



DECISION NOTICE

To: Mr Raphael Lilla

DFSA Reference No.: I003946

Address: C/- Al Tamimi & Company
Advocates & Legal Consultants
Dubai International Financial Centre
Building 4 East, 6th Floor
PO Box 9275
Dubai
UNITED ARAB EMIRATES

Date: 9 May 2016

ACTION

1. For the reasons given in this Notice and pursuant to Article 90(2) of DIFC Law No.1 of 2004 (“the Regulatory Law”), the Dubai Financial Services Authority, (“DFSA”) has decided to impose on Mr Raphael Lilla, a financial penalty of US\$56,000 (“the Fine”).
2. Mr Lilla agreed to settle this matter at an early stage following the conclusion of the DFSA's investigation and therefore qualified for a 20% discount under the DFSA's policy for early settlement.
3. Were it not for the settlement discount, the DFSA would have imposed a fine of US\$70,000 on Mr Lilla. Mr Lilla also agreed not to refer the matter to the Financial Markets Tribunal (the FMT).

DEFINITIONS

4. 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.
5. This Notice uses further definitions found in Annex B.

SUMMARY OF REASONS

6. In August 2014, Mr Lilla caused an Authorised Firm (“the Firm”) to establish business relationships with two Clients, Client M and Client S, by opening bank accounts for them.
7. The Firm classified the Clients as “high risk”, meaning that the AML Module required the Firm to carry out Enhanced Customer Due Diligence (“EDD”) for these Clients prior to opening accounts and establishing business relationships with them.
8. The Firm opened the accounts and established the business relationships before completing the EDD, in contravention of the AML Module. The Firm also did not follow its own Client account opening policies and procedures when it opened the accounts.
9. Mr Lilla and another Licensed Director of the Firm instructed the Firm to open the accounts and establish the business relationships with the Clients in circumstances where:
 - a. the Firm’s Senior Executive Officer (“SEO”) and Compliance Officer (“CO”) advised Mr Lilla that EDD was not complete;
 - b. Mr Lilla was aware that the Firm was seeking independent legal advice regarding the opening of the accounts (which subsequently confirmed EDD was required); and
 - c. Mr Lilla was aware that he was not following the Firm’s own Client account opening policies and procedures.
10. By engaging in this conduct, the DFSA considers that Mr Lilla:
 - a. caused the Firm to open the accounts and contravene the AML Module. As a result, he was knowingly concerned in these contraventions pursuant to Article 86 of the Regulatory Law; and
 - b. contravened Rule 4.4.2 of the General Module by failing to act with due skill, care and diligence in carrying out his functions as a Licensed Director of the Firm.
11. The DFSA therefore decided to take the action set out in this Notice.

FACTS AND MATTERS RELIED UPON

Background

12. At all material times, and until his resignation on 13 August 2015, Mr Lilla was a Licensed Director and a member of the Board of the Firm.
13. Client M comprises two individuals, and an associated company, who belong to a South American family.
14. Client S is a company of which the ultimate beneficial owner is a member of an Asian family.

The Firm's Account Opening Process

15. In summary, the Firm's account opening policies and procedures require the:
 - a. relevant relationship manager to collect CDD and, where appropriate, EDD documentation from the prospective Client;
 - b. Firm's CO to sign-off that the collected CDD/EDD documentation meets the AML Module requirements; and
 - c. Firm's relevant committee to approve on-boarding the Client and opening the account(s).

The M Accounts and the S Account

16. For Client M, the Firm opened a joint account for two individuals and an account for an associated company on 5 August 2014 ("the M Accounts"). Client M intended to transfer a total of approximately US\$29.8million in funds and assets from bank accounts in Switzerland to the M Accounts.
17. For Client S, the Firm opened an account on 13 August 2014 ("the S Account"). The representative of Client S initially stated he intended to transfer US\$10-20million to the S Account, and that this could increase in due course to over US\$100million.
18. In respect of each of these accounts, the Firm:
 - a. assigned a Firm specific account number ("the Account Number") to each account;
 - b. assigned International Bank Account Numbers ("IBANs") to the corresponding bank account in each currency in which the Clients wished to transact;
 - c. provided the Account Number and the IBANs to Client M and Client S in order that they could transfer cash and assets to the Firm; and
 - d. expected that Client M and Client S would transfer cash and assets to the Firm "*immediately*".

The Circumstances of the Opening of the Accounts

19. The Firm opened the M Accounts and the S Account in circumstances where:
 - a. the Firm classified Client M and Client S as high risk clients and, therefore, EDD had to be completed for each of these Clients in accordance with the AML Module;
 - b. the Firm opened the accounts prior to the completion of EDD;
 - c. the Firm had made initial enquiries which uncovered adverse information regarding both accounts as follows:
 - i. M Accounts – associated persons and entities of Client M were the subjects of civil proceedings in another jurisdiction where the associated entities were suspected of receiving proceeds from a Ponzi Scheme; and

- ii. S Account – the beneficial owner of the S Account was the subject of criminal charges;
- d. Mr Lilla and another Board member instructed the SEO and CO of the Firm to open the M Accounts and S Account as follows:
 - i. in regard to the M Accounts, Mr Lilla and another Board member stated in a letter dated 30 July 2014 to the SEO that:

“the Board of Directors formally asks you to open [the M Accounts] as soon as possible, to avoid any demand for further additional information or documents, and to deliver the related IBAN numbers latest by 5 August 2014”; and
 - ii. in regard to the S Account, Mr Lilla and another Board member instructed the SEO and the CO in a telephone conference that:

“based on their comfort of the status of the client; the account should also be opened at [the Firm]”.
- e. Mr Lilla gave the instructions to open the M Accounts and S Account despite the fact that the SEO and CO had:
 - i. advised the Board, and Mr Lilla in particular, that opening the accounts without first completing EDD would cause the Firm to contravene DFSA Rules. In response, Mr Lilla stated to the SEO on 21 July 2014 that:

“I am reminding you that you are submitted to specific corporate governance rules which means that you have to report to the Board in your capacity of CEO (ad interim)...and you have to execute the decisions taken by the Board. If you do not intend to follow this rule, please advise so that appropriate measures will have to be considered. A formal warning is still pending from my side in view of your unfounded allegations made in your email of today and which will require further explanations upon my return of holydays [sic]. In this situation, you have clearly exceeded your authorised limits.....In conclusion, I am expecting from you cooperation, support and loyalty. If it is not possible, I will escalate to the appropriate level”; and
 - ii. provided the Board, including Mr Lilla, with independent legal advice from external counsel confirming that the Firm had not completed EDD and that, therefore, opening the accounts could cause the Firm to contravene DFSA Rules. The SEO and CO provided the independent legal advice in respect of both the M Accounts and the S Account shortly after these accounts were opened. In the case of the M Accounts, the advice was provided the day after the accounts were opened. In the case of the S Account, the advice was provided on the same day that the account was opened; and
- f. the Firm opened the accounts without complying with the Firm’s policies and procedures for opening accounts in that:
 - i. the CO had not signed-off that the EDD for Client M and Client S met the requirements of the DFSA’s AML Module; and

- ii. the relevant Firm committee had not considered, and therefore did not approve, the on-boarding of Client M and Client S.

Blocking of the Accounts

20. The SEO and CO of the Firm followed Mr Lilla's instructions, and opened the M Accounts on 5 August 2014, and the S Account on 13 August 2014.
21. On or about 24 August 2014, the SEO and CO approached the Chairman of the Board to discuss the opening of the M Accounts and the S Account. The SEO and CO recommended blocking these accounts for both incoming and outgoing transactions. The Chairman accepted this recommendation and instructed the SEO and the CO to block the M Accounts and the S Account.
22. On or about 26 August 2014, the Firm notified Client S that the S Account had been blocked. The Firm did not at any time receive any funds or assets for the benefit of the S Account.
23. On or about 28 August 2014, the Firm received approximately US\$29.8million in funds and assets for the benefit of the M Accounts. As the Firm had blocked the M Accounts, it placed the funds and assets into a "suspense account". At the end of March 2015, the funds and assets were transferred out of the Firm.

DFSA Notification

24. On 5 August 2014, the Board including Mr Lilla gave an instruction to the SEO and CO that "*the Board of Directors....will instruct you if and when the opening of the [M Accounts] will have to be reported to the DFSA*".
25. On 7 August 2014, the SEO and the CO notified the DFSA, and other relevant authorities in the UAE, of the opening of the M Accounts. On 14 August 2014, they did the same regarding the S Account.

Closing of the Accounts

26. On 5 November 2014, the Firm closed the M Accounts.
27. On 11 November 2014, the Firm closed the S Account.

CONTRAVENTIONS

28. The DFSA considers that Mr Lilla instructed and caused the Firm to open the M Accounts and the S Account although he knew, at the time of giving this instruction, that the EDD required by the DFSA's AML Module was not completed and the Firm's account opening policies and procedures had not been followed. Despite having this knowledge, Mr Lilla nevertheless insisted that the accounts be opened.
29. Mr Lilla also received independent legal advice, shortly after the M Accounts and the S Account were opened, which confirmed that the opening of these accounts prior to the completion of EDD would contravene DFSA Rules. Despite receiving the advices, Mr Lilla did not consider reversing his instruction to open the accounts or otherwise acting to mitigate the risks involved in the opening of the accounts.
30. The DFSA therefore considers that, by engaging in this conduct, Mr Lilla:

- a. was knowingly concerned in the Firm's contravention of Rules 7.7.1(1)(b) and (c) of the AML Module (pursuant to Article 86 of the Regulatory Law); and
- b. contravened Rule 4.4.2 of the General Module by failing to act with due skill, care and diligence in carrying out his functions as a Licensed Director of the Firm.

ACTION

31. In deciding to take the action set out in this Notice, the DFSA has taken into account the factors and considerations set out in sections 6-2 and 6-3 of the DFSA's Regulatory Policy and Process Sourcebook (RPP).
32. Annex A sets out extracts from statutory and regulatory provisions and guidance relevant to this Notice.
33. The DFSA considers that the action in this Notice supports the DFSA's objectives to:
 - a. 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 (Article 8(3)(d));
 - b. protect direct and indirect users and prospective users of the financial services industry in the DIFC (Article 8(3)(e)); and
 - c. promote public understanding of the regulation of the financial services industry in the DIFC (Article 8(3)(f)).

The Fine

Factors considered in imposing the Fine

34. With reference to RPP Section 6-2, the DFSA considers the following factors to be of particular relevance in deciding to impose the Fine on Mr Lilla:
 - a. The deterrent effect of the action and the importance of deterring Mr Lilla and other Persons from committing further or similar contraventions. This includes other AIs, and members of the Governing Body of Authorised Firms;
 - b. The nature, seriousness and impact of Mr Lilla's contraventions. Although the Firm subsequently took steps to mitigate the risks caused by Mr Lilla's pressure to open the accounts, the DFSA considers his behaviour to be serious. Further, the DFSA considers Mr Lilla's contraventions were reckless in that he completely disregarded the advice of the SEO and CO, and did not act on the advice received from independent external legal counsel;
 - c. The degree of involvement of a number of other Persons in the contraventions. Mr Lilla and another Board member were the main persons that caused the contravention;
 - d. Mr Lilla's conduct after the contraventions. The DFSA notes that Mr Lilla cooperated fully with the DFSA's investigation;

- e. Mr Lilla's position and responsibilities. As a Licensed Director of the Firm, Mr Lilla was responsible for:
 - i. approving the Firm's policies, processes and procedures;
 - ii. setting the Firm's systems and controls; and
 - iii. ensuring that the Firm's policies, processes, procedures and systems and controls complied with all legislation applicable in the DIFC;
 - f. Mr Lilla's conduct caused the Firm to fail to comply with the AML Module and also with the Firm's own account opening policies and procedures;
 - g. The difficulty in detecting and investigating the contravention that is the subject of the action. In this particular matter, the Firm notified the DFSA of the issue. Had it not done so, it is unlikely the DFSA would have been made aware of the contraventions as contraventions of this type are generally difficult to detect unless:
 - i. the DFSA has access to relevant internal communications between the senior management and the members of the Governing Body of an Authorised Firm. This is unlikely, because the DFSA does not generally review such communications, even during periodic risk assessments; or
 - ii. the senior management of an Authorised Firm make a complaint to, or notify the DFSA. The DFSA was notified of the conduct in this matter by the senior management of the Firm, even when the senior management knew that, to do so, may mean that they could be subject to adverse consequences because of the notification; and
 - h. Action taken by the DFSA in previous similar cases.
35. With reference to RPP Section 6-3, the DFSA has considered whether to impose a public censure rather than a financial penalty. Given the factors listed in paragraphs 34 above, and 38 and 41 below, the DFSA's approach in previous similar cases and the particular circumstances of this matter, the DFSA has determined that it is appropriate to impose a financial penalty on Mr Lilla rather than a public censure.

Determination of the Fine

36. The DFSA adopts a five-step approach to determine the appropriate level of financial penalty. In determining the appropriate level of financial penalty to impose in this matter, the DFSA has taken into account the factors and considerations set out in Sections 6-4 and 6-6 of the RPP as follows:

Step 1 – Disgorgement

37. This step is not considered to be relevant as Mr Lilla did not gain any financial benefit as a result of his conduct. The amount of the financial penalty after Step 1 is therefore US\$0.

Step 2 – The seriousness of the contraventions

38. The DFSA considers Mr Lilla's contraventions to be serious because he:

- a. instructed the SEO and the CO to open the M Accounts and the S Account with the knowledge that to do so would contravene the DFSA's Rules;
 - b. instructed the SEO and the CO to open the M Accounts and the S Account with the knowledge that this was not in compliance with the Firm's account opening policies and procedures;
 - c. acted recklessly in completely disregarding the advice of the SEO and the CO, and not acting on the advice obtained from independent external legal counsel in relation to the opening of the M Accounts and the S Account;
 - d. attempted to control if and when the SEO and the CO reported the opening of the M Accounts to the DFSA; and
 - e. held a senior position in the Firm.
39. Taking the above factors into account, the DFSA considers that a financial penalty of US\$50,000 appropriately reflects the seriousness of the contraventions.

Step 3 – Mitigating and aggravating factors

40. In considering the appropriate level of the financial penalty, the DFSA had regard to the circumstances of this matter and the factors set out in RPP 6-6-8.
41. The DFSA considers the following to be factors which have an aggravating effect on the contraventions:
- a. Mr Lilla immediately dismissed the advice of the SEO and the CO that opening the M Accounts and the S Account without the completion of EDD would contravene DFSA Rules. Mr Lilla did not satisfy himself as to whether or not the SEO's and the CO's advice was correct;
 - b. Mr Lilla asserted his seniority, as a member of the Board of the Firm, and warned the SEO of disciplinary action if the Firm did not follow his instructions to open the M Accounts and the S Account, even though the SEO and the CO raised valid concerns about the opening of these accounts;
 - c. Mr Lilla instructed that the M Accounts and the S Account be opened in circumstances where the opening of these accounts would cause the Firm, and possibly the SEO and the CO, to commit contraventions of DFSA Rules; and
 - d. Though he received the advices after the M Accounts and the S Account were opened, Mr Lilla did not act on the independent external legal advice that the opening of the accounts would contravene DFSA Rules.
42. The DFSA has also taken into consideration the following mitigating factors:
- a. Mr Lilla's financial services experiences and previously unblemished disciplinary record;
 - b. Mr Lilla's subsequent acceptance of responsibility and apology for his actions;
 - c. the fact that Mr Lilla cooperated fully with the DFSA's investigation.

43. The DFSA also acknowledges that the Firm took steps to mitigate the risks by blocking the M Accounts and the S Account and, in the case of the M Accounts, placing all cash and assets received for the benefit of these accounts into a suspense account. However, this action was taken by the Firm, rather than Mr Lilla. Accordingly, the DFSA does not consider this relevant to determining the penalty imposed on Mr Lilla.
44. While the DFSA has taken the mitigating factors in paragraph 42 into account, it does not consider that they outweigh the effect of the aggravating factors described in paragraph 41 above. Accordingly, the DFSA considers it appropriate to increase the figure arrived at after Step 2 by US\$20,000. The figure after Step 3 is therefore US\$70,000.

Step 4 – Adjustment for deterrence

45. Under RPP 6-6-9, if the DFSA considers that the level of the financial penalty which it has arrived at after Step 3 is insufficient to deter the person who committed the contravention, or others, from committing further or similar contraventions then the DFSA may increase it. RPP 6-6-9 sets out the circumstances where the DFSA may do this.
46. The DFSA considers that the figure after Step 3 is sufficient for the purposes of deterring Mr Lilla and others from committing further or similar contraventions. Accordingly, the DFSA does not consider it appropriate to adjust the amount of the fine arrived at after Step 3 for the purposes of deterrence.
47. Accordingly, the figure after Step 4 is US\$70,000.

Step 5 – Settlement discount

48. Where the DFSA and the person on whom the financial penalty is to be imposed agree on the amount and other terms, RPP 6-6-10 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which agreement is reached.
49. In the present case, the DFSA and Mr Lilla 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 to the DFSA, the DFSA has applied a 20% discount to the level of Fine which the DFSA would have otherwise imposed.

The level of the Fine

50. Given the factors and considerations set out in paragraphs 31 to 49 above and the circumstances of this matter, the DFSA has determined that it is proportionate and appropriate to impose on Mr Lilla a financial penalty of US\$56,000.

PROCEDURAL MATTERS

Decision Making Committee

51. The Decision Making Committee of the DFSA made the decision which gave rise to the obligation to give this Notice.

Manner and time for payment

- 52. The Fine must be paid by Mr Lilla by no later than 6 June 2016.

If the Fine is not paid

- 53. If all or any of the Fine is outstanding on 7 June 2016, the DFSA may recover the outstanding amount as a debt owed by Mr Lilla due to the DFSA.

Evidence and other material considered

- 54. Under paragraphs 4(2)(c) and 4(3) of Schedule 3 to the Regulatory Law, Mr Lilla is entitled to 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.

Appeal rights

- 55. Under Articles 29 and 90(5) of the Regulatory Law, Mr Lilla 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, Mr Lilla has agreed that he will not refer this matter to the FMT.

Confidentiality and publicity

- 56. 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 in the DIFC.
- 57. 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.
- 58. Mr Lilla will be notified of the date on which the DFSA intends to publish information about this decision.

DFSA contacts

- 59. For more information concerning this matter generally, please contact the Administrator to the DMC on +971 4 362 1580 or by email at DMC@dfsa.ae.

Signed:

.....
Ian Johnston

Chief Executive of the DFSA

ANNEX A - RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. STATUTORY PROVISIONS

DIFC Law No. 1 of 2004 – The Regulatory Law

PART 6: CONTRAVENTIONS AND FINES

86. Involvement in contraventions

- (1) If a person is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by another person, the aforementioned person as well as the other person commits a contravention and is liable to be proceeded against and dealt with accordingly.
- (2) If an officer of a body corporate is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by a body corporate, the officer as well as the body corporate commits a contravention and is liable to be proceeded against and dealt with accordingly.
- (3) If the affairs of a body corporate are managed by its members, Article 86(2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (4) If a partner (or a person purporting to act as a partner) is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by a partnership or by all or some of its constituent partners, he as well as the partnership or its constituent partners as the case may be commits a contravention and is liable to be proceeded against and dealt with accordingly.
- (5) If an officer of an unincorporated association (other than a partnership) or a member of its governing body is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by the association, that officer or member as well as the association commits a contravention and is liable to be proceeded against and dealt with accordingly.
- (6) For the purposes of Article 86, "officer" means a director, member of a committee of management, chief executive, manager, secretary or other similar officer of the body corporate or association, or a person purporting to act in such capacity, and an individual who is a controller of the body.
- (7) For the purposes of Article 86, a person is 'knowingly concerned' in a contravention if, and only if, the person
 - (a) has aided, abetted, counselled or procured the contravention;
 - (b) has induced, whether by threats or promises or otherwise, the contravention;

- (c) has in any way, by act or omission, directly or indirectly, been knowingly involved in or been party to, the contravention; or
 - (d) has conspired with another or others to effect the contravention.
- (8) In Article 86, 'person' does not include the DFSA or President.

PART 7: ENFORCEMENT

90. Sanctions and direction

- (1) Where the DFSA considers that a person has contravened a provision of any legislation administered by the DFSA, other than in relation to Article 32, the DFSA may exercise one or more of the powers in Article 90(2) in respect of that person.
- (...)
- (2) For the purposes of Article 90(1) the DFSA may:
- (a) fine the person such amount as it considers appropriate in respect of the contravention;
 - (b) censure the person in respect of the contravention;
 - (c) make a direction requiring the person to effect restitution or compensate any other person in respect of the contravention within such period and on such terms as the DFSA may direct;
 - (d) make a direction requiring the person to account for, in such form and on such terms as the DFSA may direct, such amounts as the DFSA determines to be profits or unjust enrichment arising from the contravention;
 - (e) make a direction requiring the person to cease and desist from such activity constituting or connected to the contravention as the DFSA may stipulate;
 - (f) make a direction requiring the person to do an act or thing to remedy the contravention or matters arising from the contravention; or
 - (g) make a direction prohibiting the person from holding office in or being an employee of any Authorised Person, DNFBP, Reporting Entity or Domestic Fund.
- (...)
- (5) If the DFSA decides to exercise its power under this Article in relation to a person, 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 AND SOURCEBOOK)

Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module (AML Module)

VER9/07-13 and VER10/06-14

- 7.7.1** (1) Where, in relation to any customer, a Relevant Person is unable to conduct or complete the requisite Customer Due Diligence in accordance with Rule 7.1.1 it must, to the extent relevant:
- (a) not carry out a transaction with or for the customer through a bank account or in cash;
 - (b) not open an account or otherwise provide a service;
 - (c) not otherwise establish a business relationship or carry out a transaction;
 - (d) terminate or suspend any existing business relationship with the customer;
 - (e) return any monies or assets received from the customer; and
 - (f) consider whether the inability to conduct or complete Customer Due Diligence necessitates the making of a Suspicious Activity Report under Rule 13.3.1(c).
- (2) A Relevant Person is not obliged to comply with (1) (a) to (e) if:
- (a) to do so would amount to "tipping off" the customer, in breach of Article 16 of the Federal Law No.4 of 2002; or
 - (b) the AMLSCU directs the Relevant Person to act otherwise.

General Module (GEN)

VER33/07-13 and 34/06-14

4.4 The Principles for Authorised Individuals

Principle 2 – Due skill, care and diligence

- 4.4.2** An Authorised Individual must act with due skill, care and diligence in carrying out every Licensed Function.

Regulatory Policy and Process Sourcebook – RPP

5-8 FINES

5-8-1 The DFSA may seek to impose a fine under Article 90 on a Person whom it considers has contravened a provision of the Law. The DFSA may impose a fine in any amount considered appropriate.

5-8-2 In determining whether to impose a fine and the quantum of the fine, the DFSA will take into consideration the circumstances of the conduct and will be guided by the penalty guidance set out in chapter 6 of the RPP.

5-8-3 The decision to impose a fine on a Person will be made by the DMC.

5-8-4 Prior to making a decision, the DMC will follow the procedures set out in Schedule 3 of the Regulatory Law (see also chapter 7 of the RPP).

5-8-5 If a Person receives a notice imposing a fine and does not pay the full amount of the fine, the DFSA may recover so much of the fine as remains outstanding as a debt due, together with costs incurred by the DFSA in recovering such amount.

5-17 PUBLICITY

General policy on publicity of enforcement actions

5-17-2 The DFSA will generally publish, in such form and manner as it regards appropriate, information and statements relating to enforcement actions, including censures and any other matters which the DFSA considers relevant to the conduct. The publication of enforcement outcomes is consistent with the DFSA's commitment to open and transparent processes and its objectives.

5-17-3 In all cases the DFSA retains the discretion to take a different course of action, where it furthers the DFSA's achievement of its objectives or is otherwise in the public interest to do so. For example, the DFSA may decide to publish at an earlier stage than suggested by the general policy, where circumstances justify this.

Disclosure of settled enforcement actions

5-17-15 The DFSA expects to disclose publicly the outcome of any settlement of an enforcement action, including the notice of decision or EU, to ensure all stakeholders and the general public are clearly informed as to the outcome. Settlement agreements which result in a notice of decision or EU will result in the publication of the relevant notice of decision or EU on the DFSA website as well as an associated press release.

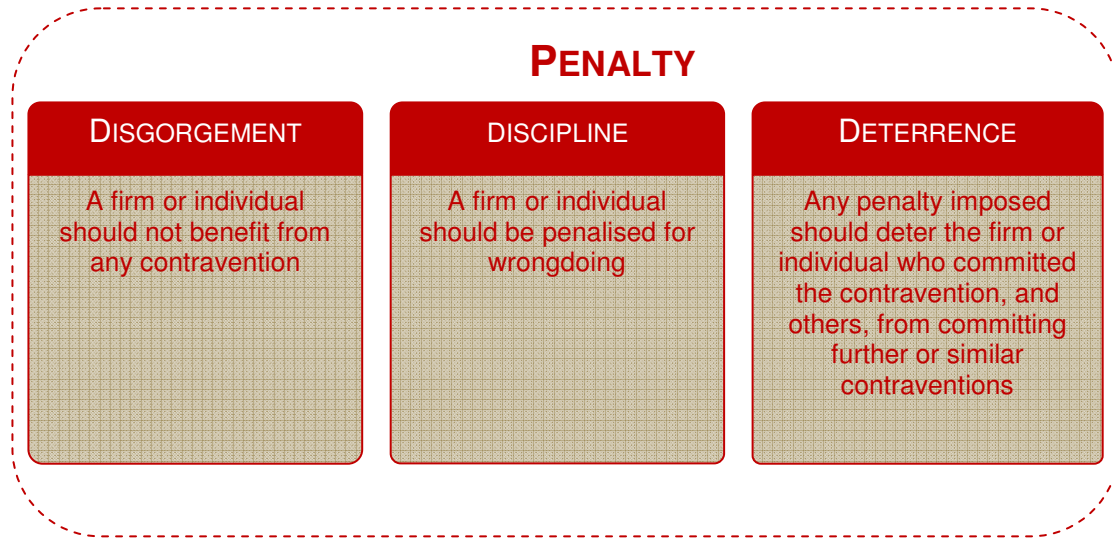
Content of Publication

5-17-18 The DFSA will generally make appropriate disclosures when publishing notices of decision, EUs, proceedings before, and decisions of, the FMT or a court.

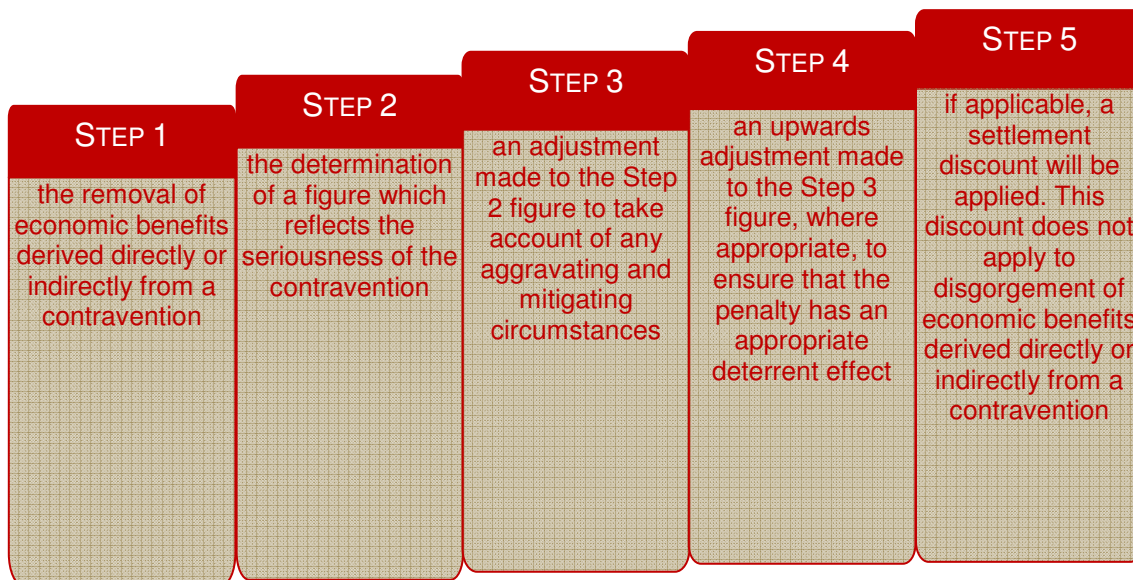
5-17-19 The DFSA will take into consideration any privileged or sensitive information when considering the content of its publications. In doing so, it will also consider the possibility that any publication may also potentially affect the rights of a third party and, if so, will endeavour to give that third party an opportunity to make representations on the publication.

6-4 DETERMINING THE APPROPRIATE LEVEL OF FINANCIAL PENALTY

6-4-1 The DFSA's penalty-setting regime is based on three principles:



6-4-2 The total amount payable by a Person subject to enforcement action may be made up of two elements: (i) disgorgement of the benefit received as a result of the contravention; and (ii) a financial penalty reflecting the seriousness of the contravention. These elements are incorporated in a five-step framework, which can be summarised as follows:



6-4-3 The DFSA recognises that a penalty must be proportionate to the contravention. These steps will apply in all cases, although the details of Steps 1 to 4 will differ for cases against firms (section 6-5), and cases against individuals (section 6-6).

6-4-5 The lists of factors and circumstances in sections 6-5 and 6-6 are not exhaustive. Not all of the factors or circumstances listed will necessarily be relevant in a particular case and there may be other factors or circumstances not listed which are relevant.

6-4-6 The DFSA will not, in determining its policy with respect to the amount of penalties, take account of expenses which it incurs, or expects to incur, in discharging its functions.

6-6 Financial Penalties Imposed on an Individual

Step 1: Disgorgement

6-6-1 The DFSA will seek to deprive an individual of the economic benefits derived directly or indirectly from the contravention (which may include the profit made or loss avoided) where it is possible to quantify this. The DFSA will ordinarily also charge interest on the benefit.

Step 2: The seriousness of the contravention

6-6-2 The DFSA will determine a financial penalty figure that reflects the seriousness of the contravention. In determining such a figure, the DFSA will take into account various factors, which will usually fall into the following four categories:

- (a) factors relating to the impact of the contravention;
- (b) factors relating to the nature of the contravention;
- (c) factors tending to show whether the contravention was deliberate; and
- (d) factors tending to show whether the contravention was reckless.

6-6-3 Factors relating to the impact of a contravention committed by an individual include:

- (a) the level of benefit gained or loss avoided, or intended to be gained or avoided, by the individual from the contravention, either directly or indirectly;
- (b) the loss or risk of loss, as a whole, caused to consumers, investors or other market users in general;
- (c) the loss or risk of loss caused to individual consumers, investors or other market users;
- (d) whether the contravention had an effect on particularly vulnerable people, whether intentionally or otherwise;
- (e) the inconvenience or distress caused to consumers; and
- (f) whether the contravention had an adverse effect on markets and, if so, how serious that effect was. This may include having regard to whether the

orderliness of, or confidence in, the markets in question has been damaged or put at risk.

6-6-4 Factors relating to the nature of a contravention by an individual include:

- (a) the nature of the Laws or Rules contravened;
- (b) the frequency of the contravention;
- (c) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the contravention;
- (d) the scope for any potential financial crime to be facilitated, occasioned or otherwise occur as a result of the contravention;
- (e) whether the individual failed to act with integrity;
- (f) whether the individual abused a position of trust;
- (g) whether the individual committed a contravention of any professional code of conduct;
- (h) whether the individual caused or encouraged other individuals to commit contraventions;
- (i) whether the individual held a prominent position within the industry;
- (j) whether the individual is an experienced industry professional;
- (k) whether the individual held a senior position with the firm;
- (l) the extent of the responsibility of the individual for the product or business areas affected by the contravention, and for the particular matter that was the subject of the contravention;
- (m) whether the individual acted under duress; and
- (n) whether the individual took any steps to comply with DFSA rules, and the adequacy of those steps.

6-6-5 Factors tending to show the contravention was deliberate include:

- (a) the contravention was intentional, in that the individual intended, could reasonably have foreseen or foresaw that the likely or actual consequences of his actions or inaction would result in a contravention;
- (b) the individual intended to benefit financially from the contravention, either directly or indirectly;
- (c) the individual knew that his actions were not in accordance with his firm's internal procedures;
- (d) the individual sought to conceal his misconduct;
- (e) the individual committed the contravention in such a way as to avoid or reduce the risk that the contravention would be discovered;

- (f) the individual was influenced to commit the contravention by the belief that it would be difficult to detect;
- (g) the individual knowingly took decisions relating to the contravention beyond his field of competence; and
- (h) the individual's actions were repeated.

6-6-6 Factors tending to show the contravention was reckless include:

- (a) the individual appreciated there was a risk that his actions or inaction could result in a contravention and failed adequately to mitigate that risk; and
- (b) the individual was aware there was a risk that his actions or inaction could result in a contravention but failed to check if he was acting in accordance with internal procedures.

Step 3: Mitigating and aggravating factors

6-6-7 The DFSA may increase or decrease the amount of the financial penalty arrived at after Step 2 (excluding any amount to be disgorged as set out in Step 1), to take into account factors which aggravate or mitigate the contravention. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.

6-6-8 The following list of factors may have the effect of aggravating or mitigating the contravention:

- (a) the conduct of the individual in bringing (or failing to bring) quickly, effectively and completely the contravention to the DFSA's attention (or the attention of other regulatory authorities, where relevant);
- (b) the degree of cooperation the individual showed during the investigation of the contravention by the DFSA, or any other regulatory authority allowed to share information with the DFSA;
- (c) whether the individual took any steps to stop the contravention, and when these steps were taken;
- (d) any remedial steps taken since the contravention was identified, including whether these were taken on the individual's own initiative or that of the DFSA or another regulatory authority;
- (e) whether the individual has arranged his resources in such a way as to allow or avoid disgorgement and/or payment of a financial penalty;
- (f) whether the individual had previously been told about the DFSA's concerns in relation to the issue, either by means of a private warning or in supervisory correspondence;
- (g) whether the individual had previously undertaken not to perform a particular act or engage in particular behaviour;
- (h) whether the individual has complied with any requirements or rulings of another regulatory authority relating to the contravention;

- (i) the previous disciplinary record and general compliance history of the individual;
- (j) action taken against the individual by other domestic or international regulatory authorities that is relevant to the contravention in question;
- (k) whether DFSA guidance or other published materials had already raised relevant concerns, and the nature and accessibility of such materials;
- (l) whether the DFSA publicly called for an improvement in standards in relation to the behaviour constituting the contravention or similar behaviour before or during the occurrence of the contravention; and
- (m) whether the individual agreed to undertake training subsequent to the contravention.

Step 4: Adjustment for deterrence

6-6-9 If the DFSA considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the contravention, or others, from committing further or similar contraventions then the DFSA may increase the financial penalty. Circumstances where the DFSA may do this include:

- (a) where the DFSA considers the absolute value of the penalty too small in relation to the contravention to meet its objective of credible deterrence;
- (b) where previous DFSA action in respect of similar contraventions has failed to improve industry standards. This may include similar contraventions relating to different products;
- (c) where the DFSA considers it is likely that similar contraventions will be committed by the individual or by other individuals in the future; and
- (d) where the DFSA considers that the likelihood of the detection of such a contravention is low.

Step 5: Settlement discount

6-6-10 The DFSA and the individual on whom a penalty is to be imposed may seek to agree on the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, section 6-8 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the DFSA and the individual concerned reached an agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

ANNEX B - DEFINITIONS

Account Number	The number the Firm assigns to an account when an account is opened
AI	Authorised Individual
AML	Anti-Money Laundering and, interchangeably depending on the context, AML Module
AML Module	DFSA Rulebook, Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module
Board	The Firm's Board of Directors
CDD	Customer Due Diligence pursuant to AML Rule 7.1.1(1)(a)
CO	Compliance Officer, sometimes used to also designate an MLRO
Court	The DIFC Court as established under Dubai Law No.12 of 2004
DIFC	The Dubai International Financial Centre, the financial free-zone in the Dubai Emirate
DFSA	The Dubai Financial Services Authority, the financial regulator in the DIFC
DMC	The DFSA's Decision Making Committee
EDD	Enhanced Customer Due Diligence pursuant to AML Rule 7.1.1(1)(b)
Fine	The fine referred to in paragraph 1 of this Notice
Firm	The Authorised Firm of which Mr Lilla was a Licensed Director
FMT	The Financial Markets Tribunal
General Module	DFSA Rulebook, General Module
IBAN	International bank account number
M Accounts	The accounts referred to in paragraph 16 above
Mr Lilla	Raphael Lilla, a Board member and Licensed Director of the Firm (DFSA AI No.I003946)
Notice	This notice
Regulatory Law	DIFC Law No. 1 of 2004
RPP	The DFSA's Regulatory Policy and Process Sourcebook Module
S Account	The account referred to in paragraph 17 above
SEO	Senior Executive Officer