a) and took, as required, 'reasonable measures' to satisfy itself that it knew the identity of the beneficial owner of this client and provided evidence that it had done so in management comments on the CIR as set out above.

21.6 Breach No 203-9b is another fine of exactly CI$24,150 for allegedly failing to terminate the business relationship with Client 2 on the basis SAMIL could not demonstrate an understanding of the identity its beneficial owners. Since SAMIL could and did demonstrate its understanding of the beneficial owners of Client 2, there was no basis to impose this fine. It is also duplicative and oppressive.

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21.7 Breach No 213-11 is a fine of CI$50,000 for allegedly failing to check 17 customers listed against sanctions lists in the Cayman Islands before forming a business relationship or one-off transaction with the customers. 14 of the 16 customers at issue were on-boarded prior to 14th March 2018 and as such cannot form the basis of a fine by operation Regulation 31. In any event AMLR Regulation 5(a)(v) mandates a risk-based approach such that not every customer is required to be checked against sanctions lists. Further or in the alternative CIMA are only empowered to issue fines with respect to deficiencies in a regulated entity's policies and procedures. No such discrepancy has been relied on by CIMA and any failure to check 2 out of 16 customers cannot lead to any inference that SAMIL's policies and procedures were in any way defective. The list of customers included the owner of SAMIL himself and several religious organizations. With the former, SAMIL knew their owner was not a sanctioned entity. With the latter there was no prospect of the clients appearing on a sanctions list and therefore no need to check the list according to the risk based approach mandated by the AMLR.

21.8 Breach No 213-12 represents the largest fine of CI$80,000 for allegedly failing to demonstrate the nature and extent of their ongoing transaction monitoring conducted, in that they did not have sufficient records or documentary evidence of having conducted ongoing transaction monitoring for 17 listed customers. SAMIL responded to a total of six requests for information /documentation from CIMA during the course of the inspection. CIMA did not ask for any records or documentary evidence of transaction monitoring. Had CIMA asked for evidence then SAMIL would have been perfectly able to provide such additional evidence as was required. In any event, SAMIL provided its transaction monitoring procedures to CIMA during its inspection (AML manual Part IV section G Ongoing Monitoring; CIR 5.2.83-5.2.85). There was accordingly no basis on which to criticize SAMIL's procedures, CIMA did not do so in any event. It would be inherently unfair and irrational to impose a fine for failing to provide records which were never requested.

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Stay

22. Regulation 22 provides the Court with the power to grant a stay in respect of any fine imposed. SAMIL will respectfully seek a stay on the grounds that it will suffer irrecoverable losses in the event its appeal is successful. Payment of a fine of this size will adversely impact on the liquidity and cost of funding for an asset management firm if SAMIL's size. Paying the fine will result in higher interest expense for the company and will also incur significant opportunity cost as the company will not be able to put the funds to work in the global capital markets.

DATED the 2nd day of June 2022

Travers Thorp Alberga

TRAVERS THORP ALBERGA
ATTORNEYS-AT-LAW
FOR THE APPLICANTS

This **APPLICATION** is filed by Travers Thorp Alberga, Attorneys-at-law for the Applicant whose address for service is 2nd Court Plaza, George Town, KY1-1106, Grand Cayman, Cayman Islands (Ref: S1022-003 IEH)