

The published version of this Notice has been redacted or amended in places to protect the identity of investors and related third parties.

DECISION NOTICE

To: MAS ClearSight Limited

Address: Level 5, The Gate,
East Wing, DIFC,
Dubai, UAE

Date: 17 August 2015

ACTION

1. For the reasons given in this notice and pursuant to Article 90(2)(b) of the Regulatory Law 2004, the Dubai Financial Services Authority (DFSA) has decided to issue a public censure that MAS ClearSight Limited (MAS) has contravened legislation administered by the DFSA.
2. The DFSA also directs MAS to effect restitution, pursuant to Article 90(2)(c) of the Regulatory Law, and compensate the relevant 20 investors described in this Notice for the loss of their initial investments in the Journey to Makkah and the Sachin Tendulkar [REDACTED] Books. The value of those initial investments was USD3,200,000 as set out in Appendix A to this Notice.
3. MAS is required to effect the restitution to the 20 Investors directed in this Notice no later than 60 days from the date of this Notice.
4. Were it not for MAS' financial position and the direction to effect restitution to the Investors, the DFSA would have imposed a fine on MAS in relation to the contraventions.

SUMMARY OF REASONS

5. Between August 2010 and July 2011, MAS marketed to potential investors the opportunity to invest in the production of three limited-edition large format books. These books, also known as the [REDACTED] Books, were to be published by the [REDACTED]

The minimum subscription in one of the [REDACTED] Books was generally USD125,000 over a timeframe of between 8 and 24 months. After that, investors were due to be repaid 100% of their initial investment plus a minimum return of 50% of their total subscription.

6. In total, MAS raised USD4,888,484 in relation to the [REDACTED] Books from 25 investors. Of those, 21 of the investors were individuals.
7. The arrangements entered into by investors in each of the [REDACTED] Books constituted a foreign fund under the Collective Investment Law 2010. In promoting the [REDACTED] Books investment opportunity as it did, MAS contravened the marketing prohibition in Article 50 of the Collective Investment Law 2010 and CIR 15.1.3.
8. When marketing the [REDACTED] Books, MAS made statements to influence investors to invest in the [REDACTED] Books. MAS was also involved in finalising term sheets with investors but these did not contain the required regulatory disclosure for marketing a foreign fund. Further, MAS was responsible for overseeing the payment of the Investors' funds into the investment accounts. Once the payments were made, neither MAS nor the Investors had any control over how the funds were used.
9. MAS' conduct amounted to the Financial Services activities of Advising and Arranging; activities that MAS was licensed to conduct. Accordingly, MAS should have properly classified the investors as Clients and conducted a proper assessment of the suitability of the [REDACTED] Books investment in accordance with relevant DFSA Rules. However, MAS failed to do so. The Investors were therefore deprived of regulatory protections relating to disclosure and conduct of business. As a result, the DFSA considers that MAS contravened DFSA administered legislation including Principle 8 of the Principles for Authorised Firms (Suitability) and a number of provisions of COB and AML.
10. By failing to classify the Investors as Clients or to conduct an assessment of the suitability of the [REDACTED] Books investment, MAS created the serious risk that the Investors invested in a fund which, given their needs and objectives, was not suitable.
11. Two of the three [REDACTED] Books remain unpublished and investors in those books have yet to receive any return on their investment or return of their initial investment. The company which owned the Special Purpose Vehicles (SPVs) into which investors paid their investments has since been put into liquidation and the SPVs dissolved.
12. Given the contraventions by MAS, in particular by marketing a high risk, unregulated fund without undertaking any due diligence or assessment of the suitability for the Investors, the DFSA considers MAS responsible for causing the Investors to invest in the [REDACTED] Books and to lose their investments. The DFSA therefore considers it appropriate in the circumstances to take the action against MAS set out in this Notice.

DEFINITIONS

13. 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 Glossary Module of the DFSA Rulebook. Unless the context states otherwise, where capitalisation of the initial letter is not used, an expression has its natural meaning.
14. Further, the definitions below are used in this notice.

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| “AML” | DFSA Rulebook, Anti Money Laundering Module VER 6/01-10 and VER 7/02-11 |
| “Collective Investment Law 2010” | Collective Investment Law (DIFC Law No 2 of 2010) |
| “CIR” | DFSA Rulebook, Collective Investment Rules Module VER 13/07-10 |
| “COB” | DFSA Rulebook, Conduct of Business Module VER 19/07-10 |
| “DFSA” | Dubai Financial Services Authority |
| “DIFC” | Dubai International Financial Centre |
| “GEN” | DFSA Rulebook, General Module VER 26/07-10 and VER 27/02-11 |
| “Investors” | The 20 investors who invested in the ST and JTM [REDACTED] Books as set out in paragraphs 28 to 30 of this Notice |
| “KYC” | Know-Your-Customer |
| “MAS” | MAS ClearSight Limited |
| “[REDACTED]” | [REDACTED], a Jersey incorporated company and publisher of the [REDACTED] Books |
| “[REDACTED] Books” | The Formula One (F1), Journey to Makkah (JTM) and Sachin Tendulkar (ST) [REDACTED] Books |
| “Regulatory Law” | Regulatory Law (DIFC Law No 1 of 2004) |
| “RPP” | DFSA Sourcebook, Regulatory Policy and Process Module May 2015 Edition |
| “SPV” | Special Purpose Vehicle |

FACTS AND MATTERS RELIED ON

Background

- On 27 October 2009, the DFSA licensed MAS to conduct the Financial Services activities of Advising on Financial Products or Credit, Arranging Credit or Deals in Investments, and Arranging Custody.
- On 18 June 2015 and pursuant to Article 52 of the Regulatory Law 2004, the DFSA suspended MAS’ Licence to carry on Financial Services in or from the DIFC.

17. Since it was licensed, MAS marketed itself as an investment and corporate banking advisory business that specialises in developing multi-asset class investment strategies, feasibility and analysis, buy/sell advisory and risk mitigation techniques. Part of its business includes providing private banking advisory services and arranging investments for clients with third-parties.

The [REDACTED] Books and [REDACTED]

18. On 8 July 2010 and 27 November 2012, MAS entered into letters of mandate to provide advisory and arranging services to [REDACTED] in connection with fund raising for three publications to be produced by [REDACTED]. [REDACTED], a Jersey incorporated company based in London, is the publisher of limited-edition large format books and other derivative products, such as DVDs, calendars and diaries. [REDACTED] also engaged MAS to assist it with advisory work on equity and debt-raising.
19. Under the mandates, MAS held the exclusive right to identify investors and obtain investment commitments for the production and publication of three [REDACTED] books. The three titles were the Formula One [REDACTED] Book (F1), the Journey to Makkah [REDACTED] Book (JTM) and the Sachin Tendulkar [REDACTED] Book (ST) (together, the [REDACTED] Books). In return, MAS was to receive a fee based on a percentage of revenue generated from sales of the particular [REDACTED] Book and related products. MAS' remuneration for the [REDACTED] Books consisted of the following;
- 4% of gross sales revenues from the ST [REDACTED] Book and derivative products;
 - 1.5% of gross sales revenues from the F1 [REDACTED] Book and derivative products; and
 - 4% of net sales revenues from the JTM [REDACTED] Book and derivative products.
20. In the mandate dated 8 July 2010, MAS was to act as the "Exclusive Financial Advisor" to [REDACTED] for the ST [REDACTED] Book with the ultimate objective of arranging USD1.5 million for [REDACTED]. The scope of work for MAS included identifying and shortlisting investors and:
- conducting closing discussions with investors and finalising the term sheet;
 - negotiating the best suitable terms on behalf of [REDACTED] with investors; and
 - remaining the contact point between [REDACTED] and the investors.
21. In the mandate dated 27 November 2012, the scope of MAS' engagement continued to include identifying, short listing and introducing or referring suitable investors for potential investment with [REDACTED] in connection with the [REDACTED] Books. It also included:
- assisting [REDACTED] in discussions and negotiations with investors;
 - assisting [REDACTED] in closing discussions and finalising the term sheets with the investors; and
 - a term that MAS will "always remain" as the contact point between [REDACTED] and the investor.
22. MAS also entered into a Client Service Agreement with [REDACTED] on 8 July 2010.

23. The minimum subscription in the [REDACTED] Books was generally USD125,000 and the stated expected return was a minimum of 50% of the total subscription over a time frame of between 8 and 24 months.
24. For each [REDACTED] Book a company was incorporated in Guernsey as a SPV. These SPVs were established by [REDACTED] on 24 April 2009 and subsequently dissolved on 11 June 2012. Each SPV had its own bank account, held outside the DIFC, into which investor funds would be deposited along with any proceeds received from the sale of the particular [REDACTED] Book. The SPV bank account number and details were contained in the term sheet.
25. The SPVs were 100% owned by [REDACTED], a Guernsey incorporated company, which was 50% owned by [REDACTED]. On 26 March 2013, the Royal Court of Guernsey ordered that [REDACTED] be wound up as it was unable to pay its debts.

Interaction with investors

26. Between August 2010 to July 2011, MAS front office staff sourced individual investors for the [REDACTED] Books.
27. In relation to the three [REDACTED] Books, MAS raised a total of USD4,888,484 for [REDACTED] from 25 investors. The USD4,888,484 consisted of the following amounts:
 - a. USD738,484 in F1;
 - b. USD2,025,000 in ST; and
 - c. USD2,125,000 in JTM.
28. Of the 25 total investors, 21 were individuals and four were companies. Of the total amount raised in the three books, USD3,818,484 came from 22 investors. The remaining USD1,070,000 came from three other investors - the former MAS SEO, the MAS Head of Investment Banking and Advisory Division, and ClearSight Capital Limited (sister company to MAS).
29. In relation to the ST and JTM [REDACTED] Books, 20 out of the 22 investors invested a total of USD3,200,000, consisting of the following amounts:
 - a. USD1,775,000 in ST; and
 - b. USD1,425,000 in JTM.
30. Appendix A to this Notice lists the 20 investors and the respective amounts they invested in the ST and JTM [REDACTED] Books (the "Investors"). The other two investors (out of the 22), invested only in F1 and the DFSA does not make any findings in relation to that [REDACTED] Book.
31. MAS set up private meetings with potential investors and provided them with background information on [REDACTED] and its products.
32. MAS advised potential investors of the [REDACTED] Books that were available for investment, described the investment proposal and offer, and provided the potential investors with

- term sheets for the relevant [REDACTED] Book that the investor was interested in. The term sheets were printed on MAS letterhead and set out the terms and conditions of the particular investor's [REDACTED] Book investment.
33. Although the term sheets generally varied between investors only in terms of the minimum subscription amount and the "Investment Horizon", each of them contained a number of common statements including the following:
 - a. "[MAS] is pleased to advice [sic] on the following investment proposal";
 - b. "[The] SPV and account is jointly controlled by [REDACTED] and MAS";
 - c. "As investors acknowledges [sic] that MAS Clear Sight is advising and arranging the above investment opportunity under the mandate from [REDACTED]";
 - d. "[MAS] confirms that they have done the due Diligence on [REDACTED] and are pleased to advice [sic] this investment opportunity to the appropriate investors from a risk perspective"; and
 - e. "The Investor confirms that they have been advised to their satisfaction by the advisors of [MAS] and understand the risk associated with this investment opportunity. They further acknowledge the advisory role and have a clear understanding of [MAS's] responsibilities in this transaction".
 34. Investors wishing to invest inserted in the term sheet the amount they were prepared to commit and signed the term sheet to signify that they accepted the terms and conditions. A MAS representative then counter-signed the term sheet.
 35. All investors were provided by MAS with a term sheet. Upon request for further information, some of the investors were also provided by MAS with a PowerPoint presentation about the relevant [REDACTED] Book.
 36. After signing the term sheet, investors paid the investment subscription amount into the SPV bank account using the details set out in the term sheet. MAS was responsible for overseeing the payment of the investment funds. Despite the statement in the term sheets that the SPV and account was jointly controlled by [REDACTED] and MAS, neither MAS nor the investors had any control over the funds once they were transferred into the SPV bank account. MAS claimed that its duty as "joint controller" was to oversee the process of payment of an investment from an investor into the relevant SPV bank account, the deployment of the investment by [REDACTED] into the project and subsequent confirmation from [REDACTED].
 37. In July 2013, the DFSA received complaints from individuals regarding their investments in the [REDACTED] Books and in September 2013 the DFSA requested information from MAS on the [REDACTED] Books. On 18 December 2013, the DFSA commenced an investigation under Article 78 of the Regulatory Law 2004 into suspected contraventions by MAS of provisions of the Collective Investment Law 2010 and the COB and AML Modules of the DFSA Rulebook.
 38. The DFSA subsequently interviewed 11 of the 22 investors who invested USD3,818,484 in the three [REDACTED] Books. These 11 investors invested in either, or both, the ST and JTM [REDACTED] Books and provided evidence that, prior to signing the term sheets, MAS did not:

- a. ask them for any information about their assets or financial position;
 - b. enquire about their investment experience or the investors' risk tolerance, objectives or needs;
 - c. ask them about their knowledge and understanding of the risks involved in investing in the ST and JTM [REDACTED] Books;
 - d. ask them whether they were an employee of a DFSA Authorised Firm or a Regulated Financial Institution; or
 - e. with the possible exception of one, provide written notice or obtain consent that MAS would not consider the suitability of the investment in ST or JTM for the investors investor (see paragraph 46 below).
39. Of the 11 investors interviewed by the DFSA, only four of them could recollect being asked for, or providing, any documentation to verify their identity.
40. A number of the Investors also provided evidence that MAS relationship managers made statements and comments to encourage them to invest in the [REDACTED] Books. In relation to the JTM [REDACTED] Book, these included the following claims:
- a. a *"unique product" with "no risk and guaranteed returns. 4 to 5 such [books] have been developed and were very successful"*;
 - b. *"an amazing and great investment opportunity ... an opportunity to earn unbelievably high returns and worship God at the same time"*;
 - c. *"The Makkah [REDACTED] book has already started developing since 6 months so you will get your initial investment plus a minimum return on your investment of 50% within the next 6 months"*;
 - d. *"Orders for 1000 pieces of the Makkah [REDACTED] book have already been placed ... So, as soon as it is published, you will get your initial investment back and more instantly, from these orders that have already been placed. This is looking at it conservatively ..."*;
 - e. *"... an equity opportunity with MAS and you will get really good returns. I strongly recommend that you invest"*; and
 - f. *"...much better than the returns you would get from investments into bonds or mutual funds"*;
41. Similarly, at a meeting with an investor at the end of 2010 in relation to the ST [REDACTED] Book, MAS described it as *"one of the best investments and it's only for a very short time. Once the book is released within two years you will get your investment plus certain profit sharing"*.
42. Further, in a letter dated 14 February 2014, which provided an update to investors on the status of the ST and JTM [REDACTED] Books, [REDACTED] stated that it was *"very pleased that ... an employee of MAS, actively recommended"* the [REDACTED] Books to investors.

Client Service Agreements and waiver of suitability

43. Under the DFSA's COB Rules regarding suitability, MAS is not permitted to recommend a financial product or service to a Client unless it has a reasonable basis for considering the recommendation to be suitable for the particular Client. For this purpose, MAS must undertake an appropriate assessment of the particular Client's needs and objectives, financial situation and, to the extent relevant, their risk tolerance, knowledge, experience and understanding of the risks involved. However, in relation to Professional Clients, MAS may limit the extent to which it will consider suitability when making a recommendation if, prior to carrying on the activity:
 - a. it gives a written warning in the form of a notice clearly stating either that it will not consider suitability, or will consider suitability only to the extent specified in the notice; and
 - b. the Professional Client has given his express consent, after a proper opportunity to consider the warning, by signing that notice.
44. In this matter, the DFSA found that MAS sought to limit the extent to which it considered the suitability of the █████ Books investment for a number of the investors. Specifically, MAS provided written notice in the form of a Client Service Agreement which stated that MAS will not be required to consider the suitability of the investment for the particular investor when giving any advice or recommendation or accepting orders or instructions in respect of the investment.
45. The standard Client Service Agreement used by MAS also stated that:

"In offering the prospectuses for purposes of marketing and selling units of a foreign funds, [MAS] may have the prospectuses stored electronically at its place of business for inspection and immediate access by the Clients or the DFSA";
46. In total, of the 11 investors interviewed by the DFSA, three of them signed such a Client Service Agreement with MAS. However, only one investor signed a Client Service Agreement, prior to making the investment, thereby consenting to MAS not considering the suitability of the investment although, in that instance, it appears the client signed the term sheet, Client Service Agreement and made the investment all on the same day (4 November 2010). It is therefore questionable whether the investor had a proper opportunity to consider the written warning in the Client Service Agreement that MAS will not consider the suitability of the investment for the particular investor before giving their consent. The other two Client Service Agreements were signed two months and seven months after the term sheets had been signed and after the investors had made the investment.
47. In addition, MAS also entered into a Client Service Agreement with █████ on 8 July 2010. It therefore appears to the DFSA that MAS failed to understand whether █████ or the investors in the █████ Books were its Clients.
48. To date, only the F1 █████ Book has been produced by █████ and investors in that █████ Book have received some return on their investment. The DFSA has been informed that, as of July 2014, the F1 investors have received approximately 25% to 27% of their investment back. Also, MAS received approximately USD26,000 in fees in relation to F1. However, neither the JTM or ST █████ Books have been produced or published to date

and the investors in those [REDACTED] books have received no return on, or return of, the sums they invested.

49. Given the “investment horizons” stated in the term sheets signed by the investors in the JTM and ST [REDACTED] Books and the dates the investments were made, the DFSA considers it reasonable for the investors to have expected their stated returns at the latest by approximately August 2012 for JTM and December 2012 for ST.
50. In a letter to a number of investors dated 14 February 2014, [REDACTED] sought to explain the reason for the delays on the ST and JTM [REDACTED] Books. [REDACTED] stated the projects were delayed due to circumstances beyond [REDACTED] control and were “scheduled to go to print before the end of April 2014”. Recognising the investors’ “frustrations caused by the delays”, [REDACTED] offered, among other things, to increase the investors’ investment return cap from 50% of their committed funds to 75%. It stated “[t]he purpose of this offer is to speed up sales revenues payable to you in 2014 and offer you an additional upside to recognise the impact of the delays”.
51. Despite this offer and the statements in the letter, no payments have yet been made to the investors in the ST and JTM [REDACTED] Books projects. Further, the reference to increasing the “investment return cap” is inconsistent with the statement in the term sheets that the “expected return” would be a “minimum of 50%”.
52. The DFSA considers that, were it not for the role of MAS in promoting and recommending the [REDACTED] Books projects, the investors are unlikely to have made the investments they did. Accordingly, the DFSA considers MAS at least partly responsible for the losses suffered by the Investors.

REPRESENTATIONS

53. On 2 July 2015, the DFSA gave MAS written notice that it was proposing to issue a public censure that MAS has committed contraventions and direct MAS to effect restitution to the Investors (the “Preliminary Notice”).
54. On 2 August 2015, in a letter from its Chairman, MAS objected to the action proposed in the Preliminary Notice. The DFSA has reviewed and considered those representations in full.
55. In deciding to take the action set out in this Notice, the DFSA has taken into account all of the representations made on behalf of MAS, whether or not they are summarised below.
56. In its representations, MAS claims that the investment in the [REDACTED] Books did not meet the requirements to be deemed a foreign fund. For example, it was not registered in a foreign jurisdiction as a fund, did not have an investment manager and did not have a private placement memorandum. Further, MAS claims the SPVs into which investors paid their funds were merely legal entities for specific commercial purposes rather than collective investment schemes.
57. For the reasons given in paragraphs 67 and 68 of this Notice, the DFSA considers that the circumstances of this matter and the arrangements by which the Investors invested in the [REDACTED] Books, satisfy the requirements of a Collective Investment Fund as set out in Article 11 of the Collective Investment Law 2010. The DFSA is of the view, therefore, that the investment in [REDACTED] Books was an investment in a Collective Investment Fund. As the

██████ Books investment was neither a Domestic Fund nor an External Fund it was, therefore, a Foreign Fund (pursuant to Article 13(3) of the Collective Investment Law 2010).

58. In its representations, MAS claimed that the document setting out the terms and conditions of the investment (signed by both the investor and the MAS representative) was not a term sheet. Rather, MAS claimed these documents were merely “investment proposals” and should not be construed as a contract between MAS and the particular investor as the two contracting parties were ██████ and the investor. The DFSA does not accept this contention. While the DFSA acknowledges that the introduction to these documents states “[MAS] is pleased to advise [sic] on the following investment proposal”, the documents also state under “Legal Jurisdiction” that “[t]he above term sheet is governed by DIFC Laws”. Further, as stated in paragraphs 20 and 21 above, the scope of MAS’ engagement under the letters of mandate dated 8 July 2010 and 27 November 2012 included finalising the “term sheets” with investors.
59. MAS contends that its role was “merely of an advisor” and that the Investors were not its clients. MAS noted there were “a couple of exceptions” to this and, in this regard, the DFSA assumes MAS is referring to those investors who signed Client Service Agreements (referred to in paragraph 46 above). MAS considered ██████ to be its Client and claims that ██████ was the business counterparty for the investors. MAS claimed that due to potential conflicts of interest it could not operate under a mandate from both ██████ and the investors.
60. The DFSA is of the view that the claim by MAS that it did not consider the investors to be its clients is self-serving. Further, it demonstrates that MAS does not properly understand that whether the investors were, and should have been treated as, Clients of MAS depends, not on the process by which the client was taken on, but on the nature of the activities MAS provided to the investors.
61. For the reasons given in paragraphs 26 to 42 of this Notice, the DFSA concludes that MAS provided the Financial Services of Advising and Arranging to the investors. In so doing, the investors were Clients of MAS and it was therefore required to treat them as such. It follows that MAS was required to provide its Clients with the appropriate regulatory safeguards (for example, relating to Conduct of Business) and take reasonable care to ensure the suitability of its advice under the relevant DFSA administered Laws and Rules.
62. MAS argued that the investors’ complaints to the DFSA and their claims they were not made aware of the risks associated with the ██████ Books investment were motivated by the investment being unsuccessful. MAS also argued that all of the investors were successful people who knew “exactly what they are committing their funds to” and the underlying risks they were taking. While it may be true that the Investors complained to the DFSA because their investments in the ██████ Books were not successful, the DFSA is concerned that MAS fails to recognise its duties towards its Clients. Further, MAS appears to be attempting to distance itself from its duty to take reasonable care to ensure the suitability of its advice to the Clients on the basis that they were “successful people who have made money by mostly doing business and or important jobs where they know for a fact that an investment proposition which is proposing staggering returns of 50% p.a. is not investing in a AAA bond or a fix cash deposit”. The DFSA does not consider this assertion to have any merit and the relative success or wealth of a client in no way

excuses MAS from treating Clients differently or, as MAS appears to suggest, with a lower standard of care than would otherwise apply to other clients.

63. Despite its claim that the term sheets were merely investment proposals and not contracts between MAS and the Investors, MAS appears to be seeking to rely on an indemnity clause within the document to avoid any liability it may have to the Investors. The relevant clause states that “*The Investor indemnifies [MAS] for any loss of Principal or Return on Investments*”. For the reasons given in this Notice, the DFSA considers that the Investors were Clients of MAS. The DFSA therefore considers this attempt by MAS to limit or avoid any liability it may have to the Investors to be in contravention of COB Rule 3.2.2. Further, Article 65 of the Regulatory Law provides that any person who makes an agreement in the course of carrying on a Financial Service in breach of the Collective Investment Prohibitions (as was the case here) shall not be entitled to enforce such agreement against any party to the agreement (i.e. the Investors). Accordingly, the DFSA does not accept MAS’ contention that it is not liable to the Investors for their loss of principal investment or return on investments.
64. MAS also claimed that the failure to provide the Investors with the required documentation or deliver performance of the █████ Books investment is the responsibility of █████. While this claim may, in part, be correct, the DFSA does not consider this to justify or excuse the contraventions by MAS. For the reasons given in this Notice, the DFSA considers that, were it not for the involvement of MAS in marketing the ST and JTM █████ Books and the contraventions set out in this Notice, the Investors would not have invested in them. Further, by failing to treat the Investors as Clients and assess the suitability of the █████ Books investment, MAS created the serious risk that the Investors invested in a fund which was not suitable given their needs and objectives. As a result, the DFSA considers that MAS was at least partly responsible for the losses suffered by the Investors.
65. MAS further claims that the evidence given by former employees of MAS (allegedly asked to resign or leave due to non-performance) which supports the claims made by the Investors is motivated by a desire to “side with” and “salvage their relationships” with the Investors. MAS claims the former employees have done this in the hope that the Investors will follow them to their new employers. The DFSA has not seen any evidence to support such an accusation and instead considers this to be a baseless attempt by MAS to discredit the evidence which supports the DFSA’s findings.

CONTRAVENTIONS

66. Having regard to the facts and matters set out in this Notice and having considered the written representations dated 2 August 2015, the DFSA considers that MAS committed the following contraventions.

MAS contravened the marketing prohibition for Foreign Funds

67. The arrangements by which the Investors entered into each █████ Book project constitute a Fund, namely a Foreign Fund, under Article 11(1) of the Collective Investment Law 2010. In particular:
 - a. Investors invested funds into each █████ Book with an expected return of 50% on their investment over a time frame of between 8 and 24 months;

- b. Investors' funds were deposited into the relevant SPV bank account for the [REDACTED] Book in which they invested. These bank accounts were controlled by the SPVs and the investors had no control over these funds; and
 - c. Investors' funds were pooled into one or more of the three bank accounts operated by the SPVs for each [REDACTED] Book. All sale proceeds from the [REDACTED] Books were also to be received into the relevant SPV accounts.
68. The arrangements did not fall under any of the "arrangements not constituting a Collective Investment Fund" as contained in Part 2 of the CIR Module of the DFSA's Rulebook (CIR).
69. Under Article 50 of the Collective Investment Law 2010, MAS was prohibited from offering to existing or prospective investors a Unit of a Fund unless certain conditions were met. Those conditions included:
- a. making available to the Investors a Prospectus that complies with the requirements of the Collective Investment Law 2010 and CIR;
 - b. for MAS either to be a Fund Manager or authorised under the terms of its License to offer Units of a Fund; and
 - c. for the Offer to be made in accordance with the requirements of the Collective Investment Law 2010 and CIR.
70. MAS failed to meet all of the relevant conditions in that no Prospectus existed for the [REDACTED] Books investment. MAS therefore failed to make one available to Investors and failed to comply with the DFSA's Rules relating to the marketing of Foreign Funds set out in CIR 15.1.3. Moreover, MAS contravened the prohibition on marketing funds set out in Article 50 of the Collective Investment Law 2010.

Failings in relation to client classification

71. MAS engaged in conduct that amounted to carrying on the Financial Services activities of Advising and Arranging. This conduct included:
- a. making statements to investors to influence them to make investments in the [REDACTED] Books; and
 - b. facilitating investments in the [REDACTED] Books by, among other things, providing term sheets to the investors, obtaining the signatures of the investors on the term sheets, sending the signed term sheets to [REDACTED], and overseeing the payment of the investment funds into the SPV accounts.
72. Additionally, the term sheets signed by the Investors contained clear statements that MAS was advising on the [REDACTED] Books investment opportunity.
73. Accordingly, MAS was required to classify the Investors as Clients and comply with certain conduct of business and AML requirements before carrying on the Financial Services activities of Advising and Arranging. However, MAS failed to do so. As a result, the DFSA considers that MAS contravened the following:

- a. COB Rules 2.3.1(1), 2.3.2 and 2.3.3(1) by failing to classify the Investors as Professional Clients or Retail Clients;
- b. COB Rule 3.3.2 by failing to enter into Client Agreements with all its Clients before carrying on the Financial Services of Advising or Arranging;
- c. AML Rules 3.4.1(1) and 3.4.3(1) in that MAS failed to establish and verify the identity of the Investors before effecting any Transaction on their behalf

MAS failed to assess the suitability of the █████ Books investment

74. Despite its attempt to limit the extent to which it was required to consider the suitability of the █████ Books investment for a small number of the Investors, MAS was at all times required to take reasonable care to ensure the suitability of its advice and discretionary decisions for customers who were entitled to rely upon its judgement (Principle 8 of the DFSA's Principles for Authorised Firms, GEN 4.2.8). In the DFSA's view, this obligation applies regardless of whether Client Service Agreements had been signed by investors.
75. MAS stated in the term sheets that it had carried out due diligence and that it was pleased to advise the Investors on the █████ Books investment opportunity when, in fact, MAS had not undertaken any due diligence.
76. Additionally, MAS did not undertake any assessment of whether the █████ Books were suitable for the Investors. It did not ask investors for any information about their assets or financial position and did not make any enquiries into their experience in investing or their risk tolerance, objectives or needs. Nor did MAS ask investors about their knowledge and understanding of the risks involved in the █████ Books.
77. Further, in making statements and comments to encourage investors to invest in the █████ Books, the DFSA considers that MAS clearly intended for the Investors to rely on its advice.
78. Accordingly, the DFSA considers that MAS failed to take reasonable care to ensure the suitability of its advice to customers who were entitled to rely upon its judgement, in contravention of Principle 8 of the Principles for Authorised Firms (GEN Rule 4.2.8). In addition, MAS contravened COB Rule 3.4.2(1) by recommending the █████ Books to the Investors without having a reasonable basis for considering that the █████ Books were suitable for each particular investor.

ACTION

79. Under Article 90 of the Regulatory Law, the DFSA may impose sanctions and directions in respect of a person where it considers that person contravened a provision of any legislation administered by the DFSA.
80. In its representations, MAS did not specifically or substantially address the action proposed in the Preliminary Notice other than to state its objection to it.
81. Given the facts and matters set out in this Notice and the contraventions set out in paragraphs 67 to 78 above, the DFSA considers it appropriate in the circumstances to take the following action:

- a. Censure MAS under Article 90(2)(b) of the Regulatory Law; and
- b. Direct MAS to effect restitution, under Article 90(2)(c) of the Regulatory Law, to compensate each of the 20 Investors who contributed USD3,200,000 referred to in paragraphs 28 to 30 above and listed in Appendix A to this Notice, for the loss of their initial investments in the ST and JTM [REDACTED] Books. Each Investor will receive a payment from MAS equal to the total amount of funds deposited by that particular investor in the ST and JTM [REDACTED] Books less any return on investment which may have been received by the Investor.

Public Censure

82. In deciding to impose a public censure on MAS, the DFSA has taken into account the DFSA's penalty guidance as contained in Chapter 6 of RPP and it has considered all the relevant circumstances of this case. The DFSA considers the following factors to be particularly important:
 - a. the lack of due diligence conducted by MAS to determine that the offering being marketed to the Investors was an Investment subject to regulation under DFSA administered Laws and Rules;
 - b. the lack of appropriate disclosure that MAS was required to make for the marketing of such Funds as required under the Collective Investment Law 2010 and CIR;
 - c. the erroneous classification of the Investors by MAS as mere referrals and avoiding DFSA conduct of business requirements related to the on-boarding of clients including client classification, execution of a client agreement, assessment of suitability and AML client due diligence when MAS was clearly engaged in activities constituting Advising and Arranging;
 - d. the resultant lack of regulatory protection provided to the Investors, notably the inadequate marketing disclosure and the failure to conduct a suitability assessment of the Investors;
 - e. the deterrence that will be achieved in issuing a public censure and direction to effect restitution or compensation;
 - f. the conduct by MAS appears not to have been deliberate but was reckless; and
 - g. the action is consistent with pursuing the DFSA's objectives including to foster and maintain confidence in the financial services industry in the DIFC and to protect direct and indirect users and prospective users of the financial services industry in the DIFC.
83. The DFSA has also taken into consideration the financial position of MAS, its category and status as an Authorised Firm and the fact that, on 18 June 2015, the DFSA suspended its Licence to carry on Financial Services in or from the DIFC pursuant to Article 52 of the Regulatory Law 2004.
84. Were it not for MAS' financial position and the direction to effect restitution to the Investors, the DFSA would have imposed a fine on MAS in relation to the contraventions.

Restitution

85. Under Article 90(2)(c) of the Regulatory Law, where the DFSA considers that a person contravened a provision of any legislation administered by the DFSA, it may 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.
86. The DFSA recognises that the delay in publication of the ST and JTM [REDACTED] Books may be due to circumstances beyond the control of MAS. However, the DFSA considers that, were it not for the involvement of MAS in this matter and the contraventions set out in this Notice, the Investors would not have invested in the ST and JTM [REDACTED] Books. Further, by failing to classify the Investors as Clients and conduct an assessment of the suitability of the [REDACTED] Books investment, MAS created the serious risk that the Investors invested in a fund which was not suitable given their needs and objectives. As a result, the DFSA considers that MAS was at least partly responsible for the losses suffered by the Investors.
87. Accordingly, the DFSA considers it appropriate in the circumstances to direct MAS to pay restitution to the 20 Investors who contributed USD3,200,000 referred to in paragraphs 28 to 30 above and listed in Appendix A to this Notice.
88. Each Investor will receive a payment from MAS equal to the total amount of funds deposited by that particular investor in the ST and JTM [REDACTED] Books less the value of any return on investment they may have already received.
89. MAS is required to effect the restitution to the 20 Investors no later than 60 days from the date of this Notice. If restitution is not paid in full by this date, or arrangements to effect restitution have not been made by this date, the DFSA may proceed to take action in the DIFC Courts to enforce compliance with this Notice.
90. Nothing in this Notice affects the rights and powers that any person (including the Investors) may have under Article 94 of the Regulatory Law, or otherwise, to seek orders for the recovery of damages or compensation against MAS or any of its directors or officers.

PROCEDURAL MATTERS

Decision Maker

91. The decision which gave rise to the obligation to give this Notice was made by the DFSA's Decision Making Committee.
92. This Notice is given to MAS under paragraph 5 of Schedule 3 to the Regulatory Law.

Evidence and other material considered

93. In accordance with paragraphs 5(2) and 5(3) of Schedule 3 of the Regulatory Law, the DFSA is required to provide a copy of the relevant materials that were considered in making the decision which gave rise to the obligation to give this Notice.

94. An electronic copy of the relevant materials that were considered in deciding to give MAS the Preliminary Notice was provided on 2 July 2015. A hard copy of the same materials was also provided on 8 July 2015.
95. A copy of the further materials considered by the Decision Making Committee in deciding to take the action set in this Decision Notice will be provided to MAS.
96. Extracts of the relevant provisions of the DFSA administered Laws and Rules and the RPP Sourcebook Modules are set out in Appendix B to this Notice. Full copies can be located on the DFSA website at www.dfsa.ae.

Right of review of the decision

97. Under Articles 29 and 90(5) of the Regulatory Law, MAS has the right to refer this Decision Notice to the Financial Markets Tribunal ("FMT") for review.
98. The FMT is operationally independent of the DFSA and it has the power to conduct a full merits review of the DFSA's decision. After review of the DFSA's decision, the FMT has the power to make a new decision using the powers available to the DFSA. This could involve:
 - a. confirming the decision set out in this Notice;
 - b. substituting the DFSA decision with a new decision;
 - c. or referring the matter back to the DFSA with a direction for the DFSA to make a new decision.
99. Should MAS wish to have this matter reviewed by the FMT, it must exercise that right within 30 days from the date it is notified of this decision. Any reference made after that date would have to be approved by the FMT where it is satisfied that such approval is appropriate in the circumstances, pursuant to Article 29(3)(b) of the Regulatory Law.
100. Proceedings before the FMT are commenced by submitting a Notice of Appeal ("Form FMT 1") to the Registrar of the FMT.
101. The Rules of Procedure of the FMT, as well as a template Form FMT 1 and the Registrar's contact details can be found on the DFSA's website at:
www.dfsa.ae/Pages/AboutUs/WhoWeAre/BoardofDirectors/FMT.aspx
102. Under paragraph 26 of the FMT Rules of Procedure, MAS is required to send a copy of Form FMT 1 to the DFSA on the same date it is filed with the Registrar of the FMT.

Publicity

103. 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.

- 104. Sections 5-17-8 to 5-17-10 of the RPP are relevant to the publication of information about the matter to which this Decision Notice relates. As stated in these paragraphs, the DFSA will generally make public any decision made by the DMC and will do so in a timely manner after any relevant period to refer a matter to the FMT has expired or the appeal process has come to an end.
- 105. In the event that MAS refers this matter to the FMT, and as set out in RPP 5-17-8, the DFSA expects to publish information about the hearing or commencement of proceedings before the FMT or Court unless otherwise ordered by the FMT or Court.

DFSA contacts

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

Signed:

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Mark McGinness

On behalf of the Decision Making Committee of the DFSA

APPENDIX A – INVESTOR SCHEDULE

To protect their identity, the Investors' names have been removed from the published version of the DFSA's Decision Notice.

| Investor Number | Date of investment | Amount invested (USD) | Book |
|-----------------------------|--------------------|-----------------------|------|
| 1. | 15-Jul-11 | \$250,000 | JTM |
| 2. | 05-Nov-10 | \$150,000 | ST |
| 3. | 11-Jul-11 | \$125,000 | JTM |
| 4. | 01-Dec-10 | \$100,000 | ST |
| 5. | 31-May-11 | \$125,000 | JTM |
| 6. | 07-Feb-11 | \$50,000 | JTM |
| | 18-May-11 | \$100,000 | ST |
| 7. | 08-Dec-10 | \$50,000 | ST |
| 8. | 06-May-11 | \$100,000 | JTM |
| 9. | 24-May-11 | \$100,000 | ST |
| 10. | 30-Mar-11 | \$100,000 | JTM |
| | 30-Mar-11 | \$100,000 | ST |
| 11. | 18-Aug-10 | \$125,000 | ST |
| | 07-Sep-10 | \$125,000 | ST |
| 12. | 18-May-11 | \$50,000 | JTM |
| 13. | 31-Mar-11 | \$125,000 | JTM |
| | 05-Apr-11 | \$125,000 | ST |
| 14. | 21-Mar-11 | \$50,000 | ST |
| | 21-Mar-11 | \$50,000 | JTM |
| 15. | 30-Nov-10 | \$250,000 | ST |
| 16. | 27-Jan-11 | \$100,000 | JTM |
| 17. | 02-Sep-10 | \$150,000 | ST |
| | 02-Sep-10 | \$100,000 | JTM |
| 18. | 25-Jan-11 | \$75,000 | ST |
| | 18-May-11 | \$175,000 | ST |
| 19. | 16-May-11 | \$100,000 | ST |
| 20. | 06-Jan-10 | \$250,000 | JTM |
| Value of investments in ST | | \$1,775,000 | |
| Value of investments in JTM | | \$1,425,000 | |
| TOTAL | | \$3,200,000 | |

APPENDIX B - RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. STATUTORY PROVISIONS

DIFC Law No. 1 of 2004 – The Regulatory Law

Part 7: Enforcement

Article 90 – Sanctions and directions

- (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;
- (...)
- (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.

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.
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DIFC Law No. 2 of 2010 – Collective Investment Law

Chapter 1: Collective Investment Funds

11. Arrangements constituting a Collective Investment Fund

- (1) A Collective Investment Fund (“Fund”) is, subject to Article 12, any arrangements with respect to property of any description, including money, where:
- (a) the purpose or effect of the arrangements is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income;
 - (b) the arrangements must be such that the persons who are to participate (“Unitholders”) in the arrangements do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions; and
 - (c) the arrangements have either or both of the following characteristics:
 - (i) the contributions of the Unitholders and the profits or income out of which payments are to be made to them are pooled; or
 - (ii) the property is managed as a whole by or on behalf of the Fund Manager.
- (2) If the arrangements provide for such pooling as is mentioned in Article 11(1)(c)(i) in relation to separate parts of the property, the arrangement is not to be regarded as constituting a single Fund unless the Unitholders are entitled to exchange rights in one part for rights in another.

12. Arrangements not constituting a Collective Investment Fund

The DFSA may, by Rules, specify when arrangements or types of arrangements that meet the definition of a Fund in Article 11(1) do not constitute a Fund.

50. Marketing prohibition

- (1) Subject to Article 50(2), a person shall not, in or from the DIFC, Offer a Unit of a Fund to a prospective or existing Unitholder unless:
- (a) a Prospectus that complies with the requirements in this Law and the Rules made for the purposes of this Law is made available to such a Unitholder;
 - (b) the person making the Offer is either the Fund Manager of the Fund or an Authorised Firm whose Licence authorises it to do so; and
 - (c) the Offer is made in accordance with the requirements in this Law and the Rules made for the purposes of this Law.
- (2) The DFSA may, by Rules, exempt any person or class of persons from the prohibition in Article 50(1) and in doing so, may subject such person or class of persons to any conditions it considers appropriate.

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2. REGULATORY PROVISIONS (DFSA RULEBOOK AND SOURCEBOOK)

General Module (GEN)

GEN/VER26/07-10 and GEN/VER27/02-11

4.2 The Principles for Authorised Firms

Principle 8 - Suitability

- 4.2.8 An Authorised Firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for customers who are entitled to rely upon its judgement.
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Collective Investment Rules (CIR)

CIR/VER13/07-10

Prospectus disclosure relating to Foreign Funds

- 15.1.2 Where an Authorised Firm Offers a Unit of a Foreign Fund to a Person, it must make available to that Person a copy of a current Prospectus relating to the Fund which complies with the additional requirements in Rule 15.1.3 at the time of the Offer.

Guidance

Under Article 50(3)(d) of the Law, a Prospectus includes, in the case of a Foreign Fund the Units of which are marketed in or from the DIFC, any prospectus or other disclosure document prepared in accordance with the laws applicable to that Foreign Fund.

- 15.1.3
- (1) The Prospectus of a Foreign Fund made available by an Authorised Firm must be in the English language.
 - (2) The Prospectus must contain in a prominent position, or have attached to it, a statement that clearly:
 - (a) describes the foreign jurisdiction and the legislation in that jurisdiction that applies to the Fund;
 - (b) states the name of the relevant Financial Services Regulator in that jurisdiction;
 - (c) describes the regulatory status accorded to the Fund by that Regulator;
 - (d) includes the following warning:

“This Prospectus relates to a Fund which is not subject to any form of regulation or approval by the Dubai Financial Services Authority (“DFSA”).

The DFSA has no responsibility for reviewing or verifying any Prospectus or other documents in connection with this Fund. Accordingly, the DFSA has not approved this Prospectus or any other associated documents nor taken any steps to verify the information set out in this Prospectus, and has no responsibility for it.

The Units to which this Prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers should conduct their own due diligence on the Units.

If you do not understand the contents of this document you should consult an authorised financial adviser.”;

and

- (e) if the Offer is not directed to Retail Clients, includes a prominent statement to that effect to be incorporated within the warning in (d).

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Conduct of Business Module (COB)

COB/VER19/07-10

2.3 Types of Client

- 2.3.1**
- (1) Subject to (2), before carrying on a Financial Service with or for a Person, an Authorised Firm must determine whether such a Person is a Professional Client in accordance with Rule 2.3.2, in respect of all or particular Financial Services or products offered by the Authorised Firm.
 - (2) An Authorised Firm is not required to comply with (1) in relation to a particular Person where it:
 - (a) treats that Person as a Retail Client; or
 - (b) carries on an activity of the kind described in GEN Rule 2.26.1 that constitutes marketing with that Person and provides no other Financial Service to that Person.
 - (3) If an Authorised Firm is aware that a Client with or for whom it is intending to carry on a Financial Service is acting as an agent for another Person (the ‘second person’) in relation to a particular Transaction then, unless the Client is another Authorised Firm or a Regulated Financial Institution, the Authorised Firm must treat that second person as its Client in relation to that Transaction.

[Amended][RM68][VER17/01-10]

Guidance

Pursuant to GEN Rule 3.2.7, an Authorised Firm which is not a Representative Office may carry on activities which constitute marketing financial services and financial products offered in a jurisdiction other than the DIFC. The effect of Rule 2.3.1(2)(b) is to provide a carve-out for an Authorised Firm from the requirements under Rule 2.3.1(1) when the firm is carrying on such marketing activities. Under other provisions in this module, an Authorised Firm is also exempt from other specific requirements when carrying on such marketing activities under Rules 3.3.1(d) and 3.4.1(d).
[Amended][RM68][VER17/01-10]

Professional Client

- 2.3.2** (1) An Authorised Firm may classify a Person as a Professional Client only if such a Person:
- (a) either:
 - (i) has net assets of at least \$500,000 calculated in accordance with Rule 2.4.1; or
 - (ii) is, or has been in the previous 2 years:
 - (A) an Employee of the Authorised Firm; or
 - (B) an Employee in a professional position in another Authorised Firm;
 - (b) subject to (2), appears, on reasonable grounds, to the Authorised Firm, to have sufficient experience and understanding of relevant financial markets, products or transactions and any associated risks following the analysis specified in Rule 2.5.1; and
 - (c) has not elected to be treated as a Retail Client in accordance with Rule 2.3.3.
- (2) An Authorised Firm may consider the following Persons as possessing the necessary degree of experience and understanding of relevant financial markets, products or transactions without having to undertake the analysis referred to in (1)(b):
- (a) a Collective Investment Fund or a regulated pension fund;
 - (b) an Authorised Firm, a Regulated Financial Institution or the management company of a regulated pension fund;
 - (c) a properly constituted government, government agency, central bank or other national monetary authority of any country or jurisdiction;
 - (d) a public authority or state investment body;

- (e) a supranational organisation whose members are either countries, central banks or national monetary authorities;
 - (f) an Authorised Market Institution, regulated exchange or regulated clearing house;
 - (g) a Body Corporate whose shares are listed or admitted to trading on any regulated exchange of an IOSCO member country;
 - (h) a Body Corporate which has called up share capital of at least \$10,000,000; or
 - (i) any other institutional investor whose main activity is to invest in financial instruments, including an entity dedicated to the securitisation of assets or other financial transactions.
- (3) A personal investment vehicle may be classified as a Professional Client without having to meet the requirements in (1)(a)(i) if it is established and operated for the sole purpose of facilitating the management of the investment portfolio of an existing Professional Client.

Guidance

1. A Professional Client is responsible for keeping an Authorised Firm informed about any changes that could affect his current classification. Should the Authorised Firm become aware that a Professional Client no longer fulfils the conditions which made him eligible to be classified as a Professional Client, the Authorised Firm should take appropriate action.
2. A personal investment vehicle may be a Body Corporate, Partnership, trust or foundation.

Option of a Professional Client to be treated as a Retail Client

- 2.3.3**
- (1) Subject to (4), the purpose of Rule 2.3.2(1)(c), an Authorised Firm must, when first establishing a relationship with a Person as a Professional Client for the purposes of carrying on a Financial Service, inform that Person of his option to be treated as a Retail Client, the higher level of protection available to Retail Clients, and the time within which the Person may elect to be treated as a Retail Client.
 - (2) If the Person does not expressly elect to be treated as a Retail Client within the time specified by the Authorised Firm, the Authorised Firm may, pursuant to Rule 2.3.2, classify that Person as a Professional Client.
 - (3) Subject to (4), an Authorised Firm must, during the course of its dealings with a Professional Client, treat such a Client as a Retail Client if he expressly requests the Authorised Firm to do so.
 - (4) In the event that an Authorised Firm only carries on Financial Services with or for Professional Clients, it must inform the Person of this fact and any relevant consequences.

Guidance

1. The obligation in Rule 2.3.3(1) applies to an Authorised Firm when it deals for the first time with a Professional Client.
2. For the purposes of Rule 2.3.3 (3), it is the responsibility of a Professional Client to ask for a higher level of protection as a Retail Client.

3.3 Key information and Client Agreement

Application

3.3.1 The Rules in this section do not apply to an Authorised Firm when it is:

- (a) carrying on a Financial Service with or for a Market Counterparty;
- (b) Accepting Deposits;
- (c) Providing Credit;
- (d) carrying on an activity of the kind described in GEN Rule 2.26.1 that constitutes marketing; or [Amended][RM68][VER17/01-10]
- (e) a Fund Manager of a Fund Offering the Units of a Fund it manages.

[Amended][RM72][VER19/07-10]

3.3.2 (1) Subject to (2), an Authorised Firm must not carry on a Financial Service with or for a Person unless:

- (a) there is a Client Agreement entered into between the Authorised Firm and that Person containing the key information specified in App2; and
- (b) before entering into the Client Agreement with the Person, the Authorised Firm has provided to that Person the key information referred to in (a) in good time to enable him to make an informed decision relating to the relevant Financial Service.

(2) An Authorised Firm may provide a Financial Service to a Client without having to comply with the requirement in (1);

- (a) subject to (3), where it is, on reasonable grounds, impracticable to comply; or
- (b) where the Client has expressly agreed to dispense with the requirement in regard to a personal investment vehicle.

(3) When (2)(a) applies, an Authorised Firm providing the Financial Service must:

- (a) first explain to the Person why it is impracticable to comply; and
- (b) enter into a Client Agreement as soon as practicable thereafter.

Guidance

1. App 2 sets out the core information that must be included in every Client Agreement and additional disclosure for certain types of activities to which this chapter applies. The information content for Client Agreements with Retail Clients is more detailed than for Professional Clients.
2. For the purposes of Rule 3.3.2(1)(b), an Authorised Firm may either provide a Person with a copy of the proposed Client Agreement, or give that information in a separate form. If there are any changes to the terms and conditions of the proposed agreement, the Authorised Firm should ensure that the Client Agreement to be signed with the Person accurately incorporates those changes.
3. For the purposes of Rule 3.3.2(2)(a), an Authorised Firm may consider it is reasonably impracticable to provide the key information to a Person if that Person requests the Authorised Firm to execute a Transaction on a time critical basis. Where an Authorised Firm has given the explanation referred to in Rule 3.3.2(3)(a) verbally, it should maintain records to demonstrate to the DFSA that it has provided that information to the Client.

3.4 Suitability

Application

3.4.1 The Rules in this section do not apply where the Authorised Firm:

- (a) undertakes a Transaction with a Market Counterparty;
- (b) undertakes an Execution-Only Transaction;
- (c) undertakes the activities of Accepting Deposits or Providing Credit; or
- (d) carries on an activity of the kind described in GEN Rule 2.26.1 that constitutes marketing. [Amended][RM68][VER17/01-10]

Suitability assessment

- 3.4.2** (1) Subject to (2), an Authorised Firm must not recommend to a Client a financial product or financial service, or execute a Transaction on a discretionary basis for a Client, unless the Authorised Firm has a reasonable basis for considering the recommendation or Transaction to be suitable for that particular Client. For this purpose, the Authorised Firm must:
- (a) undertake an appropriate assessment of the particular Client's needs and objectives, and, financial situation, and also, to the extent relevant, risk tolerance, knowledge, experience and understanding of the risks involved; and
 - (b) take into account any other relevant requirements and circumstances of the Client of which the Authorised Firm is, or ought reasonably to be aware.

- (2) An Authorised Firm may, subject to (3), limit the extent to which it will consider suitability when making a recommendation to, or undertaking a Transaction on a discretionary basis for or on behalf of, a Professional Client if, prior to carrying on that activity, the Authorised Firm:
 - (a) has given a written warning to the Professional Client in the form of a notice clearly stating either that the Authorised Firm will not consider suitability, or will consider suitability only to the extent specified in the notice; and
 - (b) the Professional Client has given his express consent, after a proper opportunity to consider the warning, by signing that notice.
- (3) Where an Authorised Firm manages a Discretionary Portfolio Management Account for a Professional Client, it must ensure that the account remains suitable for the Professional Client, having regard to the matters specified in (1) (a) and (b).

Guidance

1. An Authorised Firm Providing Trust Services does not have to undertake an assessment of the factors such as risk tolerance, knowledge and experience of a Client when assessing the suitability of the service to a particular Client. This is because those considerations are not relevant to the activity of Providing Trust Services.
2. The extent to which an Authorised Firm needs to carry out a suitability assessment for a Professional Client depends on its agreement with such a Client. The agreement may limit the suitability assessment to a specified extent, or may dispense with the suitability assessment completely. To the extent a limited suitability assessment is agreed upon, the firm must carry out the suitability assessment as agreed. Limitations may, for example, relate to the objectives of the Client or the product range in respect of which the recommendations are to be made.

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Anti-Money Laundering Module (AML)

AML/VER6/01-10 and AML/VER7/02-11

3.4 Customer identification requirements

Duties and responsibilities

- 3.4.1** (1) Subject to the exception under Rule 3.4.5, an Authorised Firm must establish and verify the identity of any customer with or for whom the Authorised Firm acts or proposes to act.
- (2) In establishing and verifying a customer's true identity, an Authorised Firm must obtain sufficient and satisfactory evidence having considered:

- (a) its risk assessment under Rule 3.7.1 in respect of the customer; and
 - (b) the relevant provisions of App1 and App2.
- (3) An Authorised Firm must update as appropriate any customer identification policies, procedures, systems and controls.

Guidance

An Authorised Firm should adopt a risk-based approach for the customer identification and verification process. Depending on the outcome of the Authorised Firm's money laundering risk assessment of its customer, it should decide to what level of detail the customer identification and verification process will need to be performed.

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Regulatory Policy and Process Sourcebook Module (RPP)

May 2015 Edition

6-3 FINANCIAL PENALTY OR PUBLIC CENSURE

6-3-1 The DFSA will consider all the relevant circumstances of the case when deciding whether to impose a financial penalty or issue a public censure. As such, the factors set out in section 6-2 are not exhaustive. Not all of the factors may be relevant in a particular case and there may be other factors, not listed, that are relevant.

6-3-2 The criteria for determining whether it is appropriate to issue a public censure rather than impose a financial penalty include those factors that the DFSA will consider in determining the amount of a financial penalty set out in sections 6-5 to 6-7. Some particular considerations that may be relevant when the DFSA determines whether to issue a public censure rather than impose a financial penalty are:

- (a) whether or not deterrence may be effectively achieved by issuing a public censure;
- (b) depending upon the nature and seriousness of the contravention:
 - (i) whether the Person has brought the contravention to the attention of the DFSA;
 - (ii) whether the Person has admitted the contravention and provides full and immediate co-operation to the DFSA, and takes steps to ensure that those who have suffered loss due to the contravention are fully compensated for those losses;
- (c) the DFSA's approach in similar previous cases: the DFSA will seek to achieve a consistent approach to its decisions on whether to impose a financial penalty or issue a public censure; and
- (d) the impact on the Person concerned. It would only be in an exceptional case that the DFSA would be prepared to agree to issue a public censure rather than impose a

financial penalty if a financial penalty would otherwise be the appropriate sanction. Examples of such exceptional cases could include:

- (i) where the application of the DFSA's policy on serious financial hardship (set out in section 6-7) results in a financial penalty being reduced to zero;
- (ii) where there is verifiable evidence that the Person would be unable to meet other regulatory requirements, particularly financial resource requirements, if the DFSA imposed a financial penalty at an appropriate level; or
- (iii) where there is the likelihood of a severe adverse impact on a Person's shareholders or a consequential impact on market confidence or market stability if a financial penalty were imposed. However, this does not exclude the imposition of a financial penalty even though this may have an impact on a Person's shareholders.