

ENFORCEABLE UNDERTAKING

ARQAAM CAPITAL LIMITED

THIS ENFORCEABLE UNDERTAKING is made under and for the purposes described in Article 89 of the Regulatory Law.

The commitments in this Enforceable Undertaking are offered to the Dubai Financial Services Authority by **ARQAAM CAPITAL LIMITED**.

Capitalised terms not otherwise defined in this Enforceable Undertaking have the meanings given to them in the *DFSA Rulebook, Glossary Module, AML Module* or in the Annex to this Enforceable Undertaking.

1. INTRODUCTION AND BACKGROUND

Introduction

- 1.1 On 23 May 2007, Arqaam was licensed by the DFSA to conduct a range of Financial Service activities in or from the DIFC. Arqaam offers financial intermediation services to Professional Clients, including Market Counterparties. The services include equities sales and trading, equity derivatives, corporate finance advisory, capital markets advisory, asset management and custody services. Arqaam also provides equities research coverage on companies listed on Middle Eastern and African exchanges. Arqaam concentrates on corporate and institutional clients and its clients include local and international institutions, sovereign wealth funds, insurance companies, corporates, family offices and high net worth individuals. Arqaam does not deal with Retail Clients.
- 1.2 On 10 December 2014, Arqaam's internal auditor submitted its final report in respect of a review of Arqaam's AML functions. The report's assessment rating was "Needs Strengthening."

The DFSA risk assessment

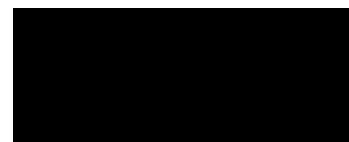
- 1.3 In February 2015, the DFSA conducted a periodic risk assessment of Arqaam that focused on the firm's AML systems and controls. The risk assessment included interviews with 5 members of staff, a review of 33 client files and a review of Arqaam's past and present AML policies and procedures.
- 1.4 The DFSA risk assessment identified a number of deficiencies in Arqaam's AML systems and controls, customer AML risk assessment, and CDD practices including EDD and ongoing CDD. The DFSA's risk assessment found:
 - 1.4.1 Arqaam's relationship managers (RMs) failed to take an appropriate level of responsibility for AML compliance and conducting CDD in accordance with Arqaam procedures, seeking to rely instead on Arqaam's Account Opening Team;
 - 1.4.2 Arqaam did not maintain an effective AML training program;
 - 1.4.3 Arqaam's RMs were not aware of, nor involved in, customer AML risk assessments, and were not aware of the firm's AML risk appetite;

- 1.4.4 Arqaam put undue reliance on the RMs' and/or senior management's knowledge of each client without proper documentation on client files to support such knowledge;
- 1.4.5 Arqaam instituted an inappropriate non-risk based procedure to apply a low risk rating and Simplified Customer Due Diligence to certain non-sanctioned customers who are regulated entities, be they in FATF jurisdictions or otherwise. This procedure was found to be too narrow in that it did not consider the level or quality of regulation and supervision in the customer's jurisdiction (including between different FATF jurisdictions) and the beneficial ownership, the nature of controllers, the nature of business to be conducted and the nature of the ownership structure of the customer;
- 1.4.6 A number of Arqaam client files reviewed:
- (a) did not include any evidence that Arqaam was seeking to treat the customer as a Prescribed Low Risk Customer (as Arqaam claimed) or other evidence to justify a low risk rating;
 - (b) did not contain sufficient evidence or explanation for the client AML risk ratings;
 - (c) did not identify the ultimate beneficial owners of the customers;
 - (d) contained expired identification documentation;
 - (e) contained documents purporting to be evidence of ultimate beneficial ownership or source of funds with no discernible connection to the actual customer;
 - (f) did not identify the directors of corporate entity clients;
 - (g) failed to identify Politically Exposed Persons including shareholders, directors and other persons with significant influence as PEPs;
 - (h) did not adequately verify the customer's source of wealth; and
 - (i) did not adequately verify the customer's source of funds.
- 1.4.7 Arqaam failed to perform sufficient Enhanced Due Diligence (EDD) for clients assigned a "high" AML risk rating by the firm; and
- 1.4.8 Periodic reviews of client files appeared to be little more than an audit of the contents of each file without a meaningful review of KYC documents or customer risk ratings.

1.5 At a meeting on 7 April 2015, the DFSA communicated the findings of its risk assessment to Arqaam.

Commencement of investigation

1.6 On 22 April 2015, the DFSA commenced an investigation into Arqaam's AML systems and controls, customer AML risk assessments and CDD practices.

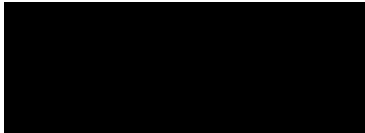


2. AREAS OF CONCERN

- 2.1 Arqaam acknowledges the DFSA's concerns set out below regarding its conduct as a DFSA licensed firm.
- 2.2 Although no specific contraventions of the laws and regulations applicable in the DIFC are cited in this Enforceable Undertaking, due to the deficiencies identified in section 1 above, the DFSA is concerned that Arqaam may not have:
- 2.2.1 acted with due skill, care and diligence in accordance with Principle 2 of the Principles for Authorised Firms (GEN Rule 4.2.2);
 - 2.2.2 ensured that its affairs were managed effectively and responsibly and that it had in place adequate systems and controls to ensure, as far as is reasonably practical, that it complied with legislation applicable in the DIFC in accordance with Principle 3 of the Principles for Authorised Firms (GEN Rule 4.2.3); and
 - 2.2.3 complied with requirements under the AML Module, including those in relation to AML systems and controls, assessing customer AML risks, CDD, EDD, and ongoing CDD.
- 2.3 The DFSA requires Arqaam to ensure that it:
- 2.3.1 has AML systems and controls that comply with the DFSA's Laws and Rules;
 - 2.3.2 implements these systems and controls effectively; and
 - 2.3.3 maintains these systems and controls.
- 2.4 The DFSA acknowledges that Arqaam has cooperated fully with the DFSA since the commencement of its investigation and sought an early amicable resolution with the DFSA. This includes the offer to appoint an independent expert in relation to AML and to undertake remedial action.
- 2.5 The DFSA did not conduct an investigation into suspected money laundering but a risk assessment of Arqaam's AML systems and controls. The deficiencies identified by the DFSA and the concerns set out above does not mean the DFSA found instances of money laundering.

3. TERMS AND CONDITIONS OF ENFORCEABLE UNDERTAKING

Appointment of External Compliance Expert

- 3.1 Arqaam undertakes that, within 45 days from the date of this Enforceable Undertaking, it will engage a suitably qualified and experienced third party firm or person (the External Compliance Expert) to carry out the activities described in Clauses 3.4 to 3.8.
- 3.2 The External Compliance Expert must be approved by the DFSA, and the terms and conditions of engagement of the External Compliance Expert must be approved by the DFSA.
- 3.3 Arqaam further undertakes that it will pay the costs and expenses of the engagement and the services provided by the External Compliance Expert.
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Role of External Compliance Expert

Remediation Plan

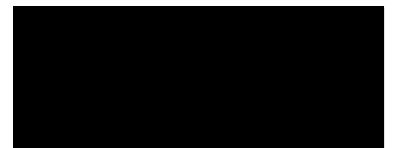
- 3.4 Arqaam and the External Compliance Expert will prepare a remediation plan to remedy the AML deficiencies identified by the DFSA and any further issues or deficiencies identified by the External Compliance Expert (the Remediation Plan) that will also include an appropriate AML training program for all relevant staff and the Board regarding obligations under DFSA Laws and Rules, focusing on Arqaam's risk management and AML obligations. The Remediation Plan is subject to approval by the DFSA but must as a minimum set out the:
- 3.4.1 deficiencies to be remediated;
 - 3.4.2 tasks to be completed to remediate the deficiencies;
 - 3.4.3 person(s) responsible for completing each of the tasks; and
 - 3.4.4 timeframe to complete each of the tasks.
- 3.5 Arqaam undertakes to ensure that the Remediation Plan is approved by the DFSA and for that purpose to:
- 3.5.1 submit the draft Remediation Plan to the DFSA for approval no later than 30 days after the date of the appointment of the External Compliance Expert;
 - 3.5.2 make any reasonable changes to the draft Remediation Plan that may be required by the DFSA in order for it to approve the plan; and
 - 3.5.3 resubmit the draft Remediation Plan for approval with the changes requested under Clause 3.5.2 no later than 14 days after the DFSA has requested the changes.

Implementation of the Remediation Plan

- 3.6 Arqaam undertakes to implement all of the tasks in the Remediation Plan and to do so within the timetable in the Remediation Plan and, in any event, to complete all of the remediation tasks no later than six months from the date the Remediation Plan is approved by the DFSA.

Monitoring

- 3.7 The External Compliance Expert will monitor the implementation of the Remediation Plan to ensure that the changes have been properly implemented and are operating effectively in practice and report to the DFSA on a monthly basis in this regard from the date of its appointment.
- 3.8 The External Compliance Expert will provide the DFSA with an assessment and written confirmation at the end of the period of six months following its engagement as to whether Arqaam has properly implemented measures to fulfill the requirements of the Remediation Plan.



Financial Penalty

- 3.9 Arqaam further undertakes to pay to the DFSA, within 30 days of the date of this Enforceable Undertaking, a financial penalty of USD 50,000 in relation to the concerns set out in this Enforceable Undertaking.

Further Undertakings

- 3.10 Arqaam agrees to comply with any reasonable and lawful directions given to it by the DFSA about compliance with its obligations under this Enforceable Undertaking, within a reasonable period prescribed at the sole discretion of the DFSA.
- 3.11 Arqaam undertakes not to make any public statement that in any way conflicts with the intent and purpose of this Enforceable Undertaking or that disputes the determinations reached by the DFSA as recorded in this Enforceable Undertaking.

Remedies for Breach of Enforceable Undertaking

- 3.12 Arqaam acknowledges the right of the DFSA, at its sole discretion, to reasonably determine that Arqaam has failed to satisfy the terms and conditions of this Enforceable Undertaking.
- 3.13 In the event the DFSA determines that a failure to satisfy the terms and conditions of this Enforceable Undertaking has occurred, then the DFSA reserves the right to pursue any remedy available to it in law without further notice, including but not limited to those specified in Article 89(4) of the Regulatory Law.

Address for Service of Documents or Process

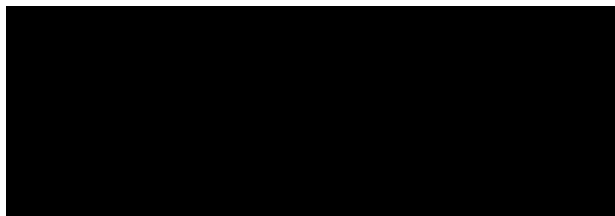
- 3.14 Arqaam agrees that its address for service of any letter, document or process in relation to this Enforceable Undertaking is:

Arqaam Capital Limited
Level 4, Building GV05
The Gate Village
PO Box 506687
DIFC
Dubai, UAE

Acknowledgements

- 3.15 The DFSA accepts the undertakings given by Arqaam in this Enforceable Undertaking.
- 3.16 This Enforceable Undertaking is drafted and agreed to as between the DFSA and Arqaam.
- 3.17 A person who is not a party to this Enforceable Undertaking has no rights under Part 10 of the *Contract Law (DIFC Law No 6 of 2004)* or otherwise to enforce any term of this Enforceable Undertaking.
- 3.18 Subject to Clause 3.19 below, the facts and matters contained in this Enforceable Undertaking are without prejudice to the DFSA and Arqaam in that they may not be used, produced or relied upon 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.

- 3.19 Clause 3.18 above does not prevent the DFSA from seeking any court order in relation to this matter or bringing any action to enforce a term or condition of this Enforceable Undertaking.
- 3.20 This Enforceable Undertaking is governed by and shall be construed in accordance with the laws of the DIFC. The parties irrevocably agree that the DIFC Court shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of, or in connection with this Enforceable Undertaking.
- 3.21 This Enforceable Undertaking does not affect the DFSA's power to investigate or take further action against Arqaam in relation to any other concerns, or arising from future conduct or findings, other than the facts and concerns set out in this Enforceable Undertaking.
- 3.22 The DFSA may issue a media release upon execution of this Enforceable Undertaking referring to its terms and the concerns of the DFSA that led to its execution. Further, the DFSA may make this Enforceable Undertaking available for public inspection.
- 3.23 This Enforceable Undertaking takes effect on the date on which it is executed by the DFSA's authorised delegate.

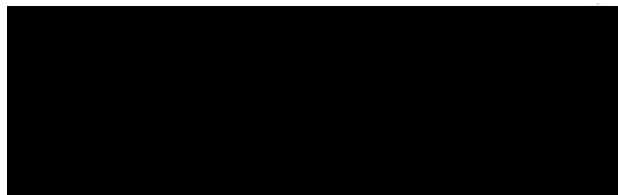


..... JULY 17, 2015

Date

Tarek Abdel-Magid
Senior Executive Officer
Arqaam Capital Limited

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



..... 27.7.15

Date

Stephen Glynn
Senior Director and Head of Enforcement
Dubai Financial Services Authority

ANNEX – DEFINITIONS

AML means anti-money laundering.

AML Module means the *Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module of the DFSA Rulebook*.

Arqaam means Arqaam Capital Limited, (incorporated in the DIFC with registered number 0360), an Authorised Firm in the DIFC (DFSA reference number F000407).

CDD means Customer Due Diligence.

Date of this Enforceable Undertaking means the day on which the Enforceable Undertaking takes effect under Clause 3.23.

DIFC means Dubai International Financial Centre.

DFSA means Dubai Financial Services Authority.

EDD means Enhanced Due Diligence.

External Compliance Expert means expert referred to in Clause 3.1.

FATF means the Financial Action Task Force.

GEN means the *General Module of the DFSA Rulebook*.

KYC means Know Your Customer.

Regulatory Law means the *Regulatory Law, DIFC Law No 1 of 2004*.

Remediation Plan means the plan referred to in Section 3.4.