

## ENFORCEABLE UNDERTAKING

This Enforceable Undertaking is made under and for the purposes described in Article 89 of the *Regulatory Law 2004* ("the *Regulatory Law*"). The Dubai Financial Services Authority ("DFSA") accepts this Enforceable Undertaking from Robert Da Silva ("DA SILVA").

Unless the context otherwise requires, defined terms are identified by capitalisation of the initial letter of a word or of each word in a phrase and are defined in the Glossary Module of the DFSA Rulebook

### **Recital of Facts.**

This Enforceable Undertaking is based on the admission of the following facts:

1. GFS Investments (Middle East) Limited ("GFS") is a wholly owned subsidiary of GFS Forex and Futures Inc ("GFS Inc") and was licensed by the DFSA on 17 May 2007 as a Category 4 Authorised Firm.
2. Under its Licence GFS is authorised to Arrange Credit or Deals in Investments and advise on Financial Products or Credit in respect of Options or Futures. GFS was not authorised, on or before 30 June 2008, to Deal in Investments as Agent or to deal with customers who were not Clients, as defined in the DFSA Rulebook, Conduct of Business Module, in force during the relevant period specified in paragraph 3 below.
3. DA SILVA is a former Authorised Individual of GFS. He occupied the position of Compliance and Anti-Money Laundering Reporting Officer from 17 May 2007, the time that GFS was licensed by the DFSA, to 31 October 2007 ("the relevant period").
4. As GFS Compliance Officer, DA SILVA had responsibility for all compliance matters in relation to the Financial Services carried on by GFS including, ensuring that he and GFS complied with the relevant laws, administered by the DFSA, and Rules including the Principles for Authorised Individuals and the Principles for Authorised Firms which have the status of Rules.
5. GFS acted as introducing agent on behalf of its parent, GFS Inc, and offered customers access to GFS Inc's online foreign currency trading platform, OperaFX.
6. Customers were introduced to the platform by GFS employees known as business associates.



The DFSA is the independent financial services regulator for the DIFC

[www.dfsa.ae](http://www.dfsa.ae)

7. In order to gain access to OperaFX, customers were required to complete a 'Customer Account Application' wherein personal and financial particulars of the each customer were entered.
8. The financial particulars provided by customers enabled GFS to determine if the customer satisfied the Client requirements as prescribed in COB Rule 3.3.2, DFSA Rulebook.
9. GFS and its Employees were not authorised to deal with customers who were not Clients as defined, on or before 30 June 2008, in the COB Module of the Rulebook.
10. GFS and its employees were not authorised to trade ("Deal in Investments as Agent") on behalf of customers or Clients.
11. During the account opening process, GFS business associates frequently completed the "Customer Account Application" on behalf of the applicants. When completing the "Customer Account Application", business associates knowingly recorded incorrect particulars in the application by inflating the applicant's current net worth, liquid assets and financial experience.
12. GFS and GFS Inc approved the applications and each applicant became a customer of GFS and GFS Inc.
13. None of the customers approved by GFS and GFS Inc actually satisfied the requirements to be classified as a Client, on or before 30 June 2008, and therefore GFS was not authorised to deal with any of those customers pursuant to COB Rule 3.3.1. then in force.
14. Furthermore, GFS then permitted its business associates to Deal in Investments as Agent, on behalf of customers and on the GFS Inc platform, when not authorised to do so.
15. GFS customers suffered losses as a result of the unauthorised trading conducted by its business associates.
16. GFS has admitted to the facts described above.
17. DA SILVA, through his acts and/or omissions:
  - a) failed to take adequate steps to ensure that GFS customers were Clients;



- b) failed to take adequate steps to ensure that GFS and its Employees were aware of their obligations under, and complied with, the relevant Laws administered by the DFSA and the Rules, as they applied to them;
- c) failed to ensure GFS and its employees conducted business within the scope of the Licence granted to GFS, in particular ensuring GFS and its employees did not Deal in Investments as Agent on behalf of customers; and
- d) failed to ensure that the Advice given to customers by GFS and its Employees was suitable, having regard to the customer's financial circumstance and experience.

**Areas of Concern**

By virtue of the foregoing, DA SILVA acknowledges the following concerns of the DFSA about his conduct as an Authorised Individual of GFS.

18. The DFSA is concerned that, as Compliance Officer of GFS during the relevant period, DA SILVA:
- a) contravened Principles 1, 2, 3, 8 and 10 for Authorised Firms and Article 38 of the *Markets Law 2004* ("the Markets Law") by being knowingly concerned in a contravention, by GFS, of the said Principles and Law; and
  - b) contravened Principles 1, 2, 3, 4, 5, and 6 of the Principles for Authorised Individuals.

**Principles 1- Integrity – for Authorised Firms and Individuals**

19. DA SILVA failed and/or, in the alternative, was knowingly concerned in a failure by GFS to observe high standards of integrity and fair dealing in carrying out every licensed function by:
- a) doing or omitting to do an act that resulted in GFS and its Employees recording false information in Customer Account Opening Applications, in contravention of Article 38 of the Markets Law 2004;
  - b) doing or omitting to do an act that resulted in GFS and its Employees failing to act within the scope of its authority under the Licence issued

to GFS, in contravention of Article 42(4)(b) of the Regulatory Law 2004; and

- c) doing or omitting to do an act that resulted in GFS and its Employees providing Financial Services to a Person other than one who met the prescribed criteria to be classified as a Client, in contravention of COB Rule 3.3.1 of the DFSA Rulebook, in force during the relevant time.

**Principles 2- Due skill, care and diligence – for Authorised Firms and Authorised Individuals.**

20. DA SILVA failed and/or, in the alternative, was knowingly concerned in a failure by GFS to act with due skill, care and diligence in carrying out a Licensed Function by:

- a) failing to take reasonable care to ensure that the business of GFS, for which he was responsible, complied with any financial services legislation applicable in the DIFC;
- b) failing to provide adequate and ongoing training to Employees of GFS as to the relevant financial services laws and Rules applicable to GFS; and
- c) failing to ensure that Employees understood their obligations under such Laws and Rules.

**Principle 3- Market Conduct - for Authorised Individuals**

21. DA SILVA failed to observe proper standards of conduct in financial markets in carrying out a Licensed Function by doing or omitting to do an act that resulted in GFS, its Employees and third parties to trade in foreign exchange products that were not suitable or in the best interests of the customers.

**Principle 8 – Suitability - for Authorised Firms**

22. DA SILVA was knowingly concerned, in a failure by GFS, to take reasonable care to ensure the suitability of its Advice and discretionary decisions for



customers who are entitled to rely upon its judgment.

**Principal 10 – Relations with Regulator - for Authorised Firms**

23. DA SILVA was knowingly concerned in a failure by GFS to act in an open and co-operative manner with the DFSA during the course of its Investigation into the affairs of GFS and to disclose, appropriately information of which the DFSA would reasonably be expected to be notified, or significant events by failing to report contraventions of the aforementioned Laws and Rules.

**Principle 4- Relations with the DFSA - for Authorised Individuals**

24. DA SILVA failed to act in an open and co-operative manner; to disclose, appropriately information of which the DFSA would reasonably be expected to be notified, or significant events by failing to report contraventions of the aforementioned Laws and Rules.

**Principal 3 – Management, Systems and Controls - for Authorised Firms**

25. DA SILVA was knowingly concerned in a failure by GFS to:
- a) ensure that its affairs were managed effectively and responsibly; and
  - b) have adequate systems and controls to ensure, as far as reasonably practicable, that it complied with financial services legislation applicable to GFS.

**Principle 5- Management, Systems and Controls – for Authorised Individuals**

26. DA SILVA failed to take reasonable care to ensure that the business of GFS, for which he is responsible, was organized so that it could be managed and controlled effectively.

**Principle 6- Compliance - for Authorised Individuals**

27. DA SILVA failed to take reasonable care to ensure that the business of GFS, for which he was responsible, complied with any financial services legislation applicable to GFS:



- a) doing or omitting to do an act that resulted in GFS and its Employees conducting Investment Business with or for a Person who was not a Client, in contravention of COB Rule 3.3.1(1) and (2) in force at the relevant time; and
- b) doing or omitting to do an act that resulted in GFS and its Employees and third parties to Deal in Investments as Agent (by trading on behalf of customers), in contravention of Article 42(4)(a) of the Regulatory Law 2004.

### **Terms and Conditions of Undertaking**

The terms and conditions of this Enforceable Undertaking are as follows:

- 28. DA SILVA undertakes to pay a sum of USD70,000 to the DFSA. This sum is to be paid by way of quarterly instalments of USD17,500, the first payment to be made by on or before the 1 February 2009, with three subsequent payments of USD17,500 being made on or before 1 May 2009, 1 August 2009 and 1 November 2009.

### **Remedies for Breach of Undertaking**

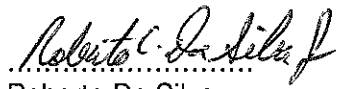
- 29. Should DA SILVA fail to satisfy the terms and conditions of this Enforceable Undertaking as determined by the DFSA, in its sole discretion, the DFSA reserves the right to pursue any remedy available to it in law without further notice, including but not limited to those listed in Article 89(4) of the Regulatory Law 2004.

### **Acknowledgements**

- 30. The facts as set out in this undertaking are without prejudice to the DFSA or DA SILVA in any other proceedings including, without limitation, any civil, administrative or criminal actions or proceedings that may be brought by any other Person or agency. DA SILVA does not acknowledge any liability with respect to matters raised herein except solely to the extent of the undertakings set out in paragraphs 28 and 29 above.

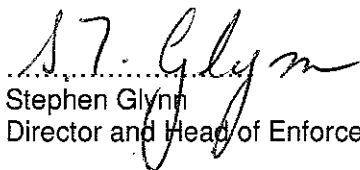


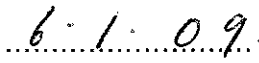
31. This undertaking does not affect the DFSA's power to investigate or take further action in relation to any other concerns not the subject of the facts as recited above, or arising from future conduct.
32. The DFSA may issue a media release upon acceptance of this undertaking referring to its terms and the concerns of the DFSA that led to this undertaking. Further the DFSA may make this undertaking available for public inspection.

  
.....  
Roberto Da Silva

  
.....  
Date

**Accepted by the Dubai Financial Services Authority under Article 89 of the Regulatory Law 2004 by its authorised delegate:**

  
.....  
Stephen Glynn  
Director and Head of Enforcement, DFSA

  
.....  
Date

The date of this Enforceable Undertaking is the date of acceptance, by the DFSA, of this Enforceable Undertaking.

