



DECISION NOTICE

To: Deutsche Bank AG Dubai (DIFC) Branch

Address: Building 5, Level 6,
The Gate Village,
PO Box 504902,
DIFC,
Dubai, UAE

Date: 29 March 2015

1. ACTION

- 1.1. For the reasons given in this notice (the "Decision Notice"), the Dubai Financial Services Authority ("DFSA") has decided, pursuant to Article 90(2) of the Regulatory Law 2004, to impose on Deutsche Bank AG Dubai (DIFC) Branch ("DBDIFC" or the "Firm"):
 - (a) a fine of \$8,400,000 (the "Fine"); and
 - (b) a number of directions (the "Directions").
- 1.2. DBDIFC agreed to settle this matter at an early stage following the conclusion of the DFSA's investigation. It therefore qualified for a 20% discount under the DFSA's policy for early settlement. Were it not for this discount, the DFSA would have imposed a fine of \$10,500,000 on the Firm. DBDIFC has also agreed not to refer the matter to the Financial Markets Tribunal (the "FMT").
- 1.3. The DFSA has decided to take this action following an investigation (the "Investigation") that found breaches by DBDIFC of certain Client take-on and AML Rules. The DFSA suspected that DBDIFC was Advising and Arranging for customers in the Dubai International Financial Centre ("DIFC"), which would have required DBDIFC to treat such customers as its Clients and afford them certain regulatory protections.
- 1.4. However, the Investigation found evidence that on a number of occasions between 1 January 2011 and 22 January 2014 (the "Relevant Period"), DBDIFC represented to the DFSA that in respect of its Private Wealth Management ("PWM") business line in the DIFC (one of three business lines operating in DBDIFC), it followed a business model of simply referring and introducing customers to other parts of its Group. These are activities which would not have required DBDIFC to treat its customers as DIFC Clients. However, DBDIFC was, in fact, Advising and Arranging for customers in the DIFC during the Relevant Period. DBDIFC confirmed that this was the case on 22 January 2014.

- 1.5. In representing to the DFSA that its PWM business line followed a referrals and introductions business model, DBDIFC provided the DFSA with false information about its activities in the DIFC, and therefore, misled the DFSA, in breach of Article 66 of the Regulatory Law 2004. During the Relevant Period, DBDIFC also failed to promptly correct the false information provided to the DFSA concerning the activities of its PWM business line.
- 1.6. The Investigation also found evidence that DBDIFC failed to meet DFSA requirements relating to governance, systems and controls and compliance arrangements. The Investigation found that certain individuals within Senior Management and Regional Management, who collectively were ultimately responsible for DBDIFC's governance, failed to ensure that DBDIFC's governance structure was appropriate in light of DBDIFC's business model. The DFSA considers that DBDIFC's governance breaches contributed to the failures set out in this Decision Notice.
- 1.7. Given the above, the Fine has been imposed in respect of breaches of Principles 2, 3, 4, 10 and 11 of the Principles for Authorised Firms (the "Principles") and for contraventions of Articles 66 and 69 of the Regulatory Law 2004. The above breaches and contraventions occurred during the Relevant Period primarily in DBDIFC's PWM business line, but were also relevant to DBDIFC's overall business in the DIFC.
- 1.8. The DFSA has imposed the Directions on the Firm in order to improve, *inter alia*, the Firm's corporate governance systems and controls and its compliance with DFSA administered laws and Rules. The Directions are set out in Section 6 of the Decision Notice.
- 1.9. The DFSA acknowledges that, since 22 January 2014, Deutsche Bank AG ("DBAG") has escalated this matter appropriately within DBAG and taken steps to remedy the failings. The DFSA also acknowledges that it was a small number of individuals in DBDIFC, and a small number of individuals in PWM business management, who provided false information to, and concealed information from, the DFSA with the result that the DFSA was misled.
- 1.10. While the Investigation did not find any evidence of financial detriment to DBDIFC's customers, DBDIFC's failures are serious and therefore merit enforcement action and the imposition of the Fine and the Directions.
- 1.11. Accordingly, for the reasons set out below and having agreed with DBDIFC the facts and matters relied on, the DFSA imposes a fine on DBDIFC in the amount of \$8,400,000 and the Directions.

2. DEFINITIONS

- 2.1. The most commonly-used definitions in this Decision Notice are set out in the table below. Any other definitions used can be found in the DFSA Glossary Module.

Term	Meaning
\$	US Dollars
Advising	The Financial Service activity of Advising on Financial Products or Credit
AML	Depending on the context, means either "anti-money laundering" or the Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module of the DFSA Rulebook in

Term	Meaning
	force during the Relevant Period (including the 2012 version of that Module)
Arranging	The Financial Service activity of Arranging Credit or Deals in Investments
BaFin	German Federal Financial Supervisory Authority
CB&S	Corporate Banking and Securities
CEO	The Chief Executive Officer for the MENA region of DBAG
Client	A Retail Client, Professional Client or Market Counterparty as defined in COB chapter 2
COB	The Conduct of Business Module of the DFSA Rulebook in force during the Relevant Period
COO	The Chief Operating Officer for the MENA region of DBAG
DB, DBAG or Deutsche Bank	Deutsche Bank AG, a bank incorporated in Germany and regulated by BaFin
DBDIFC	The DIFC branch of Deutsche Bank AG
DFSA	Dubai Financial Services Authority
DIFC	Dubai International Financial Centre
EMEA	The Europe, Middle East and Africa region of DBAG
Former SEO	The SEO of DBDIFC from 14 March 2011 to 2 January 2012
GEN	The General Module of the DFSA Rulebook in force during the Relevant Period
Group Internal Audit	The Group Internal Audit of DBAG
GSA	The Global South Asia section of PWM
GTB	Global Transaction Banking
Investigation	The DFSA investigation commenced on 25 December 2012, the scope of which was varied on 16 June 2013 and 19 February 2014
MEA	Middle East and Africa
MENA	The Middle East North Africa
PWM	Private Wealth Management
PWM GSA	PWM Global South Asia team. A team of PWM in DBDIFC
PWM MEA	PWM Middle East and Africa team. A team of PWM MEA in the DBDIFC
Regional Management	The regional management team of DBAG located in the DIFC
Regulatory Law	DIFC Regulatory Law No 1 of 2004 in force during the Relevant Period
Relevant Period	1 January 2011 to 22 January 2014
RPP	DFSA's Regulatory Policy and Process Sourcebook in force during the Relevant Period
SEO	Senior Executive Officer of DBDIFC from 2 January 2012

Term	Meaning
Senior Management	The senior management team of DB in the DIFC
Senior PWM MEA Employee	A senior employee in DBDIFC's PWM MEA team. This term has been used to protect the person's identity
SPR	The report commissioned by DBDIFC and prepared by an external firm and provided to the DFSA in two tranches on 21 April 2013 and 15 May 2013

3. SUMMARY OF REASONS

3.1. DBDIFC's failings can be categorised under the following three areas of conduct:

- (a) Dealings with the DFSA, which refers to the provision by DBDIFC of false information to, and the concealment of information from, the DFSA concerning the activities of its PWM business line during the Relevant Period;
- (b) Dealings with Clients, which refers to DBDIFC's Client take on and AML practices during the period from 1 January 2011 to 30 June 2013; and
- (c) Governance, Systems and Controls and Compliance Arrangements, which refers to DBDIFC's governance, systems and controls and compliance arrangements, particularly as they relate to the activities of its PWM business line during the Relevant Period.

3.2. A summary of the DFSA's findings on these matters, which resulted from the Investigation, are set out in the following paragraphs.

Dealings with the DFSA

- 3.3. Between 25 July 2013 and 7 February 2014, DBDIFC failed, without reasonable excuse, to give or produce information or documents specified by the DFSA in contravention of Article 69 of the Regulatory Law.
- 3.4. Between 1 October 2011 and 22 January 2014, DBDIFC provided false information to the DFSA and concealed information with the result that the DFSA was misled, in contravention of Article 66 of the Regulatory Law.
- 3.5. Between 1 October 2011 and 22 January 2014, DBDIFC breached Principle 10 of the Principles for Authorised Firms, by failing to deal with the DFSA in an open and co-operative manner and keep the DFSA promptly informed of significant events or anything else relating to DBDIFC of which the DFSA would reasonably be expected to be notified (GEN Rule 4.2.10).
- 3.6. Between 1 October 2011 and 22 January 2014, DBDIFC breached GEN Rule 11.10.7, by failing to advise the DFSA immediately that it was aware or had reasonable grounds to believe that a significant breach of a Rule by DBDIFC had occurred.

Dealings with Clients

3.7. In summary, between 1 January 2011 and 30 June 2013, DBDIFC:

- (a) breached Principle 2 of the Principles for Authorised Firms, by failing to act with due skill, care and diligence (GEN Rule 4.2.2); and

- (b) breached Principle 3 of the Principles for Authorised Firms, by failing to ensure that its affairs were managed effectively and responsibly and to have in place adequate systems and controls to ensure, as far as is reasonably practical, that it complied with legislation applicable in the DIFC (GEN Rule 4.2.3).

3.8. The failures referred to in paragraph 3.7 above occurred because, from 1 January 2011 to 30 June 2013, DBDIFC failed to comply with certain DFSA COB and AML requirements because it did not treat certain of its customers as Clients of DBDIFC. Details of the breaches are set out in more detail in the findings regarding dealings with Clients below.

Governance, Systems and Controls and Compliance Arrangements

3.9. In the Relevant Period, DBDIFC:

- (a) breached Principle 3 of the Principles for Authorised Firms by failing to ensure that its affairs were managed effectively and responsibly by its Senior Management and failing to have in place adequate systems and controls to ensure, as far as is reasonably practical, that it complied with legislation in the DIFC (GEN Rule 4.2.3);
- (b) breached Principle 4 of the Principles for Authorised Firms by failing to maintain and be able to demonstrate the existence of adequate resources to conduct and manage its affairs. These include adequate financial and system resources as well as adequate and competent human resources (GEN Rule 4.2.4); and
- (c) breached Principle 11 of the Principles for Authorised Firms by failing to have in place a corporate governance framework that was appropriate to the nature, scale and complexity of its business and structure and which was adequate to promote the sound and prudent management and oversight of DBDIFC's business and to protect the interests of its consumers and stakeholders (GEN Rule 4.2.11).

3.10. The failures referred to in paragraph 3.9 are set out in further detail in paragraph 4.87.

4. FACTS AND MATTERS RELIED UPON

Background

- 4.1. DBDIFC is a branch of DBAG, which is incorporated in Germany and regulated by the BaFin.
- 4.2. DBDIFC was licensed by the DFSA on 26 September 2005. During the Relevant Period, DBDIFC was (and remains) Authorised to carry on the Financial Services of:
 - (a) Advising on Financial Products or Credit;
 - (b) Arranging Credit or Deals in Investments;
 - (c) Arranging Custody;
 - (d) Dealing in Investments as Agent;
 - (e) Dealing in Investments as Principal;

- (f) Providing Fund Administration; and
 - (g) Providing Trust Services.
- 4.3. During the Relevant Period, DBDIFC operated three lines of business:
- (a) CB&S;
 - (b) GTB; and
 - (c) PWM MEA and PWM GSA.

Overview of the DFSA Investigation

- 4.4. On 25 December 2012, the DFSA commenced the Investigation which initially inquired into suspected breaches of the DFSA's Client take-on and AML rules by DBDIFC. The scope of the Investigation was varied on 16 June 2013 to include additional AML, conduct of business and other contraventions. On 19 February 2014, the Investigation was further varied to include suspected contraventions of Articles 66 of the Regulatory Law (providing false or misleading information to the DFSA) and other Rulebook contraventions.
- 4.5. In February 2013, during the course of the Investigation, DBDIFC offered to engage an external firm to provide the DFSA with a "Skilled Person's Report" ("SPR") covering, *inter alia*, a review of DBDIFC's compliance with COB requirements pertaining to Client take-on and AML requirements.
- 4.6. On 21 April 2013, the DFSA received the SPR which, *inter alia*:
- (a) found material deficiencies in DBDIFC's Client classification and AML processes in respect of DBDIFC's CB&S and GTB business lines; and
 - (b) stated that the external firm's understanding was that DBDIFC's PWM business line merely introduced and referred Clients to other DBAG entities and did not provide Financial Services (as defined in the DFSA Rulebook) to any Clients.
- 4.7. On 13 June 2013, DBDIFC agreed to remediate its COB and AML failures with respect to its CB&S and GTB business lines.
- 4.8. However, the DFSA had concerns that DBDIFC's PWM business line had not adhered to its stated "*introductions and referrals*" business model and had, in fact, provided the Financial Services of Advising and Arranging in or from the DIFC.
- 4.9. On 25 July 2013, the DFSA issued a notice pursuant to Article 80(1)(b) and (c) of the Regulatory Law requiring the production of documents and information relating to PWM. DBDIFC, without reasonable excuse, did not produce the required material on or by the date specified. While it is not a reasonable excuse, DBDIFC stated at the time that it could not produce the required material on or by the date specified due to concerns on DBDIFC's part to ensure that the Firm did not breach any duties owed to its clients or to authorities in another jurisdiction.
- 4.10. On 27 August 2013, the DFSA conducted an inspection of DBDIFC focused on the business of PWM. During the course of that inspection, certain DBDIFC employees provided the DFSA with false information about the business practices of PWM.

- 4.11. On 1 October 2013, the DFSA issued a further notice pursuant to Article 80(1)(b) and (c) of the Regulatory Law requiring the production of documents and information relating to PWM. DBDIFC, without reasonable excuse, did not produce the required material on or by the date specified, for the same reasons as stated at paragraph 4.9 above.
- 4.12. On 31 October 2013, the DFSA commenced proceedings in the DIFC Courts to enforce compliance with the notices served on 25 July 2013 and 1 October 2013.
- 4.13. On 22 January 2014, while the DFSA's court action to enforce the notices was on foot, DBDIFC notified the DFSA that:
- (a) on a number of occasions from 2011 to 2013, DBDIFC PWM had been carrying out the Financial Services of Advising and Arranging;
 - (b) therefore, statements contained in the SPR to the contrary were inaccurate;
 - (c) they believed that certain individuals in the DBDIFC Compliance Department, PWM business management, and Senior Management had knowledge of the existence of Advising and Arranging activities by PWM. Therefore, DBDIFC may have provided the DFSA with false information by allowing the SPR to be produced to the DFSA; and
 - (d) DBDIFC's responses to the DFSA's notices dated 25 July 2013 and 1 October 2013 may not have been accurate or complete.
- 4.14. Following DBDIFC's disclosure on 22 January 2014, the DFSA expanded the scope of the Investigation. In particular, the DFSA investigated the extent of knowledge of DBDIFC regarding the activities of DBDIFC's PWM business line, and DBDIFC's provision of false information to the DFSA regarding the actual activities of PWM over the Relevant Period. DBDIFC appointed a new external firm to assist with the revised scope of the Investigation.
- 4.15. On 7 February 2014, DBAG consented to an order to conclude the DFSA's proceedings in the DIFC Courts. The Court Order included a declaration that DBDIFC, without reasonable excuse, was in material non-compliance with the requirements to produce information and documents as set out in the DFSA's notices served on 25 July 2013 and 1 October 2013. On 6 March 2014, DBDIFC produced, pursuant to the Court Order a consolidated response to the notices served on 25 July 2013 and 1 October 2013 accompanied by a statement of truth affirming its accuracy and completeness.
- 4.16. As part of the Investigation, DBDIFC worked with DBDIFC's newly-appointed external firm in order to ensure full compliance with an information request made by the DFSA. The DFSA reviewed emails sent by DBDIFC PWM relationship managers to DBDIFC Clients and to their managers. This review confirmed that PWM relationship managers of DBDIFC provided the Financial Services of Advising and Arranging to Clients on a frequent and systemic basis over the whole of the Relevant Period and had not undertaken the consequent steps required by DFSA Rules in relation to certain matters including Client classification, entering into Client Agreements, suitability and AML obligations (although the DFSA investigation has not found any evidence of customer detriment).

Dealings with the DFSA

First internally-documented concerns

4.17. Between March and September 2011 concerns were raised to the DBDIFC Compliance Department by PWM MEA senior employees, that PWM compliance procedures might be inadequate and that there was a risk that PWM was not operating in a compliant manner. These matters were also the subject of email correspondence with external legal counsel, who suggested random sampling of client correspondence to determine whether Advising and Arranging activity had taken place.

DFSA first misled

4.18. On 18 October 2011, an employee in the DBDIFC Compliance Department sent an email to the DFSA stating in part:

“... because the principal activities of the PWM team in the DIFC are the provision of information and referrals, we do not believe that they currently conduct regulated activities from a DFSA perspective.”

4.19. The DFSA considers that this communication was false in light of the state of knowledge of DBDIFC which, through the DBDIFC Compliance Department and the Senior PWM MEA Employee, was aware at the time (at a minimum) of the risk that PWM relationship managers were Advising and Arranging for Clients without complying with certain DFSA COB and AML requirements.

4.20. During a DFSA risk assessment of DBDIFC conducted on 19, 20 and 26 October 2011, individuals in the DBDIFC Compliance Department and PWM business management advised the DFSA that DBDIFC's PWM business line planned to change its business model to an “advisory” model in the near future. However, they did not inform the DFSA of the concerns that had been raised internally to the DBDIFC Compliance Department to the effect that PWM was already Advising and Arranging transactions for Clients without an adequate compliance framework to support such a business model.

4.21. On 30 October 2011, a DBDIFC Compliance Department employee sent an email to the Senior PWM MEA Employee stating that the DFSA:

“eventually accepted our analysis that the PWM business prospected in Dubai did not constitute a DFSA regulated activity as of now (and looking back to May 2010)”.

4.22. The email attached, for comment, a draft note to be sent to the DFSA which described the activities of PWM in the DBDIFC as being introductions and referrals only.

4.23. On 30 October 2011, the Senior PWM MEA Employee sent an email in reply to a DBDIFC Compliance Department employee which stated in part that:

“PWM MEA DIFC is already not limiting itself to pure referral activities but is already engaging in advisory. Whilst this is covered by our branch license it is not formally documented w/ the client as per DFSA requirements.”

4.24. On 30 October 2011, the DBDIFC Compliance Department employee sent a further email in reply stating:

“Thanks. Completely understood. This document is for a very specific purpose but confirm that I am aware of your position.”

- 4.25. On 31 October 2011, notwithstanding the concerns expressed by the Senior PWM MEA Employee in writing the day before, the DBDIFC Compliance Department employee sent an email to the DFSA attaching the note describing the activities of PWM, which was unchanged from the draft discussed the day before and described the activities of PWM as introductions and referrals only. The note stated in part:

“From the DIFC Branch, PWM Dubai act in the capacity of identifying and the minimum prospecting of potential client targets on behalf of the offshore PWM booking centres (including, but not limited to Geneva and Luxembourg). The DB DIFC Model is then the identification, introduction and referral of prospects to PWM teams offshore, who may or may not ultimately adopted (sic) by that offshore entity. Members of the PWM Dubai in the DIFC do not provide investment advice to prospect clients of PWM booking centres.”

- 4.26. By sending this email to the DFSA, DBDIFC provided false information to the DFSA on 31 October 2011 with the result that the DFSA was misled. The Investigation also concluded that DBDIFC failed to notify the DFSA immediately of the material concern about PWM’s activities which the Senior PWM MEA Employee communicated to the DBDIFC Compliance Department employee by email on 30 October 2011.

Country Risk Workshop

- 4.27. On 22 November 2011, DBDIFC conducted a “UAE Country Risk Workshop” at its offices in the DIFC. A number of individuals attended the workshop including members of the Senior Management and DBDIFC Compliance Department. During the UAE Country Risk Workshop, the Senior PWM MEA Employee gave an oral presentation on PWM risks. The written presentation material, which was made available to all attendees, stated in part that:

“Our existing procedures, KPIs, client contractual documentation and client data recording practices are not adapted to an advisory model. The latter is already a reality, with PWM DIFC teams providing investment advice to clients”; and

“The existence and development of advisory activities within the DIFC require us to enter into additional contractual agreements with clients and increase our level of responsibility vis-à-vis them and the regulator”; and

“Failure to obtain DIFC client agreements from clients will put us in breach of DFSA regulations.”

- 4.28. However, none of the attendees at the UAE Country Risk Workshop who were interviewed as part of the Investigation recalled this issue being raised in the oral presentation given by the Senior PWM MEA Employee.

- 4.29. On 23 November 2011, the day after the UAE Country Risk Workshop, a DBAG employee sent an email to the DBDIFC Compliance Department asking for the draft summary of the risk raised by the Senior PWM MEA Employee at the UAE Country Risk Workshop to be reviewed for the purpose of the report to be prepared for that exercise. The email stated that the DBDIFC Compliance Department should amend the identified risk so that it would be:

“streamlined in a way to have it clear but not harming if any regulator would read it.”

4.30. On 23 November 2011, the DBDIFC Compliance Department sent an email in reply to the DBAG employee (copied to the Senior PWM MEA Employee) proposing an amended form of words to describe the risk identified by PWM MEA. The amended form of words referred to “*PWM’s expansion plans*” and the provision of advisory services in the future. It did not make reference to the current activities of PWM. This form of words was used in the final report relating to the UAE Country Risk Workshop that was subsequently circulated.

4.31. On or about 21 December 2011, DBDIFC sent a letter to the DFSA. The letter concerned the DFSA’s recent risk assessment of DBDIFC and related primarily to DBDIFC’s remediation of a number of GTB Clients that had not been subject to client classification (by DBDIFC or any other DBAG entity). The letter contained the following information in relation to PWM:

“wealth management employees do not provide any of the services set out in Schedule A [an attached schedule listing the Financial Services provided by DBDIFC]. The mere introduction and referral of prospective clients to booking locations like Geneva, does not constitute providing financial service”.

A footnote to that statement further advised that:

“It is anticipated that this model will change in Q1, 2012.”

4.32. In its letter to the DFSA dated 21 December 2011, DBDIFC provided false information to the DFSA and failed to notify the DFSA of the material concern about PWM’s activities which the Senior PWM MEA Employee had included in the slides at the workshop, with the result that the DFSA was misled.

Further contraventions

4.33. In February 2012, the Senior PWM MEA Employee sent three separate emails to the DBDIFC Compliance Department that referred to the concern that PWM MEA may not be adhering to the introductions and referrals model. Despite receiving these emails the DBDIFC Compliance Department failed to enquire further into the matter.

4.34. On 3 April 2012, DBDIFC had a meeting with the DFSA. During the course of the meeting, DBDIFC advised the DFSA that DBDIFC:

- (a) had completed its review of the PWM business model;
- (b) would look at the compliance framework for PWM to move to an arranging/advising model in the DIFC, rather than just referral; and
- (c) would revert back to the DFSA when it is in a position to provide an update.

4.35. DBDIFC failed to advise the DFSA of the concerns that had been raised:

- (a) on 30 October 2011 and 22 November 2011; and
- (b) in three separate emails sent by the Senior PWM MEA Employee to the DBDIFC Compliance Department in February 2012.

4.36. DBDIFC did not take the opportunity of the meeting with the DFSA to correct the information it had previously provided concerning the activities of PWM. Therefore, on 3 April 2012, DBDIFC continued to mislead the DFSA about the nature and scope of its PWM activities.

- 4.37. On 11 April 2012, the Senior PWM MEA Employee sent an email to the DBDIFC Compliance Department that clearly articulated that PWM was Advising and Arranging without a compliance framework in place and thus was operating in breach of DFSA requirements. The email stated in part:

"...the RMs remain in charge of the client relationship and do get involved more sporadically in providing investment advice themselves..."; and

"...am concerned with the fact we are actively advising here and still do not formalize this in a properly documented manner with our clients."

- 4.38. DBDIFC failed to notify the DFSA immediately of the material concern about PWM's control framework communicated to the DBDIFC Compliance Department on 11 April 2012.

Internal audit activities and findings

- 4.39. From around late April 2012, an internal project was set up by the DBDIFC Compliance Department to coordinate the implementation of a compliance framework for both PWM MEA and PWM GSA to conduct Advising and Arranging from DBDIFC. The DBDIFC Compliance Department and PWM MEA and GSA business management employees were assigned to the project. Procedures were not implemented until March 2013 for PWM MEA and May 2013 for PWM GSA. During this time, DBDIFC failed to instruct PWM relationship managers to discontinue or alter their Advising and Arranging practices and PWM relationship managers continued to provide Advising and Arranging services to DBDIFC Clients.

- 4.40. In or around June 2012, DBAG's Group Internal Audit carried out field work for the purposes of an internal audit of PWM GSA. That internal audit focused on the operations of PWM GSA in DBAG's Asia Pacific Region but also involved a visit to DBDIFC to inspect PWM GSA's operations.

- 4.41. On 22 June 2012, a Compliance Department employee sent an email to their supervisor stating that:

"I am meeting with business management covering PWM Global South Asia ... on Sunday ahead of a meeting with by [sic] Group Audit on Tuesday (currently auditing Singapore). Notwithstanding the actual activity carried out by [PWM GSA relationship manager and Team leader] and his team, I will be stating that from our perspective, the current model allows them to introduce and refer to booking centres. I'll also mention the work being undertaken to implement the new model."

- 4.42. On 22 June 2012, the Compliance Department supervisor sent an email in reply to the Compliance Department employee stating in part:

"PWM-sounds fine".

- 4.43. On 27 June 2012, Group Internal Audit sent an email to the DBDIFC Compliance Department that articulated a preliminary finding that PWM relationship managers in DBDIFC were Advising and Arranging without a compliance framework in place and that DBDIFC Compliance did not provide oversight over PWM GSA relationship managers in DBDIFC. The email stated in part:

"As per our discussions with RMs and review of activities we are of the view that the following activities are being conducted by RMs of Dubai. Please let us know

that if these will not be construed as violation of regulatory license requirements of DIFC.

- a) *RMs (DIFC) advise clients for investments products and suggest banking products to clients in UAE, India and Pakistan;*
- b) *RMs (DIFC) meet clients and discuss banking products not always with Investment advisor from offshore. And moreover many clients will also not have IA tagged to them in system;*
- c) *RMs file the call report here in Dubai and have access to CCT systems in Dubai;*
- d) *RMs receive the banking instructions such as fund transfers here in Dubai Fax which are processed from here to Singapore after validations;*
- e) *RMs send the clients statements on email and fax as per the request from the customers;*
- f) *RMs perform client suitability for clients;*
- g) *Ongoing portfolio review of clients and transaction monitoring is performed by RMs;*
- h) *Dubai NRI team is in process of entering referral arrangement locally between DIFC branch and external party.”*

4.44. In or around October and November 2012, Group Internal Audit conducted a UAE Governance Review Audit focused on the governance structures of DBAG businesses in the UAE, including DBDIFC. During the course of the fieldwork for that review, PWM MEA self-identified to Group Internal Audit its concern that:

“while the changes to the business operating model have not yet been implemented there is a risk of breaching client conduct regulations”

4.45. The DBDIFC Compliance Department was also informed of the self-identified issue.

4.46. On 27 November 2012, an Internal Audit Report concerning a “UAE Governance Review” and its covering email were distributed to a number of individuals including certain members of Senior Management. The Internal Audit Report and its covering email contained the following statement:

“Although management re-evaluate the UAE business model in order to adapt appropriately to the market conditions, AWM management self-identified the need to fully implement changes to the operating framework to address the potential regulatory impact following recent changes to the AWM business model in the region. This issue is being tracked in the [Group Internal Audit of PWM GSA]”.

4.47. Although this message did not specify the exact nature of the “regulatory impact” referred to, the DFSA Investigation found that DBDIFC failed to investigate the matter or to make further enquiries in spite of the risks self-identified by PWM MEA or identified by Group Internal Audit.

The “new model”

- 4.48. On 11 July 2012, two weeks after the 27 June 2012 email from Group Internal Audit to the DBDIFC Compliance Department employee referred to in paragraph 4.43 above, the DBDIFC Compliance Department employees met with the DFSA and advised that DBDIFC would be implementing an advisory model for PWM “*in the near future*”. At the meeting, DBDIFC described the steps being undertaken to implement an advisory model for PWM and provided several draft ‘template’ documents that had been prepared for that purpose. The documents included a printout of training material for PWM relationship managers which stated in part that:

“Historically, DIFC employee has introduced and referred customers to offshore booking centres (primarily Geneva, Frankfurt and Singapore. No involvement of DIFC employee in any transaction/Financial service that may be agreed upon between a customer and offshore booking centres.)”

- 4.49. At the meeting DBDIFC described to the DFSA a change in business model for PWM in DBDIFC. DBDIFC did not disclose the concerns that had been raised internally on a number of occasions which were referred to above.
- 4.50. On 1 August 2012, a DBDIFC Compliance Department employee sent an email to the DFSA which stated in part:

“As discussed at the meeting on 11 July, the Private Wealth Management (PWM) operating model will change imminently with the effect that PWM employees based in the DIFC will be providing financial services to clients and such clients will be treated as clients of DIFC Branch in accordance with the relevant DFSA Regulations.”

- 4.51. Therefore, at the meeting on 11 July 2012, and by email on 1 August 2012, DBDIFC continued to mislead the DFSA about the nature and scope of its PWM activities.

The “Skilled Person’s Report”

- 4.52. On 13 March 2013, DBDIFC engaged an external firm to prepare the SPR. DBDIFC commissioned the SPR in response to the DFSA’s Investigation. DBDIFC stated that the SPR would provide an independent report into the activities of DBDIFC. However, the external firm preparing the report relied on information provided by DBDIFC and on representations made by its employees when interviewed.
- 4.53. During several meetings over the period from around 17 March 2013 to around 4 April 2013, certain members of Regional Management were informed that PWM relationship managers were Advising and Arranging for Clients before a proper compliance framework was in place.
- 4.54. On 2 April 2013, the Senior PWM MEA Employee sent an email to the DBDIFC Compliance Department (attaching documents evidencing concerns) which stated in part:

“For our discussion this pm, I forward the following documents in which the Business highlights the ongoing advisory activities of WM, as well as the related risks. This is in order to avoid miscommunication happening between the business and DB DIFC Compliance department going forwards.”

Furthermore, as per our recent discussions with [DBDIFC Compliance Department employee 1] and [DBDIFC Compliance Department employee 2], and despite the Compliance training provided to WM staff in November 2012, I strongly recommend that we issue a clear email to WM staff underlining that it is strictly prohibited to WM staff based in Dubai to advise and arrange for clients of the WM booking centres, without these clients first becoming contractual clients of DB Dubai DIFC. I would like this to go out ASAP so if you are OK with the Business sending it, please kindly let me know.”

- 4.55. While the 2 April 2013 email was clear and unambiguous, the Investigation found that around the same time a DBDIFC Compliance Department employee also provided conflicting information to that in the email to certain members of Regional Management. However, DBDIFC did not enquire into the matter and despite being once again told of the “*ongoing advisory activities*” of PWM, DBDIFC did not disclose the breaches to the DFSA and consequently breached Principle 10 by failing to inform the DFSA promptly of the material concern identified concerning PWM and the conduct of PWM relationship managers.
- 4.56. Over the period from 18 March 2013 to 7 April 2013, the external firm, in the capacity of “skilled person”, interviewed a number of DBDIFC employees from the DBDIFC Compliance Department, PWM MEA and PWM GSA. However, none of these employees advised the external firm of the concerns that had been raised about the activities of PWM.
- 4.57. On 3 April 2013, the Senior PWM MEA Employee sent an email to all DBDIFC based PWM MEA relationship managers instructing them not to provide Advising or Arranging services to Clients unless the Client has been on-boarded as a Client of DBDIFC. This was the first instance identified during the Investigation where PWM relationship managers had been instructed that they could not provide the Financial Services of Advising and Arranging to Clients.
- 4.58. Over the period from 4 to 21 April 2013, the DBDIFC Compliance Department received and commented upon several draft versions of the draft SPR. Over this period, the DBDIFC Compliance Department made representations to the external firm that any instances of Advising or Arranging activity by PWM were so infrequent as to be immaterial, and that they were not aware of material Advising or Arranging activities being conducted by PWM.
- 4.59. The comments provided by the DBDIFC Compliance Department to the external firm caused a number of references in the initial draft versions of the SPR to be materially amended and/or removed from the final version of the SPR. This included references to:
- (a) the lack of monitoring performed by DBDIFC Compliance to ensure that PWM adhered to its stated “*introduction and referral model*”; and
 - (b) a conclusion made by the external firm that the activities undertaken by PWM constituted Arranging.
- 4.60. Therefore, by causing certain statements to be removed from the SPR and not providing certain information to the external firm it had engaged to prepare the SPR (for the specific purpose of providing it to the DFSA), DBDIFC concealed information from the DFSA and thereby continued to mislead the DFSA about the nature and scope of its PWM activities.
- 4.61. On 21 April 2013, DBDIFC submitted the SPR to the DFSA. The SPR stated that it was the external firm’s understanding that the PWM business line operated an introduction and referral model, under which DBDIFC introduced and referred

Clients to other DBAG entities and did not provide Financial Services to Clients. In making this statement, the external firm relied on information provided to it by DBDIFC and on representations made by its employees when interviewed (which, not inconsistent with its instructions, the external firm did not make any independent inquiries to test). The SPR stated that PWM had historically provided:

“‘introduction and referral’ services that did not constitute Financial Services (the ‘Old PWM Model’) but that it was in the process of implementing a ‘New PWM Model’, under which it would provide Advising and Arranging services and would have in place systems and controls to allow it to comply with COB and AML requirements.”

- 4.62. On 2 May 2013, the DFSA met with the external firm responsible for producing the SPR and informed them that the DFSA had concerns that DBDIFC PWM had been providing Financial Services. On 3 May 2013, the DFSA’s concerns were reported to an employee of the DBDIFC Compliance Department. On 13 June 2013, an employee of the DBDIFC’s Compliance Department and DBDIFC’s legal representatives met with the DFSA. At this meeting, the DFSA advised that it would expand the Investigation to include whether or not PWM had provided Financial Services in breach of DFSA requirements.
- 4.63. Despite DBDIFC having knowledge of the material concerns raised over the previous two years about the activities of PWM, DBDIFC failed to inform the DFSA of the concerns regarding PWM’s non-compliance and did not correct the false information it had previously provided to the DFSA, including in the SPR. Therefore, DBDIFC continued to mislead the DFSA about the nature and scope of its PWM activities.

25 July 2013 notice

- 4.64. On 25 July 2013, the DFSA issued a notice to DBDIFC requiring the production of documents and information concerning the activities of PWM.
- 4.65. On 21 August 2013, DBDIFC sent a letter to the DFSA which, *inter alia*, provided by way of background a summary of certain aspects of the PWM business as it relates to DBDIFC. The letter stated in part:

“As indicated in the Skilled Person’s Report a New Model for operating the PWM business is being implemented, moving away from an introduction/referral model (Old Model) to one which expressly ‘on-boards’ clients as clients of DBDIFC in accordance with DFSA Rules and to whom Financial Services may be provided.”

- 4.66. The context of the letter was that the DFSA’s 25 July 2013 notice to DBDIFC required DBDIFC, *inter alia*, to provide a schedule of information relating to all DBAG Clients that had a DBDIFC PWM employee assigned as a relationship manager, or to whom DBDIFC was providing Financial Services. The purpose of DBDIFC’s letter of 21 August 2013 was to advise the DFSA of difficulties it was faced with, due to foreign secrecy provisions, in accessing and providing that information to the DFSA.
- 4.67. On 25 August 2013, the DFSA met with an employee of the DBDIFC’s Compliance Department and DBDIFC’s legal representatives. At the meeting, the DFSA advised that it had concerns that DBDIFC PWM had been providing Financial Services. Later that day, the DBDIFC Compliance Department reported by email to certain members of Senior Management that the DFSA had advised at the meeting that:

“they did not have a sufficiently clear view of the activities carried out locally (and historically) by both PWM teams. They are concerned that regulated activities may have been conducted by these teams, ahead of the implementation of the PWM ‘New’ model. They were of the view that the issues as they perceive them could be systemic in nature.”

- 4.68. Despite DBDIFC having knowledge of material concerns expressed within DBDIFC in relation to the activities of PWM, DBDIFC failed to disclose PWM’s non-compliance to the DFSA at its meeting on 25 August following the receipt of the 25 July 2013 notice or correct the false information it had previously provided to the DFSA, and the author of the SPR, concerning PWM.
- 4.69. On 27 August 2013, the DFSA conducted an on-site inspection of DBDIFC focused on the activities of PWM. During the course of that inspection, the DFSA interviewed a number of DBDIFC PWM employees, in the presence of a DBDIFC Compliance Department employee and a representative of the external firm which had produced the SPR. The DFSA’s Investigation found that the information provided by DBDIFC employees during the course of that inspection was false and misleading, in that relevant PWM employees consistently represented that PWM did not, in practice, provide the Financial Services of Advising and Arranging.
- 4.70. Therefore, on 27 August 2013, DBDIFC continued to mislead the DFSA about the nature and scope of its PWM activities by providing false information and by concealing information from the DFSA.

1 October 2013 notice

- 4.71. On 1 October 2013, the DFSA issued DBDIFC with a further notice requiring the production of documents and information concerning PWM. In responding to the notice, DBDIFC failed to disclose the material concerns that had been raised in relation to the activities of PWM, or to correct the inaccurate information it had previously provided to the DFSA about PWM.
- 4.72. In September and October 2013, the DBDIFC Compliance Department conducted a sampling exercise of communications between PWM and Clients. That sampling exercise found that approximately 40 to 50 per cent of communications reviewed constituted Advising and/or Arranging. The DFSA’s Investigation found that, in breach of Principle 10, DBDIFC did not disclose the results of the sampling exercise to the DFSA promptly, despite being aware of the DFSA’s concerns about the activities of DBDIFC’s PWM business line.
- 4.73. On 22 January 2014, following the commencement of Court action by the DFSA to enforce compliance with certain notices, DBDIFC disclosed to the DFSA the Advising and Arranging activities of PWM. This was two years and four months after the Investigation revealed that the Firm knew that PWM was providing Advising and Arranging services to its Clients.

Findings regarding dealings with Clients

- 4.74. The Investigation revealed that DBDIFC failed to treat many of its DIFC customers as Clients. Instead, these customers were treated as clients of the booking locations (i.e. other DBAG branches or Deutsche Bank (Suisse) SA). Consequently, many DBDIFC Clients, to whom DBDIFC provided Financial Services over the Period, were not:
- (a) documented as Clients of DBDIFC;

- (b) classified in the DIFC in accordance with COB Rule 2.3.1;
- (c) provided with a DBDIFC Client Agreement and Key Information in accordance with COB Rule 3.3.2;
- (d) subject to suitability assessments in the DIFC in accordance with COB Rule 3.4.2;
- (e) subject to customer identification and verification in the DIFC in accordance with AML Rules 3.4.1 and 3.4.2; and
- (f) subject to an AML risk assessment in the DIFC in accordance with AML Rule 3.7.1.

4.75. From 1 January 2011 to 19 February 2013, DBDIFC failed to deal with 355 active Clients of DBDIFC's CB&S and GTB business lines in accordance with requirements specified in paragraph 4.74 above. This number represents all but 5 of DBDIFC's CB&S and GTB Clients.

4.76. From 1 January 2011 to 30 June 2013, DBDIFC failed to comply with requirements specified in paragraph 4.74 in respect of all of PWM's 583 Clients.

4.77. DBDIFC also failed in these respects to:

- (a) establish and verify, and obtain sufficient and satisfactory evidence of the identity of 938 customers with, or for whom, DBDIFC acted in accordance with AML Rules 3.4.1 and 3.4.2;
- (b) establish and maintain effective AML policies, procedures, systems and controls to prevent opportunities for money laundering in relation to DBDIFC and its activities, take reasonable steps to ensure that its employees comply with relevant requirements of its AML systems and controls, and review the effectiveness of its AML systems and controls in accordance with AML Rule 3.1.1;
- (c) establish AML policies, procedures, systems and controls to adequately address its money laundering risks, taking into account its products, services and customers, and assess its risks in relation to money laundering and perform enhanced due diligence investigations for higher risk products, services and customers in accordance with AML Rule 3.7.1; and
- (d) between 1 January 2011 and 7 February 2014:
 - (i) take reasonable steps to ensure that its records were held in a manner consistent with AML Rule 3.4.12;
 - (ii) verify if there was secrecy or data protection legislation that would restrict access, without delay, by the DFSA to customer identification records held by DBDIFC and obtain without delay certified copies of relevant customer identification evidence and keep such copies in a jurisdiction which allows access by the DFSA in accordance with AML Rule 3.4.12;
 - (iii) retain records of matters and dealings which are the subject of requirements and standards under legislation applicable in the DIFC and ensure that records, however stored, were capable of production

within a reasonable period not exceeding 3 days in accordance with GEN Rule 5.3.24; and

- (iv) take reasonable steps to ascertain if there is any secrecy or data protection legislation that would restrict access by the DFSA to any data required to be recorded under DFSA Rules and keep copies of relevant documents or material in the DIFC which allows access in accordance with legislation applicable in the DIFC in accordance with GEN Rule 11.1.4.

Governance, Systems and Controls and Compliance Arrangements

4.78. During the Relevant Period, DBDIFC had an SEO who was Authorised by the DFSA as an Authorised Individual and who had ultimate responsibility for the day-to-day management, supervision and control of one or more (or all) parts of DBDIFC's Financial Services carried on in or from the DIFC. The current SEO, who was appointed on 2 January 2012, was the co-head of sales and coverage, CB&S and is one of the people who reports to the CEO. The SEO had informal reporting structures to him, from business and compliance heads by way of ExCo meeting forums and meetings, although those reporting lines were not formal reporting lines except for two senior DBDIFC PWM GSA employees, who reported to him from around October 2012, as they had no local reporting line. The SEO job description describes the job to include:

“Assist the organisation in fulfilling its Corporate Governance Objectives, Promotes and Maintains Corporate governance Standards....engages regularly with the Regional CEO ... and local management on significant legal, regulatory and reputational matters”.

4.79. During the Relevant Period, DBDIFC had a Compliance Officer, a person who was Authorised by the DFSA as an Authorised Individual and who had responsibility for compliance matters in relation to DBDIFC's Financial Services. This person reported directly to the Head of Compliance for EMEA in respect of compliance matters. The Compliance Officer also had a local dotted reporting line to the COO for the MENA Region (a dotted reporting line meant that the COO for the MENA Region did not manage the Compliance Officer on a day to day basis).

4.80. DBDIFC also has heads for each of the business lines it operates namely PWM, CB&S and GTB. The heads of the business lines are responsible, either alone or jointly with other individuals, for the management, supervision or control of one or more parts of DBDIFC's Financial Services. During the Relevant Period, the heads of the business lines were not licensed as Senior Managers pursuant to GEN Rule 7.4.7, but should have been under Article 43 of the Regulatory Law. The heads of the business lines had a dotted reporting line to the CEO (a dotted reporting line meant that the CEO did not manage the heads of business lines on a day to day basis) in addition to the direct reporting lines within the business divisions. CB&S had four senior employees, including the SEO, who also had an additional reporting line to the CEO.

4.81. The DFSA considers that failures in DBDIFC's corporate governance framework contributed to the failures referred to in this Decision Notice.

4.82. The Investigation shows that DBDIFC's PWM MEA and PWM GSA business lines:

- (a) were not adequately or effectively supervised within DBDIFC. Neither business line had in place adequate arrangements to supervise the activities of their employees located within DBDIFC;

- (b) did not have adequate systems and controls in place in relation to their activities in the DIFC. Prior to March 2011, PWM MEA had procedures in place to govern the activities of PWM MEA relationship managers employees in DBDIFC. However, in March 2011, DBDIFC identified that those procedures were inadequate and were not being followed. PWM MEA did not implement adequate procedures until March 2013. PWM GSA did not have procedures in place to control the activities of PWM GSA relationship managers in DBDIFC until May 2013.
 - (c) did not provide effective instruction on relevant local regulatory requirements to PWM relationship managers operating in DBDIFC.
- 4.83. The Investigation shows that the DBDIFC Compliance Department did not, or did not adequately, monitor the activities of PWM MEA or GSA in or from DBDIFC.
- 4.84. The only exercise undertaken by the DBDIFC Compliance Department to ascertain the actual activities of PWM relationship managers, was a sampling exercise undertaken, with respect to PWM MEA RMs, in September and October 2013, after the commencement of the Investigation, despite concerns having been being raised directly with the DBDIFC Compliance Department on numerous occasions.
- 4.85. As noted above, the Investigation revealed that, on many occasions, Senior Management were made aware of concerns within DBDIFC that PWM relationship managers were conducting the Financial Services of Advising and Arranging without a control framework in place. However, Senior Management failed to:
- (a) inquire adequately into the concerns raised;
 - (b) investigate the concerns to identify their veracity and the nature and scale of any problem;
 - (c) monitor the activities of PWM relationship managers;
 - (d) prevent PWM from continuing to operate in breach of DFSA requirements;
 - (e) report the concerns to any of the management committees operating in DBDIFC;
 - (f) provide information about the concerns to the SEO at material times in March and April 2013;
 - (g) implement adequate supervisory and oversight arrangements; or
 - (h) implement an adequate control framework under which Financial Services could be provided in accordance with legislative requirements.
- 4.86. From early May 2013, the DFSA put DBDIFC on notice that it had specific concerns about PWM. The Investigation found that those concerns were escalated to certain members of Senior Management but were not considered by any of the Firm's management committees.
- 4.87. The Investigation found that, in respect of DBDIFC's governance, systems and controls and compliance framework, DBDIFC failed to:
- (a) apportion significant responsibilities between the members of its Senior Management to enable the business of DBDIFC to be adequately

monitored and controlled by the Senior Management in accordance with the requirements of GEN Rule 5.2.1;

- (b) establish and maintain adequate systems and controls to ensure that DBDIFC's affairs were managed effectively and responsibly by its Senior Management, and undertake regular reviews of its systems and controls, in accordance with the requirements of GEN Rule 5.3.1;
- (c) ensure that any employee delivering Financial Services to customers is clearly identified, together with their respective lines of accountability and supervision, in accordance with GEN Rule 5.3.2(2);
- (d) ensure that DBDIFC's affairs were managed effectively and responsibly by its Senior Management, by having adequate systems and controls to ensure, as far as is reasonably practical, that it complied with legislation applicable in the DIFC, in accordance with GEN Rule 4.2.3 (Principle 3 – Management, systems and controls);
- (e) establish and maintain risk management systems and controls to enable DBDIFC to identify, assess, mitigate, control and monitor its risks, in accordance with the requirements of GEN Rule 5.3.4;
- (f) establish and maintain compliance arrangements, including processes and procedures that ensure and evidence, as far as reasonably practicable, that DBDIFC complied with all legislation in the DIFC, in accordance with GEN Rule 5.3.7;
- (g) ensure that the Compliance Officer had sufficient resources, including an adequate number of competent staff, to perform his or her duties objectively and independently as required by GEN Rule 5.3.9 and for DBDIFC to conduct and manage its affairs in accordance with GEN Rule 4.2.4 (Principle 4 – Resources);
- (h) establish and maintain documented monitoring processes and procedures to ensure any compliance breaches were identified, reported and promptly acted on, in accordance with GEN Rules 5.3.11 and 5.3.12; and
- (i) ensure that the arrangements that were in place to provide Senior Management with relevant, accurate, comprehensive, timely and reliable information to organise, monitor and control its activities and comply with legislation in the DIFC and manage risks, in accordance with GEN Rule 5.3.17 were being adhered to by DBDIFC.

5. DETERMINATION OF FINANCIAL PENALTY

5.1. In deciding the appropriate level of the fine to impose on the Firm, the DFSA has taken into account the factors set out in sections 6-4 and 6-5 of the DFSA's Regulatory Policy and Process Sourcebook (RPP), as follows:

Step 1: Disgorgement

5.2. This step was not considered to be relevant.

Step 2: The seriousness of the contravention

5.3. The DFSA considers DBDIFC's failings to be serious because:

- (a) the Firm benefited from the contraventions by not having to comply with DFSA Rules, which meant that the Firm did less work in on-boarding DIFC Clients and maintained fewer records;
- (b) the contraventions revealed serious and systemic weaknesses in the Firm's procedures and in the management systems and internal controls relating to all or part of the Firm's business;
- (c) the contraventions created risk, in particular:
 - (i) the risk that DBDIFC might provide Financial Services to customers who would not have qualified as Professional Clients;
 - (ii) the risk that DBDIFC might recommend financial products or Financial Services that were unsuitable to Clients; and
 - (iii) the risk of money laundering and financial crime.
- (d) several members of Senior Management and Regional Management were made aware of the risk that DBDIFC might have been in contravention of DFSA Rules;
- (e) the contraventions were committed over a long period of time, including during the DFSA Investigation, thus causing the DFSA to incur further expense as a result of DBDIFC's provision to the DFSA of false information on numerous occasions.

5.4. In considering whether DBDIFC's failings were deliberate, the DFSA had regard to the factors set out in RPP 6-5-5 including that:

- (a) the contraventions were intentional, in that Senior Management, or a responsible individual, intended, could reasonably have foreseen, or foresaw that the likely or actual consequences of their actions or inaction would result in a contravention;
- (b) one or more members of Senior Management, or a responsible individual, knew that their actions were not in accordance with the Firm's internal procedures or the DFSA's requirements;
- (c) one or more responsible individuals in DBDIFC's Compliance Department sought to conceal their misconduct; and
- (d) the contraventions were repeated.

5.5. Given the nature of DBDIFC's failings and because they can be categorised into three areas of conduct, the DFSA considers it appropriate to specify amounts in relation to those three categories. Accordingly, having regard to the matters set out in paragraphs 5.2 to 5.4 above, a breakdown of the figure after Step 2 is as follows:

- (a) for the contraventions described in this Decision Notice, relating to DBDIFC's dealings with the DFSA, the DFSA imposes the following fines:
 - (i) for failing to give or produce specified information or documents to the DFSA - \$250,000;

- (ii) for failing to notify the DFSA immediately that it was aware, or had reasonable grounds to believe, that a significant breach of a Rule by DBDIFC had occurred - \$250,000;
 - (iii) for concealing information where the concealment of such information misled the DFSA, providing information to the DFSA that was false, and failing to deal with the DFSA in an open and co-operative manner - \$5,000,000;
- (b) for the contraventions described in this Decision Notice, relating to DBDIFC's dealing with Clients, the DFSA imposes a fine of \$1,500,000; and
 - (c) for the contraventions described in this Decision Notice, relating to DBDIFC's governance, the DFSA imposes a fine of \$1,500,000.

5.6. The figure after Step 2 is therefore \$8,500,000.

Step 3: Mitigating and aggravating factors

5.7. In considering the appropriate level of the fine, the DFSA had regard to the factors set out in RPP 6-5-8. The DFSA found, and the evidence supports, the following aggravating factors:

- (a) that DBDIFC failed to bring the relevant contraventions to the DFSA's attention;
- (b) DBDIFC on many occasions misled the DFSA and failed to cooperate with the DFSA's Investigation;
- (c) because of DBDIFC's lack of cooperation prior to 22 January 2014, the DFSA initiated Court action against DBDIFC to enforce compliance with its notices to produce information and documents;
- (d) that several members of Senior Management were aware of the risk that DBDIFC might have been in contravention of DFSA Rules but failed to take adequate steps to address the failures; and
- (e) DBDIFC failed to act, or to act in a timely manner, after being told of the DFSA's concerns or after becoming aware of the DFSA's publication of enforcement actions in relation to two other Authorised Firms which covered substantially the same or similar grounds as the contraventions in relation to DBDIFC's dealings with its clients.

5.8. The DFSA acknowledges the following mitigating factors:

- (a) the breaches all flow from the fact that the introduction and referral model was not being followed and so Clients were not on-boarded according to DIFC regulatory standards. However, on-boarding was done in DB's booking locations;
- (b) that DBDIFC has confirmed that the deficiencies identified in all files have now been materially remediated;
- (c) since March 2013 (in relation to PWM MEA) and May 2013 (in relation to PWM GSA), DBDIFC has had a new operating model in place for PWM which permits Advising and Arranging; and

- (d) since 22 January 2014, DB has escalated the matter appropriately within DBAG and has been open and cooperative with the DFSA and taken steps to remedy the identified failings. In particular the new external firm appointed by DBDIFC in 2014 has assisted DBDIFC in: (i) providing a full report to the DFSA which identifies the Advising and Arranging issue; and (ii) fully complying with the DFSA's information requests.

5.9. In respect of the fine imposed on DBDIFC referred to in paragraph 5.5(a)(iii), the amount would have been \$5,000,000 but the DFSA decided to increase this figure to \$6,000,000 to include an upward adjustment of 20%, in the amount of \$1,000,000, to take into account the aggravating nature of DBDIFC's conduct.

5.10. The figure after Step 3 is therefore \$9,500,000.

Step 4: Adjustment for deterrence

5.11. Under RPP 6-5-9, if the DFSA considers that the level of fine which it has arrived at after Step 3 is insufficient to deter the firm who committed the contravention, or others, from committing further or similar contraventions, the DFSA may increase the fine. RPP 6-5-9 sets out the circumstances where the DFSA may do this.

5.12. In this regard, in the present case, the DFSA considered that RPP 6-5-9 (b) was relevant in that action in respect of similar contraventions has failed to improve industry standards, both in respect of the dealings by the Firm with its clients and its dealings with the DFSA.

5.13. The DFSA also considered that RPP 6-5-9 (c) was relevant in that, unless significant regulatory action was taken and publicised regarding, in particular, the Firm's breach of Principle 10 and contraventions of Article 66 of the Regulatory Law, there would be a greater risk that similar contraventions might be committed by DBDIFC or by other firms in the future.

5.14. Therefore, the DFSA has considered it necessary to impose an upward adjustment to the fine to achieve an appropriate deterrent effect. In this regard, the breach of Principle 10 and contraventions of Articles 66 and 69 of the Regulatory Law have been adjusted upwards to achieve an appropriate deterrent effect.

5.15. Accordingly, in respect of the fine imposed on DBDIFC referred to in paragraph 5.5(a)(iii), the amount would have been \$5,000,000 but the DFSA decided to increase this figure by 20%, in the amount of \$1,000,000, to deter DBDIFC or any other person from engaging in the same or similar conduct.

5.16. The figure after Step 4 is therefore \$10,500,000.

Step 5: Settlement discount

5.17. Where the DFSA and the firm on whom a fine is to be imposed agree on the amount of the fine and other terms, RPP 6-5-10 provides that the amount of the fine which might otherwise have been payable will be reduced to reflect the stage at which the DFSA and the firm reached agreement.

5.18. In the present case, the DFSA and DBDIFC have reached agreement on the relevant facts and matters relied on and the amount of the fine to be imposed. Having regard to the stage at which this agreement has been reached and in recognition of the benefit of this agreement, the DFSA has applied a 20% discount to the level of fine which the DFSA would have otherwise imposed.

The level of fine imposed

5.19. Given the matters set out in paragraphs 5.2 to 5.18 above, the DFSA has determined that it is proportionate and appropriate to impose on DBDIFC a fine of \$8,400,000 in this matter.

6. THE DIRECTIONS

6.1. DBDIFC must, within a timeframe to be agreed with the DFSA:

- (a) establish a corporate governance framework, approved by the DFSA, that is appropriate to the nature, scale and complexity of the business of DBDIFC;
- (b) apportion significant responsibilities between the members of its Senior Management in accordance with GEN 5.2.1, including appointing a sufficient number of individuals in Licensed Functions who comprise an adequate mix of individuals who each possess the relevant knowledge, skills, expertise and time commitment to fulfil their responsibilities;
- (c) ensure that Senior Management undergo ethics and corporate governance training approved by the DFSA; and
- (d) ensure that all relevant DBDIFC staff undergo specialised training approved by the DFSA in the requirements of the DFSA-administered laws and Rules applicable to their duties in the DIFC.

7. PROCEDURAL MATTERS

Decision Maker

7.1. The decision to take the action taken in this Decision Notice was made by the DFSA's Decision Making Committee and is given under the Regulatory Law.

Manner and time for payment

7.2. The Fine must be paid by DBDIFC within 14 days of the date on which the DFSA publishes information about this decision.

If the Fine is not paid

7.3. If all or any of the Fine is outstanding on the date after that specified in paragraph 7.2 above, the DFSA may recover the outstanding amount as a debt owed by DBDIFC and due to the DFSA.

Evidence and other material considered

7.4. The DFSA has provided DBDIFC with 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 Decision Notice.

Appeal rights

7.5. Under Article 90(5) of the Regulatory Law, DBDIFC has the right to refer this matter to the FMT for review. However, in agreeing to the action set out in this Decision Notice and deciding to settle this matter, DBDIFC has agreed that it will not refer this matter to the FMT.

Confidentiality and publicity

- 7.6. Under Article 116(2) of the Regulatory Law, 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 under the DIFC.
- 7.7. In accordance with Article 116(2) of the Regulatory Law, the DFSA will publicise the action taken in this Decision Notice and the reasons for that action. This may include publishing the Decision Notice itself, in whole or in part.
- 7.8. DBDIFC will be notified of the date on which the DFSA intends to publish information about this decision.

Signed:

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Errol Hoopmann

On behalf of the Decision Making Committee of the DFSA

