

DECISION NOTICE

To: Mr Julian Rifat

Address:

Date: 24 November 2019

ACTION

1. For the reasons given in this Notice and pursuant to Article 59(1) of DIFC Law No. 1 of 2004 (**the Regulatory Law 2004**), the Dubai Financial Services Authority (the **DFSA**) has decided to restrict Mr Julian Rifat (**Mr Rifat**) from performing any functions in connection with the provision of Financial Services in or from the DIFC (**the Restriction**). The Restriction takes effect from the date of this Notice.

DEFINITIONS

2. Defined terms are identified in this Notice by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the DFSA Rulebook, Glossary Module. Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.

SUMMARY OF REASONS

3. The DFSA has decided to impose the Restriction on the grounds that Mr Rifat is not a fit and proper person to perform any functions in connection with the provision of Financial Services in or from the DIFC.
4. In November 2014, Mr Rifat was convicted in the United Kingdom (**UK**) of committing a number of criminal offences, namely dealing in securities when having inside information (**Insider Dealing**) while being a Financial Services Authority (**FSA**) approved person and employed as a senior trader for a London-based hedge fund. Mr Rifat was later sentenced to 19 months imprisonment, fined £100,000 and ordered to pay costs of £159,402.
5. In June 2019, it was brought to the DFSA's attention that Mr Rifat was employed as a sales representative by a DFSA Authorised Firm (**the Firm**). The Firm terminated Mr Rifat's employment in July 2019.

6. Given his conviction for Insider Dealing in the UK, which arose during the course of his employment in a financial services firm, and the fact that Mr Rifat was until recently working in the DIFC, the DFSA considers it appropriate to impose the Restriction to maintain the integrity and reputation of the DIFC and ensure the confidence of participants in the market.

FACTS AND MATTERS RELIED ON

7. Mr Rifat was employed in the UK by various financial services firms and approved by the FSA to perform customer-facing controlled functions from December 2001 to March 2010.
8. On 7 November 2014, Mr Rifat pleaded guilty at Southwark Crown Court to eight counts of Insider Dealing contrary to the UK Criminal Justice Act 1993. Mr Rifat admitted to passing inside information, obtained during the course of his employment, to an associate who then traded for their joint benefit.
9. On 19 March 2015, Mr Rifat was sentenced at Southwark Crown Court to 19 months' imprisonment and was fined £100,000 for the offences. Mr Rifat was also ordered to pay costs of £159,402. When sentencing Mr Rifat, the Judge said that Mr Rifat had acted "deliberately and dishonestly" and "that any court must regard insider dealing of this kind perpetrated by somebody in your position as being very serious."
10. In June 2019, it was brought to the DFSA's attention that Mr Rifat had commenced employment as a sales representative at the Firm in November 2016. Mr Rifat's UK conviction and sentence were made known to the Firm at the time he commenced employment. Mr Rifat's employment at the Firm was terminated on 26 July 2019.
11. The DFSA conducts no background checks on prospective employees of Authorised Firms unless the individual is to perform a Licensed Function at that firm. Mr Rifat's role was not prescribed as a Licensed Function in the DIFC.
12. The Firm is a branch of UK financial services firm offering brokerage services from the DIFC, advising and arranging deals in investments for its clients. UK and European orders are transmitted to the firm's London trading desk, while Asian orders are executed directly with the market from the DIFC. Its business involves trading in a variety of instruments, including equities and derivatives.

REPRESENTATIONS

13. On 28 August 2019, the DFSA gave Mr Rifat a written notice that it was proposing to restrict him (the "Preliminary Notice"). The following submissions were subsequently made:
 - a. On 9 September 2019, submissions in writing by Mr Rifat;
 - b. On 26 September 2019, submissions in writing from the DFSA's Enforcement Case Team;
 - c. On 14 October 2019, some answers by the DFSA's Enforcement Case Team to questions on behalf of the decision maker dated 3 October 2019; and
 - d. On 21 October 2019, oral submissions from Mr Rifat in person.
14. In making the decision which gave rise to the obligation to give this Notice, the DFSA has taken into account all of the representations made by Mr Rifat, whether or not referred to in this Notice. Mr Rifat's key representations, and the DFSA's conclusions (*in italics*) in respect of them, are set out below.

15. In his submissions, Mr Rifat expressed remorse for committing the Insider Dealing offences and the effect it has had on his family and career.
16. In his submissions, Mr Rifat also referred to a proposal for reform in the UK to the Rehabilitation of Offenders Act where a conviction by persons who received a prison sentence of four years or more, would not need to be disclosed. Mr Rifat asked the DFSA to note and take into consideration the spirit and rationale underlying the proposal which mirrors the message associated with the Year of Tolerance in the UAE. *The DFSA notes that the reform proposal in the UK has not been implemented and, as things stand under English Law or DIFC Law, Mr Rifat's conviction is still not spent nor forgotten and must be considered in any assessment of his fitness and propriety.*
17. The Enforcement Case Team submitted in response that the overwhelming objective of a restriction is protective - protecting users and also the reputation of the DIFC. *The DFSA agrees and considers that the reputation and integrity of the DIFC in allowing a person, who had been convicted of and sentenced for a serious criminal offence within the last six years, to perform a Financial Service in or from the DIFC, is put at risk.*
18. In his oral submissions, Mr Rifat referred to a number of cases, mainly anecdotal, of other individuals with convictions or at least adverse findings against them, being allowed to perform Financial Services in or from the DIFC. Mr Rifat pointed this out as what he perceived as inconsistencies in the DFSA's approach. The Enforcement Case Team sought details of these cases from Mr Rifat so it could pursue them. *The DFSA considers that the presence of such individuals in the DIFC as being detrimental to its reputation.*
19. In his oral submissions, Mr Rifat stated, "It's clear to me that there is absolutely no point ever seeking to try and get a licensed role for a regulated firm ever again." However, he observed that in the two and a half years he had worked for the Firm in the DIFC, he had worked hard and honestly. "I haven't done anything wrong. I'm not going to do anything wrong again." Mr Rifat submitted he was happy to sign something saying, "I will never seek licensed employment in a regulated firm in the DIFC." Mr Rifat went on to ask if he could be allowed to perform a limited role, similar to the one he had performed at the Firm, essentially introducing clients. *Although this is not a role that requires formal authorisation from the DFSA, it is still a function that is performed in connection with the provision of Financial Services in or from the DIFC. On that basis, to permit Mr Rifat to perform such a role in the DIFC would still put the reputation and integrity of the DIFC at risk.*
20. Finally, Mr Rifat submitted that a restriction would reignite "more negative press, ten years after my offence, four years plus after I came out of serving a custodial sentence, when I'm trying to actually look to try and do business going forward." *In addition to protecting the DIFC's participants and its reputation, two key tenets of the DFSA's regulatory regime are transparency and deterrence. The DFSA is required under the Regulatory Law 2004 to publish and maintain a register of all persons who have been restricted by the DFSA from performing functions in the DIFC. By doing so, any prospective user of financial services in the DIFC can consult the DFSA's public website to confirm the individuals against whom the DFSA has imposed restrictions.*

CONCLUSIONS

Lack of fitness and propriety

21. The DFSA considers that Mr Rifat's UK conviction for a serious criminal offence, which involved passing on confidential, price-sensitive information obtained as a result of his

employment in a financial services role, in breach of trust and while he was approved by the FSA to perform customer-facing functions, demonstrates a fundamental lack of integrity. As a result, the DFSA has concluded that Mr Rifat is not fit and proper to perform any functions in connection with the provision of Financial Services in or from the DIFC.

Restriction

22. In deciding whether to impose the Restriction on Mr Rifat, the DFSA has had regard to the DFSA's policy in relation to the exercise of the restriction power under Article 59(1) of the Regulatory Law 2004, set out in section 4-10-3 of the RPP Sourcebook allowing the DFSA to have regard to all relevant matters, including the criteria for assessing the fitness and propriety of Authorised Individuals in chapter 7 of the GEN module.
23. In particular, in determining the Mr Rifat's fitness and propriety, the DFSA considers the following factors to be relevant:
 - a. the fact that Mr Rifat was convicted in the UK of a serious criminal offence and that he was able to engage in the criminal conduct by virtue of working in the UK financial services industry and being an FSA Approved Person at an FSA regulated firm;
 - b. the level of risk which Mr Rifat currently poses, and may pose in the future, to the reputation and integrity of the DIFC; and
 - c. the need to protect the integrity and reputation of the DIFC and ensure the confidence of participants in the market.
24. Although Mr Rifat does not currently perform any Licensed Function, or hold any Authorised Individual status, he recently held a customer-facing position at the Firm, which the DFSA considers was a function in connection with the provision of Financial Services in or from the DIFC. While Mr Rifat is no longer employed by the Firm, the DFSA considers the concerns about his fitness and propriety to be such that he poses a risk to the reputation and integrity of the DIFC.
25. Taking all of the circumstances of this matter into consideration, the DFSA has decided to impose the Restriction because:
 - a. it believes on reasonable grounds that Mr Rifat is not a fit and proper person to perform any functions in connection with the provision of Financial Services in or from the DIFC; and
 - b. it is necessary and proportionate to do so in support of the DFSA's objectives.

PROCEDURAL MATTERS

Decision Making Committee

26. The decision which gave rise to the obligation to give this Notice was made by the Decision-Making Committee on behalf of the DFSA.
27. This Notice is given to Mr Rifat under Paragraph 5 of Schedule 3 to the Regulatory Law 2004.

Evidence and other material considered

28. Annex A sets out extracts from some statutory and regulatory provisions and guidance relevant to this Notice.
29. In accordance with paragraphs 5(2) of Schedule 3 of the Regulatory Law 2004, the DFSA provided Mr Rifat a copy, or access to a copy, of the relevant materials that were considered in making the decision which gave rise to the obligation to give this Notice.

Right of review of the decision by the Financial Markets Tribunal (FMT)

30. Under Articles 29 and 59(6) of the Regulatory Law 2004, Mr Rifat has the right to refer this matter to the FMT for review.
31. The FMT is operationally independent of the DFSA and has the power to conduct a full merits review of the DFSA's decision. After review of the DFSA's decision, the FMT has the power to make a new decision using the powers available to the DFSA. This could involve:
 - a. confirming the decision set out in this Notice;
 - b. substituting the DFSA decision with a new decision; or
 - c. referring the matter back to the DFSA with a direction for the DFSA to make a new decision.
32. Should Mr Rifat wish to have this matter reviewed by the FMT, Mr Rifat must exercise that right within 30 days of the decision. Any reference made after that date will have to be approved by the FMT where it is satisfied that such approval is appropriate in the circumstances, pursuant to Article 29(3)(b) of the Regulatory Law. Proceedings before the FMT are commenced by submitting a Notice of Appeal ("Form FMT 1") to the Registrar of the FMT.
33. The Rules of Procedure of the FMT, as well as a template Form FMT 1 and the Registrar's contact details, can be found on the DFSA's website at:

<http://www.dfsa.ae/en/About-Us/Our-Structure#Financial-Market-Tribunal>
34. Under paragraph 26 of the FMT Rules of Procedure, Mr Rifat is required to send a copy of Form FMT 1 to the DFSA on the same date it is filed with the Registrar of the FMT.

Publicity

35. Under Article 116(2) of the Regulatory Law 2004, the DFSA may publish, in such form and manner as it regards appropriate, information and statements relating to decisions of the DFSA and of the Court, censures, and any other matters which the DFSA considers relevant to the conduct of affairs in the DIFC.
36. RPP 5-17-8 to 5-17-10 is relevant to the publication of information about the matter to which this Notice relates. Under these paragraphs, the DFSA will generally make public any decision made by the DMC and will do so in a timely manner after any relevant period to refer a matter to the FMT has expired or the appeal process has come to an end.

37. In the event that Mr Rifat refers this matter to the FMT, and as set out in RPP 5-17-8, the DFSA expects to publish information about the hearing or commencement of proceedings before the FMT or Court unless otherwise ordered by the FMT or Court.

DFSA contacts

38. For more information concerning this matter generally, please contact the Administrator to the Decision Making Committee on +971 4362 1500, or by email at DMC@dfsa.ae.

Signed:

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Mark McGinness
On behalf of the Decision Making Committee of the DFSA

ANNEX A - RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. STATUTORY PROVISIONS

DIFC Law No. 1 of 2004 – The Regulatory Law

Article 8(3) of the Regulatory Law 2004 sets out the DFSA's objectives.

8. The Powers, Functions and Objectives of the DFSA

(...)

(3) In performing its functions and exercising its powers, the DFSA shall pursue the following objectives:

(...)

(b) to foster and maintain confidence in the financial services industry in the DIFC;

(...)

(d) to prevent, detect and restrain conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC, through appropriate means including the imposition of sanctions;

(e) to protect direct and indirect users and prospective users of the financial services industry in the DIFC;

(...)

Part 3: Licences, Authorisation and Registration

59. Restricting persons from performing functions in the DIFC

(1) If the DFSA believes on reasonable grounds that a person is not a fit and proper person to perform any functions in connection with the provision of Financial Services in or from the DIFC, it may restrict the person from performing all or any such functions.

(2) A restriction under this Article may relate to a function whether or not it is a Licensed Function.

(3) The DFSA may vary or withdraw a restriction imposed under this Article.

(4) A person who performs a function in breach of a restriction under this Article commits a contravention.

(5) The procedures in Schedule 3 apply to a decision of the DFSA under Article 59(1).

- (6) If the DFSA decides to exercise its power under Article 59(1), the person may refer the matter to the FMT for review.

116. Publication by the DFSA

(...)

- (2) The DFSA may publish in such form and manner as it regards appropriate information and statements relating to decisions of the DFSA and of the Court, censures, and any other matters which the DFSA considers relevant to the conduct of affairs in the DIFC.

(...)

Schedule 3: Decision-Making Procedures

5. Decision Notice

- (1) If the DFSA decides to make a decision to which this Schedule applies, it must, as soon as practicable, give the Relevant Person a written notice (a “Decision Notice”) specifying:
 - (a) the decision;
 - (b) the reasons for the decision, including its findings of fact;
 - (c) the date on which the decision is to take effect;
 - (d) if applicable, the date by which any relevant action must be taken by the person; and
 - (e) the person’s right to seek review of the decision by the FMT (where applicable).
- (2) The Decision Notice must include a copy of the relevant materials which were considered in making the decision.
- (3) For the purposes of sub-paragraph (2), the DFSA:
 - (a) may refer to materials (instead of providing a copy) if they are already held by the Relevant Person or are publicly available; and
 - (b) is not required to provide material that is the subject of legal professional privilege.

2. REGULATORY PROVISIONS

DFSA Rulebook, General Module

Section 7.6 – Application for Authorised Individuals

GEN 7.6.3

An individual will only be authorised to carry on one or more Licensed Functions if the DFSA is satisfied that the individual is fit and proper to be an Authorised Individual. In making this assessment, the DFSA will consider:

- (a) the individual's integrity;
- (b) the individual's competence and capability;
- (c) the individual's financial soundness;
- (d) the individual's proposed role within the Authorised Firm ; and
- (e) any other relevant matters.

GEN 7.6.4

In Rule 7.6.3, an individual may not be considered as fit and proper where:

- (...)
- (b) he has been convicted of a serious criminal offence

Regulatory Policy and Process Sourcebook – RPP

Section 2-3 – Assessing the Fitness and Propriety of Authorised Individuals, Principal Representatives and Key Individuals

Paragraph 2-3-1

This section sets out the matters which the DFSA takes into consideration when assessing the fitness and propriety of:

- (a) in the case of an Authorised Firm, an Authorised Individual or Principal Representative under section 7.6 of the GEN module and section 4.2 of the REP module, respectively; and
- (b) in the case of an Authorised Market Institution, a Key Individual under section 3.3 and chapter 5 of the AMI module.

Integrity

Paragraph 2-3-5

In determining whether an individual has satisfied the DFSA as to his integrity, the DFSA may have regard to matters including, but not limited to, the following:

- (a) the propriety of an individual's conduct whether or not such conduct may have resulted in the commission of a criminal offence, the contravention of a law or the institution of legal or disciplinary proceedings of whatever nature;
- (b) a conviction or finding of guilt in respect of any offence, other than a minor road traffic offence, by any court of competent jurisdiction;
- (c) whether the individual has ever been the subject of disciplinary proceedings by a government body or agency or any recognised self-regulatory organisation or other professional body;
- (...)
- (n) whether the individual has been censured, disciplined, publicly criticised by, or has been the subject of a court order at the instigation of, the DFSA, or any officially appointed inquiry, or Financial Services Regulator; and
- (...)

Section 4-10 - Power to Restrict Individuals

Paragraph 4-10-1

Under Article 59(1), if the DFSA reasonably believes that a natural person is not fit and proper to perform any functions in connection with the provision of Financial Services, it may restrict that Person from performing any or all such functions.

Paragraph 4-10-2

Article 59 enables the DFSA to impose a restriction in respect of all functions or in respect of specific functions. The restriction may also apply to functions whether or not they are Licensed Functions. Whether a general restriction, or a more specific restriction, is imposed by the DFSA may depend on the facts of the matter, including:

- (a) the concerns upon which the DFSA determines that a natural person is not fit and proper to perform any functions; and
- (b) the need to protect the integrity of the DIFC and ensure the confidence of participants in the market.

Paragraph 4-10-3

In determining whether to exercise its power under Article 59(1), the DFSA may have regard to all relevant matters including, but not limited to, the criteria for assessing the fitness and propriety of Authorised Individuals as set out in chapter 7 of GEN, for Key Individuals the criteria set out in chapter 3 of AMI and section 2-3 of this Sourcebook.

Section 5-17 – Publicity

FMT or a court

Paragraph 5-17-8

The DFSA expects to publish information about the commencement or hearing of proceedings before the FMT or court, unless otherwise ordered by the FMT or court.

Disclosure of Decisions

DMC

Paragraph 5-17-9

The DFSA will generally make public any decision made by the DMC, and will do so in a timely manner after any relevant period to institute a referral of the decision to the FMT has expired or appeal process has come to an end.

Paragraph 5-17-10

In circumstances where the DFSA considers it expedient to publish at an earlier stage, the publication will refer to the right of review which the affected Person has and the time limit for that review. The DFSA would consider it necessary to publish at this early stage where to do so enables it to achieve its objectives or it is in the public interest to do so.

Paragraph 5-17-11

If the affected Person exercises its right of referral, then the DFSA will publish that fact unless otherwise ordered. When the referral has been heard and determined, the DFSA expects to publish the decision (subject only to the FMT – see 5-17-12) which would include the publication of any notice of decision.