DECISION NOTICE

To: Morgan Gatsby Limited (**MGL**)

DFSA Ref: F001950

Address: C/- Essel Group ME DMCC
Office 401, Floor 4
Zee Tower, DMCC
Dubai, UAE

Date: **6 January 2020**

ACTION

1. For the reasons given in this Notice and pursuant to Article 90(2) of the Regulatory Law 2004 (the **Law**), the Dubai Financial Services Authority (**DFSA**) has decided to impose a fine on MGL of USD246,558.29 (the **Fine**).
2. MGL has agreed to settle this matter. The DFSA has, therefore, decided to reduce the fine by a settlement discount of 30%. Were it not for the settlement discount the DFSA would have imposed a fine of USD352,226.13 on MGL.
3. This Notice is addressed to MGL alone. Nothing in this Notice constitutes a determination that any person other than MGL has breached any legal or regulatory rule, and the opinions expressed in this Notice are without prejudice to the position of any third party, or of the DFSA in relation to any third party.

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 either in this Notice or in the DFSA Rulebook, Glossary Module (**GLO**). Some of these defined terms are set out in Annex B.

EXECUTIVE SUMMARY

5. In summary, the DFSA has found that MGL has committed contraventions in its:

   5.1 promotion of the Essel Africa Natural Resource Fund (the **EANR Fund**). The DFSA considers that MGL's promotion of the EANR Fund contravened several provisions of the Collective Investment Law 2010 (**CIL**) and the Collective Investment Rules (**CIR**);

   5.2 dealings with two corporate Clients and their beneficial owners. The DFSA considers that MGL made unauthorised transactions on behalf of the two corporate Clients, and engaged in misleading and deceptive conduct in regard to these transactions;

   5.3 non-compliance with certain restrictions on business and dealing with property imposed by the DFSA on 2 May 2018;

   5.4 failure to properly classify an individual Client, and to conduct the requisite enquiries into the Client's source of funds and rationale for entering into transactions. The DFSA considers that MGL contravened several COB and AML Rules in relation to this particular Client;

   5.5 failure to ensure that its Governing Body was provided with accurate information. The DFSA considers that MGL contravened several GEN Rules in this regard; and

   5.6 failure to comply with several of the Safe Custody Provisions in COB App6 in its relationship with a third-party custody provider.

6. The DFSA also considers that MGL has committed a number of contraventions of the GEN Principles for Authorised Firms by engaging in the conduct summarised in paragraph 5 above.

BACKGROUND

MGL, the Essel Group and relevant MGL Clients

MGL

7. Sidra Capital (DIFC) Ltd (**Sidra**) was licensed by the DFSA on 27 March 2013. In the second half of 2016, Sidra was acquired by Essel Group ME DMCC (**EGME**) and changed its name to MGL.

8. Prior to the suspension of its Licence (see paragraph 22 below), MGL was authorised to carry out the following Financial Services:

8.1 Arranging Deals in Investments;

8.2 Advising on Financial Products;

8.3 Arranging Custody;

8.4 Dealing in Investments as Agent; and

8.5 Arranging Credit and Advising on Credit.

9. This Notice refers at various times to a person called SM1, who was a member of the senior management of MGL.

EGME

10. EGME is a diversified conglomerate operating in a broad spectrum of industries "*including Oil and Gas, Potash Mining, Nuclear-Based energy, Financial Services, Media Production, International Trading and Education.*" EGME is part of the Essel Group of companies, which is an Indian multinational conglomerate. Its offices in Dubai are in Dubai Media City.

11. EGME is the "Fund Sponsor" of the EANR Fund, which appears to be a Luxembourg-based fund with the objective of investing "*in Oil exploring Assets which have a high income & long term capital appreciation*". MGL is the EANR Fund's "Advisor and Master Distributor".

12. On 18 April 2016, EGME invested in Company S, a company listed on the Toronto Stock Exchange, through a private placement. Between April 2016 and October 2016, EGME gradually increased its stake in Company S. On 11 October 2016, Company S announced on its website that EGME's holding in the company amounted to 21.3%.

Relevant MGL Clients

13. Relevant MGL Clients for the purpose of this Notice are:

13.1 Client P1 and Client P2. These are two companies that are beneficially owned by Client P3 and Client P4. Unless the context otherwise requires, a reference to "the **P Clients**" in this Notice refers collectively to Clients P1 to P4;

13.2 Client B. Client B is also a shareholder in Company S; and

13.3 Client G. Client G is an investor in EANR Fund.

The DFSA's previous regulatory actions regarding MGL

Voluntary Undertaking

14. On 27 April 2016, following concerns raised by the DFSA, MGL (then called Sidra) undertook in writing to the DFSA (among other things) not to solicit, on-board, advise or deal with any new or prospective clients pending resolution of the concerns (the **Undertaking**).

15. On 22 September 2016, the DFSA sent a letter to MGL (then called Sidra) stating that it did not object to MGL withdrawing the Undertaking, subject to strict conditions, including the maintenance and injection of capital, and more onerous financial reporting. The DFSA also stated that its decision not to object to MGL's withdrawal of the Undertaking was based on the assumption that MGL had, at all times, complied with the terms of the Undertaking.

Investigation

16. On 21 March 2018, due to forming concerns which included some of the matters referred to in paragraph 5 above, the DFSA commenced an investigation (the **Investigation**) pursuant to Article 78 of the Law into the following suspected contraventions by MGL:

    16.1 Article 66 of the Law - False or Misleading Information;

    16.2 Article 69 of the Law - Compliance with an order or requirement of the DFSA;

    16.3 GEN Rule 4.2.3 - Principle 3 for Authorised Firms - Management, systems and controls;

    16.4 GEN Rule 4.2.4 - Principle 4 for Authorised Firms - Resources;

    16.5 GEN Rule 4.2.9 - Principle 9 for Authorised Firms - Customer assets and money; and

    16.6 GEN Rule 4.2.10 - Principle 10 for Authorised Firms - Relations with regulators.

The May 2018 Prohibitions

17. On 9 April 2018, the DFSA issued a letter to MGL (the **Concerns Letter**) setting out concerns that MGL had not complied, or was not complying, with regulatory requirements in its:

    17.1 erroneous classification of a Retail Client as a Professional Client;

17.2 potential breach of the terms of the Undertaking (see paragraph 14 above). MGL failed to comply with the Undertaking by engaging with a new or prospective Client (namely, Client B) while the Undertaking was in place;

17.3 failure to comply with AML Rules relating to customer on-boarding, including customer risk assessment and CDD;

17.4 inadequate record-keeping, processing and communications regarding transactions, as required by COB, in relation to the EANR Fund;

17.5 failure to comply with the CIR relating to the marketing and the offering of a Foreign Fund; namely, the EANR Fund;

17.6 inadequate treatment or protection of Client Money and Client Investments;

17.7 inadequate management, systems and controls regarding its financial resources, and therefore its ability to continue to conduct a viable business;

17.8 inadequate human resources, particularly in the compliance area and including the Compliance Officer and Money Laundering Reporting Officer (**MLRO**); and

17.9 non-compliance with the requirements of a DFSA regulatory notice within applicable deadlines.

18. The Concerns Letter indicated to MGL that the DFSA was considering taking immediate regulatory action against MGL. In this regard, the letter also:

18.1 set out the terms of restrictions pursuant to Articles 75 and 76 of the Law which the DFSA was minded to impose on MGL; and

18.2 invited MGL to consent to the imposition of these restrictions.

19. On 21 April 2018, MGL sent a letter to the DFSA asking the DFSA to impose the restrictions on MGL.

20. On 2 May 2018, the DFSA gave MGL a Decision Notice prohibiting MGL pursuant to:

20.1 Article 75 of the Law, from soliciting, on-boarding, engaging in any Financial Promotions with, for or in any way connected to (whether directly or indirectly) or otherwise dealing in any manner in any Financial Services business with any person as a potential customer; and

20.2 Article 76 of the Law, from dealing with any relevant property or assisting or procuring another person to deal with any relevant property or otherwise transacting with any relevant property for or on behalf of an existing customer,

(the **May 2018 Prohibitions**).

21. Pursuant to the terms of the Decision Notice, the May 2018 Prohibitions came into force on 7 May 2018. To the extent that they are still applicable following the suspension of MGL's Licence (see paragraph 22 below), the May 2018 Prohibitions remain in force.

Suspension of Licence

22. On 19 September 2018, the DFSA gave MGL a Preliminary Notice in which it proposed to suspend MGL's Licence. On 8 November 2018, after considering MGL's written and verbal representations, the DFSA issued a Decision Notice suspending the Licence of MGL for a period of 12 months. The DFSA took this regulatory action for the same or similar reasons to those summarised in paragraph 17 above.

23. MGL had the right to appeal against the DFSA's decision by referring the matter to the Financial Markets Tribunal (**FMT**). However, MGL did not refer the matter to the FMT.

The January 2019 Prohibitions

24. On 10 January 2019, the DFSA gave MGL a Decision Notice prohibiting MGL pursuant to Article 76 of the Law from:

24.1 dealing with any property belonging to MGL and any property held or controlled by MGL on behalf, or for the benefit, of any of its Clients; and/or

24.2 assisting, counselling or procuring another person to deal with any property belonging to MGL and any property held or controlled by MGL on behalf, or for the benefit, of any of its Clients,

(the **January 2019 Prohibitions**).

25. The DFSA imposed the January 2019 Prohibitions on MGL for the following reasons:

25.1 In the course of conducting the Investigation, the DFSA obtained information that MGL carried out transactions to the value of USD1,125,000 for the P Clients without their authorisation or knowledge. In particular MGL:

25.1.1 invested approximately USD700,000 into the EANR Fund; and

25.1.2 lent approximately USD425,000 to EGME; and

25.2 Client P3 alleged that signatures purporting to be his on certain documents relating to the transactions described in paragraph 25.1 above were forgeries.

26. Through its legal representatives, MGL made representations to the DFSA Decision Maker regarding the January 2019 Prohibitions on 4 March 2019, to which the DFSA Enforcement Department (**Enforcement**) responded on 19 March 2019. After considering the representations and Enforcement's response, the DFSA Decision Maker decided on 28 March 2019 that the January 2019 Prohibitions should remain in place.

Shareholders Resolution

27. At an Ordinary General Meeting on 13 December 2018, the shareholders of MGL passed a number of resolutions including that:

27.1 an application be made to the DFSA for the withdrawal of the Licence held by MGL; and

27.2 MGL be liquidated.

FACTS AND MATTERS RELIED UPON

The EANR Fund

Background

28. The EANR Fund is a Luxembourg "Société en Commandite Spéciale" or Special Limited Partnership. It is structured as a private equity fund with a General Partner (**GP**), who manages the private equity fund, and Limited Partners (**LPs**), who invest capital into the fund. According to the EANR Fund's Limited Partner Investment Agreement (**LPIA**), the Special Limited Partnership was constituted on 12 February 2016.

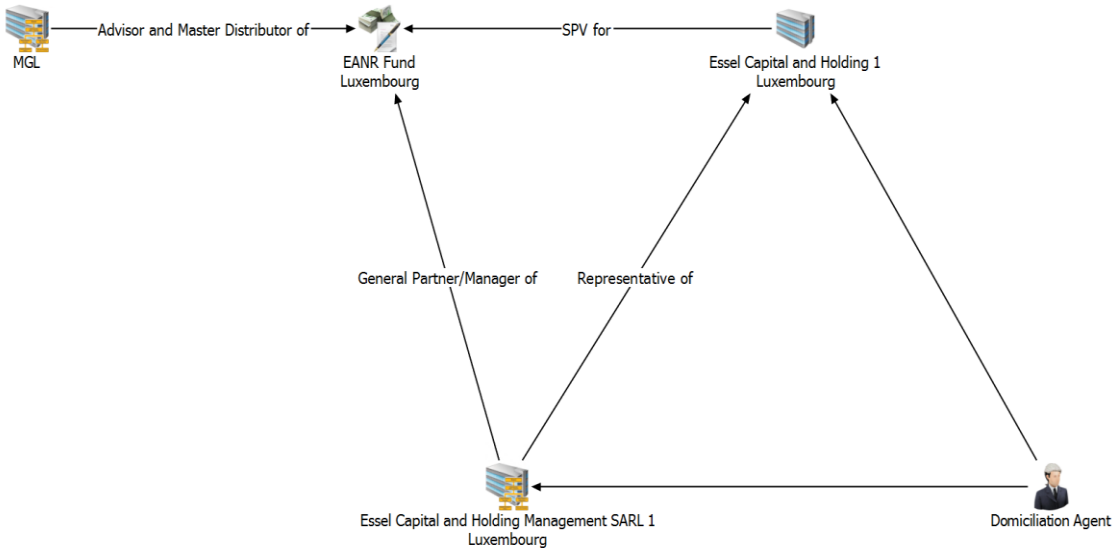
29. The following sub-paragraphs and diagram set out the relevant parties and the roles that they play in the EANR Fund:

29.1 Essel Capital and Holding 1 is the special purpose vehicle established for the EANR Fund;

29.2 Essel Capital and Holding Management Sarl 1, is the representative of Essel Capital and Holding 1 and the General Partner/Manager of the EANR Fund. Both Essel Capital and Holding 1 and Essel Capital and Holding Management Sarl 1 are incorporated in Luxembourg, and registered with the Luxembourg Registry of Commerce and Companies;

29.3 A Luxembourg law firm is the "Domiciliation Agent" for both Essel Capital and Holding 1 and Essel Capital and Holding Management Sarl 1 (the **Domiciliation Agent**). The duties of the Domiciliation Agent include providing the registered office in Luxembourg for both companies, and keeping the register of shares and accepting service of notices; and

29.4 As stated in paragraph 11 above, MGL is the EANR Fund's Advisor and Master Distributor. MGL received a mandate from EGME to promote the EANR Fund on 2 October 2016. MGL's scope of work pursuant to the mandate includes the preparation of marketing material and meeting with investors.



30. The EANR Fund is not regulated, including by the Luxembourg Financial Services Regulator; namely, the Commission de Surveillance du Secteur Financier (**CSSF**). The Investor Packs for the EANR Fund state that it is an "Unregulated Investment Fund" (see paragraphs 35.6 and 35.7 below).

31. For the purposes of the CIL and CIR, the EANR Fund:

31.1 is a Foreign Fund (i.e. a Fund established in a jurisdiction other than the DIFC); and

31.2 is not a Designated Fund, as it is not a UCITS compliant fund or scheme.

32. MGL was an LP in the EANR Fund, signing two LPIAs on 30 September 2017. In this capacity, MGL made investments in the EANR Fund on behalf of Client P2 and Client G. However, the exact amounts invested by MGL on behalf of these Clients are difficult to reconcile because:

32.1 according to the two LPIAs, and also two Escrow Agreements, MGL invested the total amount of USD3,703,900 as an LP in the EANR Fund;

32.2 according to a document entitled “Reconciliation of Fund from Essel Group”, which was received by MGL from EGME, MGL made investments totalling USD3,252,435.37 in the EANR Fund on behalf of Client P2 and Client G in 2017; and

32.3 according to an MGL document entitled “Essel Africa Fund Reconciliation to Documents on File as at 18 February 2018”, MGL made investments in the EANR Fund totalling:

32.3.1 USD2,836,000 according to Subscription Forms on file; and

32.3.2 USD3,058,870 according to entries in MGL’s Client relationship management systems.

33. MGL’s promotion of the EANR Fund also resulted in the amount of USD4,989,306.21 being invested directly in the Fund in 2017 by other investors as LPs. This amount includes an amount of USD500,000 apparently invested by Client P1 (see paragraphs 74 to 86 below).

34. By letter dated 11 October 2018, MGL claims that it ceased marketing the EANR Fund as at 7 May 2018. However, MGL continued to market the EANR Fund after that date (see paragraphs 128.3 and 128.4.1 below).

Primary Documents of the EANR Fund

35. In its promotion of the EANR Fund, MGL used the following documents:

35.1 An Investor Presentation in PowerPoint-type format;

35.2 A Teaser;

35.3 A Fact Sheet;

35.4 The LPIA, which was also called a Private Placement Memorandum;

35.5 A Disclaimer;

35.6 An Investor Pack containing a Subscription Form for a legal entity; and

35.7 An Investor Pack containing a Subscription Form for a natural person.

The Absence of the EANR Fund’s Bank Account

36. At all material times, the EANR Fund did not have a dedicated bank account into which investment monies from investors could be deposited. Instead, investors were told to

send monies for investments in the EANR Fund to EGME's bank account with a bank in the UAE (the **EGME Bank Account**).

37. In addition, two letters were sent to MGL confirming that all investment monies raised for the EANR Fund should be transferred into the EGME Bank Account as follows:

    37.1 a letter dated 10 October 2016 on the letterhead of Essel Capital and Management Holding Sarl 1. This letter was signed by a former director of MGL (**FD1**) who also held a position at EGME; and

    37.2 a letter dated 30 October 2017 on the letterhead of Essel Capital and Holding II. The letter is signed by the Domiciliation Agent as the "Class B Manager", and the signature block of the letter states that the Domiciliation Agent has signed "*For Essel Capital and Holding I*".

    Both letters state to MGL that it should "*Pls. keep this as standing instruction till further notice*".

38. The EGME Bank Account is an operational account of EGME, and not a dedicated bank account for the EANR Fund. It was used because there were difficulties in opening a dedicated bank account for the Fund.

39. MGL claims that there was an escrow arrangement in place with investors regarding the monies deposited into the EGME Bank Account. Investors in the EANR Fund entered into an "Escrow Agreement" with Essel Capital and Holding 1, Essel Capital and Holding Management Sarl 1 and EGME in which EGME became the Escrow Agent holding investors' monies on behalf of the EANR Fund.

40. Pursuant to the Escrow Agreements, EGME agreed to hold the investor monies "*in deposit*" and to follow the instructions of the GP of the EANR Fund (i.e. Essel Capital and Holding Management Sarl 1) in relation to those monies. EGME was therefore responsible for safeguarding the investor monies. However, EGME is not and has never been regulated by any Financial Services Regulator.

41. MGL transferred monies into the EGME Bank Account on behalf of Client P2 and Client G for the investments mentioned in paragraph 32 above. Also, according to the document from EGME entitled "Reconciliation of Fund from Essel Group" (see paragraph 32.2 above), MGL was responsible for "Direct Investments" into the EANR Fund by a number of investors and received commission of 5% in connection with each of these investment transactions. SM1 has stated that, among other things, MGL provided investors with the bank account details to which investment monies for the EANR Fund should be transferred.

42. On 2 August 2018, a bank account with a bank in Kenya was approved by the board of directors of Essel Capital and Holding 1 for "*investment and effective fund*

management towards oil and gas investment". However, the bank account appears to be in the name of a company which apparently owns an asset of the EANR Fund in Kenya (namely, a block of land in Eastern Kenya called Block 2A). This bank account is not in the name of the EANR Fund.

Management of the Investments of the EANR Fund

43. Pursuant to the LPIA, the manager of the EANR Fund is Essel Capital and Holding Management Sarl 1. The manager's duties include carrying out investment management activities.

44. Essel Capital and Holding Management Sarl 1 is not and has never been regulated to provide investment management services by any Financial Services Regulator.

Offer of Units in the EANR Fund

45. In order to offer Units in the EANR Fund to a Person, MGL was required pursuant to CIR 15.1.2 to make available to that Person a current Prospectus, which complied with the requirements of CIR 15.1.3.

46. Though the LPIA complied with some of the requirements of CIR 15.1.3, it did not comply with the following provisions:

    46.1 the LPIA did not state the name of the relevant Financial Services Regulator in the jurisdiction in which the EANR Fund was established; namely, the CSSF (CIR 15.1.3(2)(b)); and

    46.2 the LPIA also did not describe the regulatory status accorded to the EANR Fund; namely, that it was an unregulated fund (CIR 15.1.3(2)(c)).

Other Foreign Fund Criteria

47. CIR 15.1.6(1) sets out the required criteria prescribed for the purposes of Article 54(1)(a)(ii) of the CIL for a DFSA Authorised Firm to Offer a Unit of a Foreign Fund. These include that the Fund either:

    47.1 has a custodian who meets one of the requirements in CIR 15.1.6(2) and also an investment manager who meets one of the requirements in CIR 15.1.6(3);

    47.2 has both the custody and investment management activities being performed by a Person who meets the requirements in CIR 15.1.6(4); or

    47.3 the Fund has been rated as at least "investment grade" by an international rating agency acceptable by the DFSA – see CIR 15.1.6(1)(a)(iii).

CIR 15.1.6(1)(a)(iii)

48. The EANR Fund is not, and has never been, rated by any international rating agency (whether acceptable by the DFSA or not).

CIR 15.1.6(2)

49. None of the parties who had roles in the EANR Fund (see paragraph 29 above) satisfied the criteria set out in CIR 15.1.6(2)(a) to (c) for being a custodian to the Fund. None of the parties, including but not limited to EGME and the Domiciliation Agent, was or has ever been:

49.1 an Eligible Custodian as defined in CIR 8.2.4;

49.2 a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction; or

49.3 appointed under an agreement by a Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of that Regulator.

50. In relation to CIR 15.1.6(2)(d), none of the parties who had roles in the EANR Fund (including but not limited to EGME - see paragraph 29 above) qualified as a Person as to whom the Authorised Firm was satisfied had adequate custody and asset safety arrangements in respect of the EANR Fund after performing the requisite due diligence. This is because:

50.1 MGL did not perform the requisite due diligence on custody and asset safety arrangements on any of the parties, including EGME and the Domiciliation Agent; and

50.2 even if MGL had performed the requisite due diligence, MGL could not have been satisfied that any of the parties, including EGME and the Domiciliation Agent, had adequate custody and asset safety arrangements in respect of the EANR Fund. Taking into consideration the factors set out in CIR 15.1.6(2)(d)(i) to (v), none of the parties including EGME and the Domiciliation Agent:

50.2.1 were authorised and supervised by a Financial Services Regulator for the purposes of providing custody;

50.2.2 had any systems and controls for the segregation of assets. In fact, EGME comingled the property of the EANR Fund with its own property

by allowing investment monies for the EANR Fund to be deposited into one of its operational accounts (see paragraphs 36 to 38 above);

50.2.3 had any systems and controls for the management of conflicts of interest;

50.2.4 had entered into a safe custody agreement with appropriate terms and conditions. Investors entered into the Escrow Agreements (see paragraphs 39 and 40 above), but the terms and conditions of these agreements were inadequate in that the agreements permitted EGME to comingle investor monies with its own operational funds without segregation; or

50.2.5 had periodic reporting obligations concerning the provision of safeguarding assets.

CIR 15.1.6(3)

51. None of the parties who had roles in the EANR Fund (see paragraph 29 above) satisfied the criteria set out in CIR 15.1.6(3)(a) to (c) for being an investment manager for the EANR Fund. None of the parties, including but not limited to Essel Capital and Holding Management Sarl 1, was or has ever been:

51.1 authorised and supervised by the DFSA or a Financial Services Regulator in a Recognised Jurisdiction in respect of activities in relation to investment management;

51.2 a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction; or

51.3 appointed under an agreement by a Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of that Regulator. Though MGL has entered into LPIAs with Essel Capital and Holding 1 and Essel Capital and Holding Management Sarl 1, and the LPIA does oblige Essel Capital and Holding Management Sarl 1 to carry out certain investment management activities:

51.3.1 MGL entered into two LPIAs as a LP in, or a subscriber to, the Fund on or about 30 September 2017. Essel Capital and Holding Management Sarl 1 had therefore already been appointed to carry out investment management activities in relation to the EANR Fund. It

was appointed when the "Société en Commandite Spéciale" or Special Limited Partnership was constituted;

51.3.2 by entering into the LPIA, MGL agreed to Essel Capital and Holding Management Sarl 1 carrying out investment management activities. However, MGL had no capacity or rights whatsoever pursuant to the LPIA to supervise or monitor the carrying out of investment management activities by Essel Capital and Holding Management Sarl 1; and

51.3.3 as stated in paragraph 46 above, the LPIA was not an agreement which accorded with the requirements of the relevant Regulator; namely, the DFSA.

CIR 15.1.6(4)

52. For the same reasons as set out in paragraphs 49 to 51 above, none of the parties who had roles in the EANR Fund (see paragraph 29 above) satisfied the criteria set out in CIR 15.1.6(4)(a) to (c) for carrying out both the custody and investment management activities of the EANR Fund.

Previous DFSA findings concerning MGL's marketing of the EANR Fund

53. The DFSA's Decision Notice dated 8 November 2018, in which the DFSA suspended MGL's Licence (see paragraph 22 above), contained findings concerning MGL's marketing of the EANR Fund. The findings were that MGL had failed to:

53.1 make a Prospectus available to a Person to whom it had made an Offer of the Units in the EANR Fund; and

53.2 comply with the criteria under which an Offer of a Unit of a Foreign Fund can be made by a DFSA Authorised Firm.

54. MGL did not appeal to the FMT against the Decision Notice dated 8 November 2018, and therefore the DFSA's findings in that Decision Notice remain uncontested and are relied on in this Notice.

MGL's marketing of the EANR Fund without a Compliance Officer/MLRO in place

55. When MGL accepted the mandate to promote the EANR Fund, it did not have a DFSA Authorised Compliance Officer or MLRO in place, nor had it applied for temporary cover. MGL did not have an authorised Compliance Officer/MLRO in place from September 2016 to June 2017.

56. From September 2016 to May or June 2017, MGL employed a person who provided compliance services to the company. MGL applied to the DFSA for this person to be authorised as MGL's Compliance Officer. However, the DFSA did not consider that the person satisfactorily demonstrated the necessary competencies for the role and did not authorise the person as MGL's Compliance Officer.

57. The majority of the marketing of the EANR Fund was carried out by MGL without an Authorised Compliance Officer/MLRO in place.

Promotion of the EANR Fund – false claim of "100% Capital Protection"

58. As stated in paragraph 29.4 above, MGL received a mandate to market the EANR Fund on 2 October 2016.

59. An ex-employee of MGL (**EE1**) states that he was asked by SM1 on or about 24 January 2017 to draft an email promoting the EANR Fund. SM1 asked EE1 to draft the email, and to then send it to SM1 for his review.

60. EE1 drafted the email and sent the draft by email to SM1 on 24 January 2017. The draft states that one of the "*salient features*" of the EANR Fund is "*100% Capital Protection*".

61. On 25 January 2017, SM1 responded to EE1. SM1 added two sentences to the first paragraph of the draft email, but otherwise made no changes. In particular, SM1 did not change the words "*100% Capital Protection*".

62. EE1 states that SM1 used the words "*100% Capital Protection*" when referring to the EANR Fund's features, and also that SM1 asked him to use those words in the draft email.

63. EE1 states that this template email was used by MGL relationship managers to promote the EANR Fund. Examples include emails sent by another MGL ex-employee (**EE2**), to six customers in April and May 2018. SM1 is copied-in on some of these emails.

64. EE1 says that he attended the regular team meetings of MGL's front office team held on Sundays during his employment with MGL. He said that, at these meetings, SM1 said that the EANR Fund was 100% capital guaranteed but, when asked by the front office team to produce a document(s) verifying the guarantee, SM1 did not do so.

65. The documents used to promote the EANR Fund (see paragraph 35 above) stated that a feature of the EANR Fund was "*Return of Capital*". In addition, the Fund Fact Sheet stated that "*The fund will generate free cash flows in excess of US$ 900 million which will allow it to pay off its Limited Partner investors and return their capital at maturity (3 years, 6 years or 9 years)".* The EANR Fund documents did not use the words "*100% Capital Protection*" because, in fact, the capital was not protected.

66. During his compulsory interview on 14 November 2018, SM1 was shown emails sent by EE2 in which the words "*100% Capital Protection*" are stated to be a "*salient feature*"

of the EANR Fund. SM1 acknowledged that this was an incorrect statement. SM1 also said that all documentation which he received in relation to the Fund only ever referred to "return of capital", including the LPIA and the Investor Presentation. He says that "*this capital protection word was never used in fact actually*".

67. However:

67.1 when he reviewed the email sent by EE1 on 24 January 2017, SM1 did not remove or change the words "*100% Capital Protection*" - see paragraph 61 above;

67.2 EE1's evidence is that he and other MGL staff members were told by SM1 that the EANR Fund was 100% capital guaranteed – see paragraphs 62 and 64 above;

67.3 EE2 states that SM1 told him a "*couple of times, not once*" that the EANR Fund offered 100% capital protection;

67.4 another ex-employee of MGL (**EE3**) was also told by SM1 that investments in the EANR Fund were capital protected. EE3 also sent an email to a client using the words "100% capital protection" in respect of the EANR Fund; and

67.5 another ex-employee of MGL (**EE4**) says that he was told that the EANR Fund was capital protected.

Concerns raised by a member of MGL's Senior Management about the marketing of the EANR Fund

68. In June 2017, MGL appointed a person to its senior management team and compliance function (**SM2**). Following the appointment, SM2 reviewed the activities of MGL including its marketing of the EANR Fund.

69. SM2 identified the following concerns about the marketing of the EANR Fund:

69.1 there were deficiencies in the warning required pursuant to CIR 15.1.3(2)(d);

69.2 there was no evidence that there had been any review by MGL as to whether the EANR Fund met the criteria in the CIR, as required by CIR 15.1.9;

69.3 even if such a review had been carried out, the EANR Fund would not have met the criteria specified in CIR 15.1.6 because:

69.3.1 it was not a regulated Fund;

69.3.2 it did not have a dedicated bank account, or a suitable custodian to provide safe custody for Fund Property; and

69.3.3 it did not have a regulated Fund Manager;

69.4 key documentation concerning the EANR Fund was missing, including the original LPIA(s) in the name of MGL and a copy of the Schedule A to the LPIA showing all LPs and their respective interests in the partnership;

69.5 there was no evidence that a copy of the LPIA had been made available to persons to whom MGL marketed the EANR Fund;

69.6 some MGL relationship managers had been told to market the EANR Fund as "capital guaranteed"; and

69.7 MGL had received placement fees for investments by five investors in the EANR Fund, but these investors were not on MGL's Client lists. SM2 was concerned that:

69.7.1 if these investors had received a Financial Service from MGL, then they should have been on-boarded as MGL Clients and an assessment made as to the suitability of the investment in the EANR Fund for each of them; and

69.7.2 if they had only been provided with marketing material from MGL about the EANR Fund, then they should each have been assessed as to whether or not they met the criteria for Professional Clients in the DFSA Rules. MGL should also have recorded how each of them received the marketing material.

Concerns raised by SM2 with MGL about the lack of a dedicated bank account for the EANR Fund

70. From October 2017 to February 2018, SM2 raised concerns about the lack of a dedicated bank account for the EANR Fund with SM1. The circumstances of these concerns included, but were not limited to the following:

70.1 On 24 October 2017, the concerns raised by SM2 led to SM1 sending an email to EGME in which SM1 stated that MGL would not transfer any further investments in the EANR Fund until the Fund's bank account was in place;

70.2 On 28 October 2017, SM1 sent a follow-up email to EGME stating that he would need to ask for a refund of all investments until the EANR Fund's bank account was in place;

70.3 On 30 October 2017, MGL received the letter referred to in paragraph 37.2 above apparently signed by the Domiciliation Agent. The letter directs MGL that all investment funds raised for the EANR Fund should be transferred into EGME's operational bank account. The letter was sent to SM2 on 31 October 2017;

70.4 On 1 November 2017, SM2 sent an email to SM1 stating that EGME's operational bank account was "*not an appropriate bank account*" for subscriptions to the EANR Fund;

70.5 On 2 November 2017, SM2 sent a further email to SM1 (copied to two other employees of MGL) stating that her enquiries had revealed that the letter referred to in paragraph 37.2 above was not a "*valid direction*";

70.6 On 20 November 2017, SM2 sent an email to an ex-employee of MGL (**EE7**), copied to SM1 (and two other MGL employees), reiterating that investments in the EANR Fund needed to be deposited into a dedicated fund bank account;

70.7 On 11 December 2017, SM2 sent an email to SM1 (and two other MGL employees) in which she again raised her concerns about the lack of a dedicated bank account for the EANR Fund. She warned that MGL's Directors were responsible for ensuring compliance with DFSA administered legislation and were at risk of disqualification action being taken against them if they failed to do so. SM2 called for an "*an immediate Board meeting to discuss and record the necessary resolutions and actions*.";

70.8 On 9 January 2018, SM2 sent an email to SM1 (and three other employees) confirming that a number of issues, including the lack of a dedicated bank account for the EANR Fund, remained unresolved;

70.9 On 11 February 2018, SM2 sent an email to SM1 (and two other MGL employees) repeating the concerns specified in paragraph 70.8 above. She again urgently requested that a meeting of the MGL Board be held to discuss these issues;

70.10 On 12 February 2018, SM2 sent an email to SM1 repeating the concerns specified in paragraph 70.8 above and saying that she had grave concerns that the identified issues with the EANR Fund were not being addressed in a "timely and effective manner". She repeated her request for an urgent Board meeting;

70.11 After receiving a response from SM1 to her email specified in paragraph 70.10 above on 13 February 2018, SM2 sent an email on 14 February 2018 to SM1 (and one other MGL employee). SM2 reiterated her concerns that MGL "*does not have proper custodial protection over the Client money*" sent to EGME for investments in the EANR Fund;

70.12 After receiving a response from SM1 to her email specified in paragraph 70.11 above, SM2 sent an email on 14 February 2018 to SM1 (and one other MGL employee) in which she reiterated her concerns about the EANR Fund and asked that a Board meeting be held after 3pm on 15 February 2018;

70.13 On 15 February 2018 at 11:13am, SM1 responded to the email referred to in paragraph 70.12 above stating that a Board meeting had been called for 1 March 2018 at 11:30am. On the same day at 1:59pm, SM2 responded to this email stating that a Board meeting on 1 March 2018 was too late and asked for the meeting to be held by telephone if required;

70.14 SM1 stated that he forwarded SM2's request for an urgent meeting to all directors, and contacted a couple of the directors by telephone to arrange an urgent meeting of the Board. He said that the directors that he spoke to had told him that they were simply unavailable until 1 March 2018. However:

70.14.1 there is no evidence that SM1 forwarded SM2's emails requesting an urgent Board meeting on to any members of the MGL Board. Enforcement required SM1 to provide evidence of such communications by letter dated 14 February 2019 but, in his response to this requirement, SM1 did not provide any such evidence; and

70.14.2 though he may have spoken to certain Board members by telephone, SM1 did not use his best efforts to arrange even a short Board meeting by telephone as requested by SM2. SM1 said that he spoke to a Director of the Board of MGL (**Director 2**) who told SM1 that he was "*driving in Dallas*". He spoke to another Director of MGL (**Director 1**), who told him that he was travelling. There is no contemporaneous or documentary evidence that SM1 advised these directors about the urgency of SM2's request for a Board meeting, or tried to arrange a short meeting by telephone; and

70.15 On 18 February 2018 at 7:17pm, SM2 sent an email to SM1 and (one other MGL employee) putting MGL on notice that no further investments should be

made in the EANR Fund until the Fund bank account was in place and other deficiencies corrected.

Contraventions by MGL in relation to the EANR Fund

71. In relation to the EANR Fund, the DFSA finds that MGL has committed the following contraventions:

71.1 MGL failed to comply with CIR 15.1.3(2)(b), 15.1.3(2)(c), 15.1.6(2), 15.1.6(3) and 15.1.6(4) in its marketing of the EANR Fund. In doing so, MGL also contravened GEN Rule 4.2.2 (Principle 2 for Authorised Firms) by failing to act with due, skill, care and diligence;

71.2 MGL did not have an authorised Compliance Officer/MLRO in place when it commenced marketing the EANR Fund and during the period when the majority of the marketing of the fund was carried out (see paragraph 57 above). In doing so, MGL failed to comply with GEN Rule 4.2.4 (Principle 4 for Authorised Firms) by failing to maintain adequate and competent human resources to conduct and manage its affairs;

71.3 When a member of its compliance function (namely, SM2) repeatedly and formally raised serious concerns about MGL's marketing of the EANR Fund in the period between October 2017 and February 2018 (see paragraphs 69 and 70 above), MGL failed to take any steps to address those concerns including but not limited to:

71.3.1 stopping its promotion of the EANR Fund;

71.3.2 disclosing to its Clients and customers the concerns raised, particularly the lack of adequate arrangements to safeguard investment monies. MGL did not disclose to any Client or customer that the EANR Fund did not have a dedicated bank account or adequate custodian arrangements for investment monies; and

71.3.3 failing to attempt to obtain refunds for its Clients of monies invested in the EANR Fund, even after MGL had stated to EGME, the Fund Sponsor, that it would take this course of action on 28 October 2017 (see paragraph 70.2 above).

In doing so, MGL failed to comply with GEN Rule 4.2.6 (Principle 6 for Authorised Firms) by failing to pay regard to the interests of its customers and

communicating information to them in a way which is clear, fair and not misleading;

71.4 In relation to the two Clients on whose behalf MGL made investments in the EANR Fund (see paragraph 32 above):

71.4.1 there is no evidence that MGL made an assessment as to the suitability of the investment for these Clients. In doing so, MGL failed to comply with GEN Rule 4.2.8 (Principle 8 for Authorised Firms) by failing to take reasonable care to ensure the suitability of the advice and discretionary decisions for customers who are entitled to rely upon its judgment;

71.4.2 MGL failed to ensure that Client Money used for investments in the EANR Fund was deposited into a dedicated fund bank account and/or that adequate arrangements for safeguarding Client Assets were in place. In doing so, MGL failed to comply with GEN Rule 4.2.9 (Principle 9 for Authorised Firms) by failing to arrange proper protection for assets or money belonging to a customer which it is required to safeguard; and

71.4.3 MGL's records of the investments in the EANR Fund made in its name, whether on behalf of these Clients or otherwise, do not reconcile. MGL has therefore contravened COB Rule 3.6.1 (Record Keeping) and, in doing so, has also failed to comply with GEN Rule 4.2.2 (Principle 2 for Authorised Firms) by failing to keep records with due, skill, care and diligence;

71.5 In relation to the other investments in the EANR Fund facilitated by MGL (see paragraph 33 above), MGL claims that it only marketed the EANR Fund to these investors and did not provide Financial Services to them. However, in order for MGL to market the EANR Fund, MGL had to ensure that the investors met the criteria to be classified as a Professional Client pursuant to DFSA Rules (see Article 54(1)(c)(ii) of the CIL). There is no evidence that MGL undertook this analysis, and therefore MGL has contravened Article 54(1)(c)(ii) of the CIL, and also GEN Rule 4.2.6 (Principle 6 for Authorised Firms) by failing to pay due regard to the interests of its customers;

71.6 MGL promoted the EANR Fund to investors as offering "100% capital protection" when this was incorrect. SM1 agreed that this was incorrect. In doing so, MGL failed to comply with:

71.6.1 Article 41B of the Law, by engaging in misleading or deceptive conduct; and

71.6.2 COB Rule 3.2.1 and GEN Rule 4.2.6 (Principle 6 for Authorised Firms) by not communicating information to a Person or customer in a way which is clear, fair and not misleading; and

71.7 Despite requests dating back to 11 December 2017 by SM2 for a meeting of the MGL Board to be held on an urgent basis, a meeting of the Board was not held until 1 March 2018. In doing so, MGL failed to comply with GEN Rule 5.3.17 by failing to establish and maintain arrangements to provide the Board with the information necessary to comply with legislation in the DIFC. MGL has also failed to comply with GEN Rule 4.2.11 (Principle 11 for Authorised Firms) by not having an appropriate corporate governance framework which was adequate to promote the sound and prudent management of MGL's business, and to protect the interests of its customers and stakeholders.

Clients P1 to P4 (the P Clients)

Client P3's Complaint to the DFSA

72. On 28 November 2018, Client P3 made a complaint to the DFSA about the conduct of MGL and SM1. In summary, Client P3 complained that Client P2 (see paragraph 13.1 above) had sought the return of Client Money from MGL totalling USD625,000 since 2 June 2018. However, despite repeated requests made by email to MGL between July and November 2018, MGL had failed to return the Client Money.

73. Following the complaint on 28 November 2018, Client P3 attended an interview with Enforcement on 19 December 2018 and also provided the DFSA with information concerning an allegedly unauthorised investment made by MGL on behalf of Client P1 in the EANR Fund.

Unauthorised investment of USD500,000 in the EANR Fund by MGL on behalf of Client P1

74. In the beginning of 2017, SM1 had a discussion with the P Clients about making an investment in the EANR Fund. During the course of these discussions, SM1 stated to the P Clients that he had already advised EGME that they would be investing the amount of USD1,000,000 in the EANR Fund. The P Clients claim that SM1 made this commitment to EGME without any authorisation from them.

75. In the beginning of 2017, the P Clients stated to SM1 that they did not wish to invest in the EANR Fund. However, the P Clients also stated to SM1 that they, through Client P1, would be prepared to lend EGME the amount of USD500,000 for a fixed term of 3 years commencing in March 2017 with interest on the loan at 7.8% per annum.

76. On or about 31 January 2017, Client P1 provided the amount of USD500,000 to MGL so that this amount could be lent to EGME on the terms set out in paragraph 75 above. However, on or about 2 March 2017, a reconciliation of investments in the EANR Fund received by MGL from EGME shows that the amount of USD500,000 was invested in the EANR Fund for Client P1, contrary to the P Clients' instructions. EGME's reconciliation also shows that MGL earned commission of USD25,000 for Client P1's investment in the EANR Fund.

77. On or about 19 or 20 March 2017, Client P3 received a deal ticket (**DT1**) by email from MGL stating that:

    77.1 the amount of USD500,000 belonging to Client P1 had been invested in the EANR Fund;

    77.2 MGL earnt commission, called a "net fee amount", of USD5,000 (as opposed to the true amount of USD25,000 – see paragraph 76 above) on the investment; and

    77.3 the "trade date" and the "settlement date" for the transaction were both 31 January 2017.

78. In response to the email specified in paragraph 77 above, Client P3 sent an email to SM1 at 12:14 hours on 20 March 2017 in which he stated to SM1 that:

    78.1 according to the deal ticket (i.e. DT1), the amount of USD500,000 appears to have been invested in the EANR Fund;

    78.2 however, Client P4 gave specific instructions that the amount of USD500,000 should be treated as a loan for 3 years to EGME. It was not intended to be an investment in the EANR Fund;

    78.3 the deal ticket should be amended to show that the transaction is a loan for 3 years to EGME at 7.8% interest per annum; and

    78.4 the USD5,000 commission charged should be refunded.

79. At or around 14:17 hours on 20 March 2017, SM1 replied by email to Client P3 as follows:

"*As mentioned to you, it is a loan for a period of 3 years with payable of 7.8%pa. payable semi-annual on June 20/Dec 31 of each year.*

For this, there is no commission which has been either charged to you or received from anyone. I'm attaching the copy of the confirmation, which was signed by you whereby you can see the fee income is NIL.

Hope this clarifies. If you still desire to have confirmation with the same as above, it can be arranged. Pls note that EGME is the holding company and the money receiver is Essel Capital, which is again 100% owned by EGME (which is Essel Group ME)."

80. However, the copy of the confirmation referred to by SM1 in paragraph 79 above was apparently not attached to the email. At or around 14:31 hours on 20 March 2017, SM1 sent another email to Client P3 stating "*Pls find enclosed the fresh confirmation*". This email apparently attached a fresh deal ticket (**DT2**) which, contrary to SM1's email referred to in paragraph 79 above, was not signed by Client P3. DT2 was identical in all respects to DT1, except that the commission or "net fee amount" of USD5,000 had been removed.

81. At approximately 20:05 hours on 20 March 2017, after receiving an email from Client P3 querying the details of the transaction which were set out in DT2 and asking SM1 to issue a letter confirming the transaction rather than a deal ticket, SM1 sent a further email to Client P3 stating that "*As mentioned in the new confirmation, it's a debt instrument which is equivalent to Loan* [sic]".

82. Client P3 then signed DT2, dated it 19 March 2017 and returned it by email to MGL.

83. However, contrary to the email from SM1 referred to in paragraph 79 above, the amount of USD500,000 remained as an investment in the EANR Fund. As stated in paragraph 76 above, the undated document entitled "Reconciliation of Fund from Essel Group" which MGL received from EGME shows that:

    83.1 Client P1 made an investment of USD500,000 in the EANR Fund on 2 March 2017; and

    83.2 MGL earned 5% commission on the investment; namely USD25,000 (and not USD5,000 as stated in DT1).

84. Neither the investment in the EANR Fund, nor any commission earned by MGL, appear to have been reversed to date, contrary to SM1's email dated 20 March 2017 and referred to in paragraph 79 above.

85. The DFSA also obtained a copy of an LPIA purportedly between Client P1, as an LP in the EANR Fund, and Essel Capital and Holding Management Sarl 1, as the

GP/Manager of the EANR Fund. The LPIA was apparently signed and initialled on or about 30 September 2017 by Client P3 on behalf of Client P1. However, Client P3 denies ever seeing this LPIA before it was shown to him by Enforcement on 19 December 2018, and also denies that the signatures and the initials on this LPIA are his. A report dated 10 July 2019 by a handwriting expert accredited by the Dubai Courts confirms that the signatures on the LPIA are forgeries.

86. In addition, Client P3 is noted in this LPIA as the Chairman of Client P1. Though he was an authorised signatory of Client P1, Client P3 states that at no time in 2017 was he either a director or a shareholder of Client P1. Client P3 has also never been the Chairman of Client P1.

Investment Principal of Client P2

87. The P Clients first started dealing with SM1 when SM1 was employed by a UAE bank in 2008. When SM1 joined MGL (then called Sidra) in 2013, the P Clients decided to transfer investments belonging to their companies to MGL (then called Sidra). These investments included certain securities held by Client P2.

88. From the time that Client P2 became a client of MGL (then called Sidra), the P Clients' standing instructions to SM1 were that, if and when Client P2's securities were sold, MGL should:

88.1 remit any profit made on the sale of the securities to Client P2; and

88.2 retain the principal so that it may be invested in other securities should a suitable opportunity arise (the **Investment Principal**). The P Clients further instructed SM1:

88.2.1 to place any uninvested Investment Principal into a money market account with a bank so that it could earn interest until a suitable investment was found; and

88.2.2 that any Investment Principal so placed should be redeemable on 24 hours' notice.

89. At all material times, MGL held the following amounts as Investment Principal for and on behalf of Client P2:

89.1 two amounts of USD200,000 each; and

89.2 an amount of USD225,000.

90. Contrary to the P Clients' instructions, MGL did not place any of the Investment Principal into a money market account with a bank. Further, when the P Clients asked

MGL for the return of the Investment Principal by email on 20 June 2018, and then followed up this request either by email or by telephone, MGL at first promised the P Clients that the Investment Principal would be repaid within "*a few days*". However, the money was not repaid within that time period.

91. In August 2018, when the P Clients again requested repayment of the Investment Principal, SM1 made false and misleading representations to the P Clients that the Investment Principal:

    91.1 was placed in a money market account with a bank; and

    91.2 was not redeemable on 24 hours' notice, but rather that they had been placed for fixed terms and for certain rates of interest. Client P3 states that SM1 said to Client P3 that SM1 had "…*put it in the money market with a fixed maturity, so this will mature. I've got the date, 30 September*".

92. On 11 September 2018, MGL sent Client P3 an account statement incorporated into an email purportedly confirming that the Investment Principal was placed in a money market account for fixed terms. The statement also specified the interest rate, the amount of interest earned and the maturity date for each amount specified in paragraph 89 above. Given MGL knew that the Investment Principal was not held in a money market account on such terms, the DFSA considers that MGL sent this information to Client P3 knowing that the information was false.

93. When the maturity dates were reached, SM1 provided Client P3 with further false and misleading information. SM1 told him that the money was delayed because "*The Bank of New York, Mellon, where the money is* [sic] *lying*" was doing "*KYC, Know Your Customer*" checks on Client P4 because she was a "*third party*". SM1 further said that the money would be released the following week, but when that time came, it was still delayed.

94. On 20 November 2018, Client P3 sent an email to SM1. The subject of the email was *"Transfer of cash in Money Market and payment of interest on the Loan*" and Client P3 refers in the email to the Investment Principal belonging to Client P2 and the loan by Client P1 to EGME. In the email, he also lists:

    94.1 all emails for the period from 8 July 2018 to 15 November 2018; and

    94.2 summarises a number of telephone calls and meetings,

    in which he asked MGL for the repayment of the Investment Principal, and also for payment of the interest on the loan from Client P1 to EGME (see paragraphs 74 to 86 above).

Unauthorised investment of USD200,000 into the EANR Fund

95. The P Clients did not instruct SM1, or anyone else at MGL, to invest any of the Investment Principal belonging to Client P2 in the EANR Fund. In fact, the P Clients specifically instructed SM1 that they did not wish to make any investment in the EANR Fund. However, over the course of the following dates, MGL invested a total of USD200,000 in the EANR Fund on behalf of Client P2, without notifying the P Clients that it was doing so:

95.1 USD100,000 on or about 30 July 2017. MGL received commission of USD5,000 for this investment;

95.2 USD50,000 on or about 30 September 2017. MGL received commission of USD2,500 for this investment; and

95.3 USD50,000 on or about 2 October 2017. MGL received commission of USD2,500 for this investment.

To date, these amounts remain invested in the Fund.

96. MGL produced the following deal tickets purporting to record the investments in the EANR Fund by Client P2:

96.1 a deal ticket dated 20 July 2017 (**DT3**) for the investment of the amount of USD100,000. This deal ticket covers the investment referred to in paragraph 95.1 above; and

96.2 a deal ticket dated 2 October 2017 (**DT4**) for the investment of the amount of USD100,000. This deal ticket appears to cover the investments referred to in paragraphs 95.2 and 95.3 above.

97. DT3 and DT4 were purportedly signed by Client P3 on behalf of Client P2. However, Client P3 denies that the signatures on these deal tickets are his. The handwriting expert's report referred to in paragraph 85 above also confirms that the signatures on DT3 and DT4 are forgeries.

Unauthorised Loans to EGME

98. The P Clients did not instruct SM1, or anyone else at MGL, to lend any of the amounts belonging to Client P2 referred to in paragraph 89 above to EGME.

99. However, at a meeting held on or about 4 December 2018 between the P Clients, SM1, Director 1 and FD1, the P Clients were advised that MGL had facilitated loans from

Client P2 to EGME totalling USD425,000. This meeting followed the email sent by Client P3 to SM1 on 20 November 2018 – see paragraph 94 above.

100. The representations in paragraph 99 above were confirmed in a letter from EGME to Client P2 dated 6 December 2018. In the letter, EGME also:

100.1 advised that an amount of USD200,000 had been lent to EGME by Client P2 on 6 May 2018;

100.2 advised that an amount of USD225,000 had been lent to EGME by Client P2 on 7 June 2018.

100.3 promised to repay the total amount of USD425,000 in January and/or February 2019; and

100.4 provided Client P2 with nine undated "guarantee" cheques for the total amount of AED1,559,750 (equivalent to approximately USD425,000) as security for the repayment of the loans referred to in paragraph 99 above. However, when the P Clients deposited these cheques, they were dishonoured.

101. At no time prior to 4 December 2018 did SM1 advise the P Clients that MGL had lent amounts totalling USD425,000 belonging to Client P2 to EGME.

102. Client P2 has subsequently raised a case with a local judicial authority, which has led to EGME's payment of the amount of AED1,559,750 to the local judicial authority. The local judicial authority has issued an Order stating that these funds can be released to Client P2.

103. In addition, the loan to EGME referred to in paragraph 100.2 above was arranged by MGL after the May 2018 Prohibitions came into force on 7 May 2018 (see paragraph 21 above). The loan therefore breached the May 2018 Prohibitions, which prohibited MGL from dealing with any relevant property for or on behalf of an existing customer (see paragraph 20.2 above). This contravention appears to have been admitted by MGL.

MGL's Responses to the Allegations

104. In relation to the investment by Client P1 into the EANR Fund (see paragraphs 74 to 86 above), MGL claimed that the P Clients had knowledge of this investment and relied on the following as evidence of this knowledge:

104.1 MGL stated that Client P1's investment in the EANR Fund was a direct investment, and not through MGL as an LP. SM1 relies on the deal ticket sent to the P Clients confirming Client P1's direct investment in the EANR Fund and

the LPIA, apparently signed by Client P3 as the "Chairman" of Client P1, as evidence of the direct investment. However:

104.1.1 the P Clients have denied authorising a direct investment to be made by Client P1 in the EANR Fund (see paragraphs 74 to 86 above); and

104.1.2 when Client P3 received the deal ticket from MGL confirming Client P1's investment in the EANR Fund, Client P3 immediately sent an email to MGL stating that that the amount was a loan to EGME and not an investment in the Fund. SM1's emails in response confirmed Client P3's understanding (see paragraphs 77 to 82 above); and

104.2 MGL also claimed that the P Clients received coupon payments for the investment in the EANR Fund. However, Client P3:

104.2.1 has stated that he believed that these payments were interest on the loan made by Client P1 to EGME; and

104.2.2 has provided to Enforcement copies of two letters from Essel Capital and Holding Management Sarl 1 to Client P1 both dated 10 July 2018. These letters refer to coupon payments to Client P1 from the EANR Fund but, when he queried this with SM1 soon after receiving these letters, SM1 told Client P3 that they were sent in error and that the letters should have referred to interest payments. In any event, Client P3 has also stated that the amounts referred to in these letters were not paid.

105. In relation to Client P3's statements in paragraph 86 above regarding his status as an officeholder of Client P1, MGL claimed that Client P3 was an authorised signatory for Client P1 and also that he signed the Client P1 LPIA.

106. Client P3 has acknowledged that he was at all material times an authorised signatory of Client P1. However, he also has stated that he:

106.1 was not aware of the signed LPIA until it was shown to him at his interview on 19 December 2018;

106.2 did not sign the LPIA. The handwriting expert's report referred to in paragraph 85 above also confirms that the signatures on the LPIA are forgeries; and

106.3 was not an officeholder of Client P1 in 2017, and has never been the Chairman of Client 1 (see paragraph 86 above).

107. In response to Client P3's allegations that his signatures on the documents referred to in paragraphs 85 and 96 to 97 above, and paragraph 113 below, were forged, this is denied as a "false allegation" which is "totally unacceptable" by MGL. However, the handwriting expert's report referred to in paragraph 85 above confirms that these signatures are forgeries.

108. In relation to the standing instructions set out in paragraph 88 above, MGL agreed that these standing instructions existed but claimed that it abided by those standing instructions at all times. MGL states that the standing instructions authorised short term investment opportunities, including but not limited to money market instruments.

109. MGL's submissions in paragraph 108 above appear to be that the:

109.1 loans of USD200,000 and USD225,000 made by MGL to EGME; and

109.2 investments in the EANR Fund amounting to USD200,000 (see paragraphs 95 to 97 above),

were within the parameters of the standing instructions given to MGL by the P Clients in relation to the Investment Principal. In other words, these loans were "*short term investment opportunities*" which MGL was entitled to make on Client P2's behalf because of the standing instructions. However, this does not explain why MGL did not tell the P Clients about the loans to EGME or the investment in the EANR Fund, but instead stated to them that the amounts referred to in paragraph 89 above had been placed in a short-term money market account with a bank (see paragraphs 91 to 94 above).

110. Further:

110.1 according to the letters allegedly from Client P2 and produced by MGL to support its submissions (see paragraph 113 below), the loans referred to in paragraph 109.1 above were each for a period of one year; and

110.2 according to DT3 and DT4 referred to in paragraph 96 above, Client P2's investments in the EANR Fund were each for a period of nine years.

None of these transactions therefore qualify as "short term investment opportunities" within the parameters of the standing instructions given to MGL by the P Clients in relation to the Investment Principal.

111. MGL's response to paragraph 92 above was simply that it always abided by the standing instructions of Client P3 and Client P4 and that they were not sent false information. However, the subject of the email was "Money Market" and it states that the account statement is a "*calculation for money market and their dates of maturity*"

for the Investment Principal. It did not mention the amounts lent to EGME and the investments in the EANR Fund, neither of which are money market investments.

112. MGL relied on DT3 and DT4, as confirming Client P2's instructions to make investments in the EANR Fund totalling USD200,000 (see paragraphs 95 to 97 above). However, Client P3 has stated that:

112.1 the first time that he saw these deal tickets was when they were shown to Client P3 by Enforcement on 19 December 2018; and

112.2 the signatures on these deal tickets are not his (see paragraph 97 above). The handwriting expert's report referred to in paragraph 85 above also confirms that the signatures on the LPIA are forgeries;

113. MGL also relied on two letters apparently from Client P2 to MGL, dated 6 May 2018 and 7 June 2018 respectively, as confirming Client P2's instructions to make the loans referred to in paragraph 99 above. However, Clients P3 and P4 have stated that:

113.1 they had not seen these letters until copies of them were sent to Client P3 by Enforcement on or about 24 January 2019, and were also shown to them at their interviews on 10 February 2019;

113.2 the signatures on the letters are not that of Client P3. The handwriting expert's report referred to in paragraph 85 above also confirms that the signatures on the LPIA are forgeries; and

113.3 the letterhead used in these letters is not Client P2's correct letterhead. The correct letterhead of Client P2 is the one on which the letter referred to in paragraph 115.2 below is written. The two letterheads differ in a number of respects including:

113.3.1 the font;

113.3.2 the name of the company on the correct letterhead contains the additional word "Limited";

113.3.3 the telephone numbers are written in a different format; and

113.3.4 the correct letterhead contains a mobile telephone number and a landline number, whereas the allegedly incorrect letterhead contains two mobile numbers.

The P Clients have claimed that the differences in the letterheads provide further evidence that these documents were forged.

114. MGL stated that the P Clients' acceptance of guarantee cheques from EGME (see paragraph 100.4 above) is proof that they were aware of the loans from Client P2 to EGME totalling USD425,000 which were arranged by MGL.

115. The P Clients have stated that:

115.1 they were not made aware of the loans to EGME until being informed of same by MGL and EGME at a meeting on 4 December 2018. They were under the impression that the funds were invested in a money market account with a bank. This would appear to be confirmed by the email from MGL to Client P3 dated 11 September 2018, which states that all amounts for Client P2 were invested in the money market, including the total amount of USD200,000 invested in the EANR Fund (see paragraph 92 above); and

115.2 after the meeting on 4 December 2018, Client P2 sent a letter to MGL dated 17 December 2018 complaining about the fact that its funds had been lent to EGME without authority when they should have been placed in a money market account with a bank. As stated in paragraph 113.3 above, the Client P2 letterhead on which this letter is written is different to the letterhead of the allegedly forged letters referred to in paragraph 113 above.

Contraventions by MGL in relation to the P Clients

116. In relation to the P Clients, the DFSA finds that MGL has committed the following contraventions:

116.1 MGL invested in the EANR Fund on behalf of Client P1 (see paragraphs 74 to 86 above) and Client P2 (see paragraphs 95 to 97 above) when SM1 was specifically instructed by the P Clients that they and their companies did not wish to make any investments in the EANR Fund. MGL also made unauthorised loans to EGME on behalf of Client P2 (see paragraphs 98 to 103 above). Further, there is evidence to support the conclusion that these investments and loans were effected using forged documents - see paragraphs 85, 97 and 112.2 above. In doing so, MGL contravened:

116.1.1 GEN Rule 4.2.1 (Principle 1 for Authorised Firms) by failing to observe high standards of integrity and fair dealing;

116.1.2 GEN Rule 4.2.2 (Principle 2 for Authorised Firms) by failing to act with due skill, care and diligence;

116.1.3 GEN Rule 4.2.6 (Principle 6 for Authorised Firms) by failing to pay due regard to the interests of its customers; and

116.1.4 GEN Rule 4.2.8 (Principle 8 for Authorised Firms) by failing to ensure the suitability of the investments for its Clients;

116.2 MGL provided false and misleading information to the P Clients about Client P1's investment in the EANR Fund (see paragraphs 77 to 86 above), and Client P2's investments in the EANR Fund and loans to EGME (see paragraphs 91 to 94 and 101 above). In doing so, MGL contravened:

116.2.1 Article 41B of the Law by engaging in misleading and deceptive conduct;

116.2.2 GEN Rule 4.2.1 (Principle 1 for Authorised Firms) by failing to observe high standards of integrity and fair dealing;

116.2.3 GEN Rule 4.2.2 (Principle 2 for Authorised Firms) by failing to act with due skill, care and diligence; and

116.2.4 GEN Rule 4.2.6 (Principle 6 for Authorised Firms) by failing to communicate information to its customers in a way which is clear, fair and not misleading; and

116.3 In seeking to explain its conduct in relation to the P Clients, MGL provided the DFSA with false and misleading information including what appear to be forged Client documents (see paragraphs 104 to 115 above). In doing so, MGL contravened Article 66 of the Law. MGL also contravened GEN 4.2.1 (Principle 1 for Authorised Firms), by failing to observe high standards of integrity and fair dealing, and GEN Rule 4.2.10 (Principle 10 for Authorised Firms), in that it did not deal with the DFSA in an open and co-operative manner.

The May 2018 Prohibitions

Imposition of the May 2018 Prohibitions

117. As stated in paragraphs 20 and 21 above, the DFSA issued a Decision Notice to MGL dated 2 May 2018 which imposed the May 2018 Prohibitions. These prohibitions came into effect on 7 May 2018.

Dissemination of information about the May 2018 Prohibitions – SM1's version

118. SM1 and the other members of the MGL Board received the Decision Notice dated 2 May 2018 imposing the May 2018 Prohibitions by email on that day.

119. On receipt of the email, SM1 states that he did not tell any of the operational staff of MGL about the May 2018 Prohibitions for approximately one month. He states that he

telephoned a member of MGL's senior management (**SM3**) about the prohibitions on the morning of 6 May 2018. His reason for telephoning SM3 was because the prohibitions meant that MGL would need to "*completely redo the budget…because basically we will be out of business for some time*". He also says that he told SM3 to speak to another member of MGL's senior management (**SM4**) about the prohibitions because of the possible impact on MGL's budget.

120. On either 29, 30 or 31 May 2018, SM1 says that he had a meeting with EE2 and another MGL ex-employee (**EE4**). At that meeting, SM1 says that he advised both EE2 and EE4 about the May 2018 Prohibitions. SM1's evidence is that he advised them that MGL would not be able to on-board any new clients, but could keep working on existing mandates

121. When asked why he was of the view that work on existing mandates was allowed, SM1 said that he:

121.1 discussed the matter with two former directors of MGL (namely; FD1 referred to in paragraph 37.1 above and another former director (**FD2**)), and came to the view that work on the existing mandates may be allowed;

121.2 did not seek any legal or other advice on this issue;

121.3 says that he thought that it was a 50/50 proposition; and

121.4 agrees that it would have been prudent for him to instruct MGL staff to cease work on all existing and prospective mandates until clarification was received. However, he says that he did not do so.

Dissemination of information about the May 2018 Prohibitions – other versions

122. Contrary to SM1's statements in paragraph 120 above, both EE2 and EE4 say that they were not told about the May 2018 Prohibitions by SM1. EE2 says that:

122.1 he first came to know about the May 2018 Prohibitions when he had a conversation with another MGL ex-employee (**EE5**) at the end of June 2018. EE5 had just been appointed to take over the duties of SM1, but left MGL soon after. EE2 states that EE5 asked him how the prohibitions were impacting his business, to which EE2 responded by asking EE5 what prohibitions he was referring to;

122.2 after the conversation with EE5 referred to in paragraph 122.1 above, EE2 says that he had a conversation on 9 July 2018 with SM1. EE2 said that he opened the DFSA website on his computer and showed SM1 the prohibitions on MGL as recorded on the website. He asked SM1 for more information about the

prohibitions as "*this has not been advised to us until now*". SM1 said that he was having discussions with the DFSA about the prohibitions and that it would take around two months to resolve the matter;

122.3 EE2 then sent an email to SM1 on 9 July 2018 at 5:22pm in which he refers to the discussion with SM1 earlier that day (see paragraph 122.2 above). In the email, he asks SM1 to clarify the scope of the prohibitions and, in particular, to "*Please advice* [sic] *in detail what activities are now acceptable and lawful, and what activities cannot and should not be carried out*";

122.4 EE2 sent follow-up emails to SM1 on 11 July 2018 and 25 July 2018 (at 3:20pm) requesting a response to his email of 9 July 2018;

122.5 SM1 sent an email to EE2 on 25 July 2018 at 4:01pm in which he wrote:

"*Below is the extract from DFSA is* [sic] *self- explanatory:*

You may wish to take legal advice as to whether any or all of the work which MGL is contracted to carry out pursuant to the IB and CA mandates (the Work) falls within the activities of:

- *Arranging Credit or Advising on Credit (or, indeed. any other Financial Promotion or Service) for any person as a potential customer; or*
- *dealing etc with any relevant property for or on behalf of any existing customer.*

If the Work does fall within these activities, then MGL is prohibited from doing the Work. If the Work does not, then MGL is not prevented by the Prohibitions from doing the Work (though MGL may require other licenses, registrations or authorisations to do the Work). The DFSA does not provide such legal advice.

Thanks very much".

122.6 EE2 said that he had a conversation with SM1 after he received the email referred to in paragraph 122.5 above. EE2 said that SM1 told him that there should be "*no new client on-boarding for the investment banking but existing mandates, which is Essel Africa and (CJ), we continue with that*". CJ refers to a fund which MGL was distributing;

122.7 EE2 says that, between 25 July 2018 and 23 September 2018, he had conversations "*two/three times*" with SM1 in which he sought clarification about

the status of the May 2018 Prohibitions but that SM1 would only say that *"We are working on it"*;

122.8 on 23 September 2018 at 10:59am, EE2 sent an email to SM1 seeking clarification about the status of the May 2018 Prohibitions and also asking him to "re-confirm" that existing mandates for the EANR Fund and CJ were not impacted; and

122.9 on the same day, EE2 had a meeting with SM1 and resigned from MGL.

123. EE4 says that he became aware of the May 2018 Prohibitions at the end of June 2018 after talking to EE1 (see paragraph 59 above). EE4 says that EE1 "*casually*" or as a "*throwaway line*" mentioned that there was some restriction on MGL. EE4 says that he also had "*one or two*" brief conversations with EE2 about the prohibitions, though he cannot recall exactly when these conversations took place. EE4 said that, in these conversations, EE2 expressed dissatisfaction at the "*kind of response*" provided by SM1 about the May 2018 Prohibitions. EE4's evidence is that SM1 never told him about the May 2018 Prohibitions, either one-to-one or in a meeting.

124. EE1 states that he became aware of the May 2018 Prohibitions in July 2018. He was told by another ex-employee (**EE6**). EE6 sent EE1 a screenshot of the prohibitions as they appeared on the DFSA website. EE1 said that he did not have a conversation with, or receive any communications from, SM1 about the prohibitions.

125. SM4 says that he only became aware of the May 2018 Prohibitions on 10 or 12 May 2018 when he received information about them from someone outside MGL. Shortly after he received the information about the prohibitions, SM4 recalls having a conversation with SM1 in which he confirmed with SM1 that SM1 was aware of them.

126. EE1, EE2, EE4 and SM4 all stated in their interviews that SM1 did not:

126.1 make any announcement to MGL staff about the May 2018 Prohibitions;

126.2 send a general email to MGL staff about the May 2018 Prohibitions; or

126.3 initiate any meetings with MGL staff to discuss the May 2018 Prohibitions.

127. SM1 admits that he did not make any announcement to MGL staff, send any email to MGL staff or meet with any MGL staff about the May 2018 Prohibitions other than EE2 and EE4. The only people that he says he told about the prohibitions were:

127.1 SM3 by telephone on or about 6 May 2018;

127.2 FD1 and FD2 in person at the end of May 2018 (see paragraph 121.1 above); and

127.3 EE2 and EE4 at a meeting at the end of May 2018 (see paragraph 120 above).

Breaches of the May 2018 Prohibitions

128. MGL continued to engage in Financial Promotions, and to provide Financial Services, after the May 2018 Prohibitions came into force on 7 May 2018. Some examples follow:

128.1 as stated in paragraph 100.2 above, MGL arranged for the amount of USD225,000 to be lent to EGME on behalf of Client P2 on 7 June 2018. This loan was arranged without the authorisation of Client P2 (see also paragraph 103 above);

128.2 EE2 sent emails promoting MGL, and the Financial Services it could provide, to nine potential customers between 7 and 9 May 2018;

128.3 EE2 sent emails promoting the EANR Fund to two potential customers on 8 May 2018;

128.4 EE2 also said that he attended:

128.4.1 at least ten or twelve meetings after 7 May 2018 in which he promoted the EANR Fund; and

128.4.2 seven to ten meetings after 7 May 2018 in which he promoted CJ; and

128.5 EE4 states that he arranged a meeting with a financial institution for MGL to promote CJ in June or July 2018.

Contraventions by MGL regarding the May 2018 Prohibitions

129. MGL continued to engage in Financial Promotions and to provide Financial Services after the May 2018 Prohibitions came into effect on 7 May 2018. In doing so, the DFSA also finds that MGL contravened:

129.1 Article 69 of the Law by failing to comply with a requirement imposed by the DFSA;

129.2 GEN Rule 4.2.1 (Principle 1 for Authorised Firms) by failing to observe high standards of integrity and fair dealing;

129.3 GEN Rule 4.2.2 (Principle 2 for Authorised Firms) by failing to act with due skill, care and diligence;

129.4 GEN Rule 4.2.3 (Principle 3 for Authorised Firms) by failing to have adequate systems and controls to ensure, as far as is reasonably practical, that it complies with legislation applicable in the DIFC; and

129.5 GEN Rule 4.2.4 (Principle 4 for Authorised Firms) by failing to have adequate human resources to conduct and manage its affairs. MGL did not have a Compliance Officer in place from 18 February 2018 to 4 October 2018.

Client B

The Onboarding of Client B and the Incorrect Classification of him as a Professional Client

130. Client B first met with SM1 and another MGL staff member at MGL's offices in January or February 2016. He was on-boarded as a Professional Client by MGL on 7 November 2016.

131. COB Rule 2.3.2 requires an Authorised Firm to classify as a Retail Client any Person who is not classified as a Professional Client or a Market Counterparty. COB Rule 2.3.3 permits an Authorised Firm to classify a Person as a Professional Client only if that Person is:

131.1 a "deemed" Professional Client pursuant to COB Rule 2.3.4;

131.2 a "service-based" Professional Client pursuant to COB Rule 2.3.5, 2.3.6 or 2.3.6A; or

131.3 an "assessed" Professional Client pursuant to COB Rule 2.3.7 (for an individual) or 2.3.8 (for an Undertaking, such as a Company).

132. Client B was on-boarded by MGL and classified as an assessed Professional Client, purportedly in accordance with COB Rule 2.3.7. The relevant provisions of COB Rule 2.3.7 state that an individual is an assessed Professional Client if:

132.1 the individual has net assets of at least USD1,000,000 calculated in accordance with COB Rule 2.4.2; and

132.2 the individual appears, on reasonable grounds, to have sufficient experience and understanding of relevant financial markets, products or transactions and any associated risks.

133. The classification of Client B as an assessed Professional Client was signed-off by SM1. MGL did not have an authorised Compliance Officer when Client B was on-boarded on 7 November 2016, but the person who was performing MGL's Compliance functions at that time (see paragraph 56 above) also reviewed the assessment.

134. In a review of MGL client files conducted from September to December 2017, SM2 determined that Client B did not satisfy the criteria to be an assessed Professional Client because there was insufficient evidence on the Client file that Client B had:

134.1 net assets of at least USD1,000,000. The evidence in this regard was as follows:

134.1.1 his monthly salary in October 2016 was AED28,755 (approximately USD7,800);

134.1.2 prior to a deposit of AED500,000 on 31 October 2016 (see paragraph 143.1 below), Client B's bank account with a UAE bank (**Bank E**) showed approximate balances of between AED34,000 and AED41,000 in the period between 6 October 2016 and 31 October 2016;

134.1.3 Client B's bank account with another UAE bank showed approximate balances between AED43,000 and AED133,000 in the period between 1 March 2016 and 30 August 2016; and

134.1.4 the combined total of the purchase prices of property which Client B half-owned was "*well below the threshold*" of USD1,000,000; and

134.2 the required experience and understanding. SM2 said in her review that the "*client also has failed to indicate his knowledge and experience in high risk equity dealings, as we have no other trading account on the file showing any other portfolios and experience*".

135. On 3 December 2017, SM2 sent an email to two MGL employees (copied to SM1) stating that she had asked MGL several months ago to obtain evidence of Client B's experience in equities, and proof that he had net assets worth USD1,000,000 or over, but that no further documentation had been obtained in that period. She stated that the account should be terminated.

136. SM1, when queried about the incorrect classification of Client B as a Professional Client, said as follows:

136.1 SM1 agreed that, on the basis of his salary, it would be difficult for Client B to meet the USD1,000,000 threshold. However, SM1 also said that Client B was in the airline industry, and that Client B's father and family were wealthy; and

136.2 In regard to Client B's knowledge and understanding, SM1 said that Client B had made investments in Indian penny stocks and mutual funds on a regular basis and for a long time.

137. When asked whether he had scrutinised Client B's application forms, and supporting documentation, to satisfy himself that Client B met the criteria for a Professional Client, SM1 said that he did not go through "*specifically every page*". He says that he satisfied himself that Client B was a Professional Client by relying on the person performing MGL's compliance function to scrutinise the forms and documents, and by asking questions of the person performing the compliance function and Client B's relationship manager.

138. COB Rule 2.3.3 provides that, if an Authorised Firm becomes aware that a Professional Client no longer fulfils the requirements to remain classified as a Professional Client, the Authorised Firm must, as soon as possible, inform the Client that this is the case and the measures that are available to the firm and the Client to address that situation.

139. There is no evidence that, following the concerns raised by SM2 regarding the incorrect classification of Client B as a Professional Client, MGL (including SM1) took any steps to inform Client B of that or any measures available to address the situation.

Purchase of shares in Company S and the funding of the purchase

140. Client B's only transactions with MGL consisted of the purchase of shares in Company S. The history of these transactions follows.

<u>Company S</u>

141. As stated in paragraph 12 above, as at 11 October 2016 EGME owned approximately 21.3% of Company 1.

142. In November 2016, the following action was taken in relation to the securities of Company S:

142.1 on or about 3 November 2016, a Financial Services Regulator issued a "Cease Trade Order" due to the failure of Company S to file required documentation for the 2016 Financial Year;

142.2 on or about 4 November 2016, a self-regulatory organisation announced a trading halt;

142.3 on or about 8 November 2016, the Financial Services Regulator referred to in paragraph 142.1 above revoked its Cease Trade Order as Company S filed the required documents; and

142.4 on or about 15 December 2016, Company S announced on its website that its securities would resume trading on 16 December 2016.

Receipt of funds by Client B

143. On:

143.1 31 October 2016, the amount of AED500,000 (approximately USD136,054.42) was credited to Client B's bank account with Bank E (see paragraph 134.1.2 above). The description of the credit was "*INWARD REMITTANCE FT1630533707 GEE SQUARE FZE / REF/payment for travel advance*";

143.2 10 November 2016, the amount specified in paragraph 143.1 above (AED500,000) was transferred from Client B's Bank E account to MGL's Client Money Account;

143.3 15 November 2016, a further AED100,000 (approximately USD27,210.88) was transferred from Client B's Bank E account to MGL's Client Money Account; and

143.4 23 November 2016, the total amount of AED600,000 (approximately USD138,776.30) was credited to Client B's trading account at MGL.

144. It is not clear whether a company called "Gee Square FZE" exists. However, three companies with similar names exist and are part of the Essel Group of Companies, namely:

144.1 Gee Square Holding Sarl, a company incorporated in Milan, Italy. This company also has a branch in Egypt. It supplies relief and humanitarian goods to United Nations' missions;

144.2 Gee Square Holding PVT Limited, a company incorporated in the Ras Al Khaimah Free Zone. This company was initially incorporated to carry out the activities currently carried out by Gee Square Holding Sarl. However, due to United Nations' requirements, the Essel Group decided to incorporate Gee Square Holding Sarl to carry out those activities; and

144.3 Gee Square Tareshi. This company operates a limestone mine in Africa.

None of the abovementioned companies deals in real estate, such that it would ever be required to return monies in relation to a real estate transaction, which was Client B's explanation (see paragraph 147 below).

Trading by Client B

145. On 13 December 2016, Client B instructed MGL to purchase shares in Company S1 to the value of USD160,000. As stated in paragraph 142 above, shares in Company S were still the subject of a trading halt at the time that Client B gave this instruction.

146. On the basis of this instruction, MGL executed a number of trades on behalf of Client B in the period between 16 December 2016 and 30 March 2017 to purchase 2,120,000 shares in Company S, to the value of approximately USD158,528.83. During that time, the approximate price of the shares ranged from between USD0.073849 to USD0.074833475 per share.

147. After SM2 raised queries about Client B's account, and specifically the source of the funds used to purchase the shares in Company S, MGL asked Client B in October 2017 to explain the source of funds for the purchase. On 16 October 2017, Client B sent an email to SM1 in which he stated that the AED500,000 credited to his account came from a refund which was due from an Indian property development company associated with the Essel Group.

148. When asked for documentation regarding the refund, Client B sent an email to MGL dated 14 December 2017 in which he stated:
"*3) Refund: As discussed with you earlier the refund documents are in India and so I have already requested my father to find them and arrange for them to be sent over. However winters are extremely smoggy in Delhi where my father stays and it does affect his overall health. So please accept my apologies if the paperwork takes time to be sent to the UAE.*"

149. When asked for his strategy behind the investment in Company S and his knowledge about the company, Client B stated in an email to MGL dated 18 December 2017 that:

149.1 he has been an investor in the stock market since 2003;

149.2 at his current age (i.e. 35 years old) he can take risks that he would not be able to take if he was older;

149.3 the international media was "*abuzz*" with news about the Essel Group's purchase of shares in Company S; and

149.4 he wished to invest "*aggressively*" in Company S and felt that the investment would give him "*strong returns in the future*".

150. Since Client B purchased the shares in Company S, the value of the shares has decreased by 60% or more. As at 11 September 2019, each share in Company S is worth approximately USD0.0076. Client B's shares are therefore worth USD16,112,

representing an on-paper loss to him of USD136,416.83. Despite this, Client B has not:

150.1 complained to MGL about the decrease in value, or sought advice from MGL as to what to do with the shares; or

150.2 purchased any shares in any other company, or made any other investments whatsoever, through MGL (see paragraph 140 above).

151. MGL has also not to date received:

151.1 any explanation from Client B as to why a refund from the development company referred to in paragraph 147 above was paid to him by an apparently non-existent, or at least incorrectly named, company called "Gee Square FZE", or the links which that company may have to the Essel Group of Companies (see paragraphs 143 and 144 above);

151.2 any explanation from Client B as to why a refund relating to land development was noted in the description of the transaction in the bank account statement as a "payment for travel advance" (see paragraph 143.1 above); and

151.3 any supporting documentation from Client B which verifies the refund relating to land development.

152. On 11 February 2018, SM2 filed a Suspicious Activity Report with the Central Bank of the UAE in regard to Client B's transactions.

153. SM1 states that, in regard to these transactions, he left it to EE7 and the compliance function to make the necessary inquiries of Client B and to obtain the necessary documentation from him. He said that, once he was advised by SM2 that a Suspicious Activity Report was required to be filed, he gave the order to do so.

154. SM2 says that, despite the concerns raised by her about Client B and his transactions, "*Morgan Gatsby was resistant to closing his account*".

Contraventions by MGL regarding Client B

155. In relation to MGL's dealings with Client B, the DFSA finds that:

155.1 by incorrectly classifying Client B as an assessed Professional Client pursuant to COB Rule 2.3.7(1) and thereby failing to treat him as a Retail Client, MGL has contravened:

155.1.1 COB Rule 2.3.2;

155.1.2 COB Rule 2.3.3(1) and (2); and

155.1.3 GEN Rule 4.2.6 (Principle 6 for Authorised Firms) by failing to pay due regard to the interests of its customers;

155.2 by not making adequate enquiries into Client B's source of funds and his rationale for trading in the shares of Company S for a period of at least 6 months between March and October 2017, MGL has contravened:

155.2.1 AML Rule 7.6.1(1)(a) by failing to monitor transactions during the course of its relationship with Client B to ensure that the transactions are consistent with MGL's knowledge of Client B, his business and risk rating; and

155.2.2 AML Rule 7.6.1(1)(b) by failing to pay particular attention to unusually large or unusual patterns of transactions that have no apparent or visible economic or legitimate purpose; and

155.3 by engaging in the conduct specified in paragraphs 155.1 to 155.2 above, MGL has also contravened:

155.3.1 GEN Rule 4.2.2 (Principle 2 for Authorised Firms) by failing to act with due skill, care and diligence; and

155.3.2 GEN Rule 4.2.3 (Principle 3 for Authorised Firms) by failing to have adequate systems and controls to ensure, as far as is reasonably practical, that it complies with legislation applicable in the DIFC.

MGL Corporate Governance

Financial Information Presented at Board Meetings

156. The MGL Board met on:

156.1 27 September 2017. At this meeting, the Board was informed that MGL's net profit for the year to date was USD71,939;

156.2 1 March 2018. At this meeting, the Board was informed that MGL's net profit before provisions for 2017 was USD263,781; and

156.3 25 April 2018. At this meeting, the Board was informed that MGL's net business revenue (i.e. net income after provisions) to date was USD832,663.

157. However, MGL's Audited Financial Returns for the year ended 31 December 2017 showed a net loss for the year of USD83,640, a significantly worse financial position than that portrayed by the reports given to the Board.

Determination of What Financial Information is Presented to the MGL Board

158. SM4 (see paragraph 119 above) stated that one of his duties was to prepare the financial information for the MGL Board meetings. SM4 stated that SM1 would amend the financial information before it was presented to the Board. SM4 says that SM1's reason for amending the financial information was that only "*business related*" financial information should be presented, and not "*operating related*" financial information.

159. SM1 stated that he presented the financial information to the MGL Board in this manner because the Board "*wanted to know the – what has been the operating aspect of (MGL)*". Therefore, the financial information presented to the MGL Board was before provisioning, and the provisioning accounted for the loss of USD83,640 in MGL's Audited Financial Reports for the year ending 31 December 2017.

Director's Knowledge of Financial Position of MGL

160. Aside from SM1, three Directors of MGL were interviewed during the course of the Investigation; namely, FD1 on 10 October 2018 and 13 January 2019, FD2 on 24 September 2018 and Director 1 on 13 January 2019.

161. All three expressed surprise when they were informed that MGL had made a loss of USD83,640 for the year ended 31 December 2017. Additionally, all three Directors do not recall having previously read the Audited Financial Statements for the year ended 31 December 2017.

Contraventions by MGL regarding its corporate governance failings

162. Regarding corporate governance the DFSA finds that, by failing to provide its Governing Body with accurate financial information, MGL has contravened:

162.1 GEN Rule 5.3.17, in that it did not establish and maintain arrangements to provide the Governing Body with the information necessary to organise, monitor and control its activities. The information provided to the MGL Board was not relevant, accurate, comprehensive, timely or reliable, as required by this Rule; and

162.2 GEN Rule 4.2.3 (Principle 3 for Authorised Firms), in that it did not ensure that its affairs were managed effectively and responsibly by its senior management.

MGL's "Client Account" at Broker 1

Opening of Account

163. In about August or September 2017, MGL opened a brokerage account with Broker 1 so that it could hold securities beneficially owned by one or more of its Clients. The

account with Broker 1 was therefore a "Client Account" for the purposes of the DFSA's Rules.

164. The account was opened to replace the account which MGL previously held with Broker 2. On 26 September 2017, MGL transferred all securities from Broker 2 to Broker 1.

165. The account which MGL opened with Broker 1 failed to comply with a number of DFSA requirements as follows:

165.1 the account did not have the words "Client Account" in the name of the account;

165.2 though MGL obtained a completed "Due Diligence Questionnaire for Broker/Dealer" from Broker 1 dated 13 September 2017, the account was opened before the requisite due diligence was completed to check that it complied with the safe custody requirements in COB App6; and

165.3 MGL did not obtain, within a reasonable period, a written acknowledgment from Broker 1 that:

165.3.1 all investments standing to the credit of the account are held by MGL as agent and that Broker 1 is not entitled to combine the account with any other account or to exercise any charge, mortgage, lien, right of set-off or counterclaim against investments in that account in respect of any sum owed to it on any other account of MGL; and

165.3.2 the title of the account sufficiently distinguishes that account from any account containing investments that belong to MGL, and is in the form requested by MGL.

Contraventions regarding the Broker 1 account

166. In opening and operating the Broker 1 account referred to in paragraph 163 above, the DFSA finds that MGL has contravened:

166.1 COB Rules A6.4.1(a) and A6.4.2(d), in that the account failed to include the words "Client Account" in its title;

166.2 COB Rule A6.5.1(1), in that MGL did not undertake a prior assessment of the suitability of Broker 1 which would allow MGL to conclude on reasonable grounds that Broker 1 is suitable to hold Safe Custody Investments;

166.3 COB Rule A6.6.1, in that MGL did not obtain the requisite written acknowledgments from Broker 1; and

166.4 GEN Rule 4.2.9 (Principle 9 for Authorised Firms), by failing to arrange proper protection for assets or money belonging to a customer which it is required to safeguard in accordance with the responsibility it has accepted.

SUMMARY OF CONTRAVENTIONS

167. In summary, for the reasons set out above, the DFSA finds that MGL has contravened the following DFSA Laws and Rules:

167.1 In its promotion of the EANR Fund, the DFSA considers that MGL contravened:

167.1.1 Article 54(1)(c)(ii) of the CIL – Marketing of Foreign Funds;

167.1.2 CIR 15.1.3(2)(b) and 15.1.3(2)(c) – Prospectus disclosure relating to Foreign Funds;

167.1.3 CIR 15.1.6(2), 15.1.6(3) and 15.1.6(4) – Other Foreign Fund criteria;

167.1.4 Article 41B of the Law - General prohibition against misconduct;

167.1.5 COB Rule 3.2.1 - Communication of information and marketing material;

167.1.6 COB Rule 3.6.1 – Record Keeping;

167.1.7 GEN Rule 5.3.17 – Management information; and

167.1.8 the Principles for Authorised Firms in GEN Rules 4.2.2, 4.2.4, 4.2.6, 4.2.8, 4.2.9 and 4.2.11;

167.2 In making unauthorised transactions on behalf of Client P1 and Client P2, the DFSA considers that MGL contravened:

167.2.1 Article 41B of the Law - General prohibition against misconduct;

167.2.2 Article 66 of the Law - False and misleading information; and

167.2.3 the Principles for Authorised Firms in GEN Rules 4.2.1, 4.2.2, 4.2.6, 4.2.8 and 4.2.10;

167.3 In failing to comply with the May 2018 Prohibitions, the DFSA considers that MGL contravened:

167.3.1 Article 69 of the Law – Compliance with an order or requirement of the DFSA; and

167.3.2 the Principles for Authorised Firms in GEN Rules 4.2.1, 4.2.2, 4.2.3, and 4.2.4;

167.4 In its dealings with Client B, the DFSA considers that MGL contravened:

167.4.1 COB Rules 2.3.2 and 2.3.3(1) and (2);

167.4.2 AML Rule 7.6.1 – Ongoing customer due diligence; and

167.4.3 the Principles for Authorised Firms in GEN Rules 4.2.2, 4.2.3 and 4.2.6;

167.5 In failing to ensure that its Governing Body was provided with accurate financial information, the DFSA considers that MGL contravened:

167.5.1 GEN Rule 5.3.17 – Management information; and

167.5.2 Principle 3 for Authorised Firms in GEN Rule 4.2.3; and

167.6 In opening and operating the Broker 1 account, the DFSA considers that MGL contravened:

167.6.1 the Safe Custody Provisions in COB Rules A6.4.1(a), A6.4.2(d), A6.5.1(1) and A6.6.1; and

167.6.2 Principle 9 for Authorised Firms in GEN Rule 4.2.9.

ACTION

168. In deciding to impose the action 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**).

169. The DFSA considers the following factors to be of particular relevance in this matter:

169.1 The DFSA's objectives, in particular to prevent, detect and restrain conduct that causes or may cause damage to the reputation of the DIFC or the Financial Services industry in the DIFC, through appropriate means including the imposition of sanctions (Article 8(3)(d));

169.2 The nature and seriousness of the contraventions, as set out in paragraph 167 above, the deterrent effect of the action and the importance of deterring MGL and others from committing further or similar contraventions;

169.3 The difficulty in detecting and investigating the contraventions that are the subject of the penalty; and

169.4 MGL's disciplinary record and compliance history as set out in paragraphs 14 to 26 above.

170. The DFSA has considered the sanctions and other options available to it and has determined that a fine is the most appropriate action given the circumstances of this matter.

Determination of the Fine

171. In considering the appropriate level of financial penalty imposed in this matter, the DFSA has taken into account the factors and considerations set out in Sections 6-4 and 6-5 of the RPP as follows.

172. The DFSA considers it appropriate to take into consideration the revenue earned by MGL from the fourth quarter of 2017 to the third quarter of 2018 (the **Relevant Period**). The DFSA has taken into account MGL's total revenue figures of USD899,000 for the Relevant Period, as well as the commission of USD412,087.08 which MGL received in 2017 from facilitating investments in the EANR Fund.

Step 1 – Disgorgement

173. There is no evidence to suggest that MGL made a profit or avoided a loss as a result of the contraventions. In fact, the revenue and profit/loss figures available for the Relevant Period show that MGL made a loss of approximately USD51,000 for the Relevant Period. Accordingly, this step was not considered to be relevant. However, as indicated above, the DFSA has taken into consideration revenue received by MGL in the Relevant Period and, in particular, the commissions which it received from investments which it facilitated in the EANR Fund when determining a figure which appropriately reflects the seriousness of the contraventions under Step 2.

Step 2 – The seriousness of the contraventions

174. The DFSA considers MGL's contraventions to be serious because:

174.1 MGL's contraventions of DFSA administered legislation are numerous and systemic. These contraventions indicate that the firm either deliberately failed to comply with the legislation, or was reckless as to whether or not it complied;

174.2 the nature and extent of the contraventions evidence serious and systemic weaknesses in MGL's systems and controls relating to all of its business;

174.3 SM1 was aware MGL's contraventions. SM1 knew, or could reasonably have foreseen, that MGL's conduct relating to the EANR Fund and the P Clients, and MGL's non-compliance with the May 2018 Prohibitions, would result in contraventions being committed; and

174.4 there is evidence that:

174.4.1 MGL did not carry out its business with integrity in that it carried out unauthorised transactions on behalf of Clients;

174.4.2 Client transactions were effected by MGL with forged documents; and

174.4.3 MGL did not comply with the May 2018 Prohibitions.

175. Taking the above factors into account, the DFSA considers that the fine should be made up of the total of:

175.1 a percentage of the total of the commissions which MGL received from facilitating investments in the EANR Fund for 2017. As set out in paragraph 172 above, the total commissions received by MGL in 2017 was USD412,087.08. The DFSA considers that 20% of the commissions, which amounts to USD82,417.42, is appropriate; and

175.2 a percentage of all other revenue for the Relevant Period. As stated above, MGL's total revenue for the Relevant Period was USD899,000. This figure presumably includes the amount of approximately USD137,000 in EANR Fund commissions for Q4 of 2017. As these commissions have already been taken into account in paragraph 175.1 above, MGL's net revenue for the Relevant Period is USD762,000 (i.e. USD899,000 minus USD137,000). The DFSA considers that 20% of USD762,000, which amounts to USD152,400, is appropriate.

176. Accordingly, the figure after Step 2 is USD234,817.42 (i.e. USD82,417.42 plus USD152,400).

Step 3 – Mitigating and aggravating factors

177. In considering the appropriate level of the fine, the DFSA had regard to the circumstances of this matter and mitigating and aggravating factors, including those set out in RPP 6-5-8.

178. The DFSA considers that MGL's contraventions are aggravated by the following factors:

178.1 many of the contraventions only came to light after the DFSA gave MGL a regulatory notice on 7 December 2017;

178.2 as stated in paragraph 174.3 above, SM1 was aware of MGL's contraventions. SM1 failed to take remedial action to stop the contraventions;

178.3 as stated in paragraphs 14 to 26 above, MGL was made aware by the DFSA on a number of occasions of supervisory concerns which the DFSA had in relation to the manner in which MGL conducted its business. Despite this, MGL has continued to contravene DFSA administered legislation;

178.4 as stated in paragraphs 117 to 129 above, MGL did not comply with the May 2018 Prohibitions;

178.5 a member of its compliance function (namely, SM2) raised a number of concerns regarding MGL's compliance with DFSA legislation generally. In particular, SM2 raised concerns on numerous occasions about the marketing of the EANR Fund and the lack of a dedicated bank account for the Fund – see paragraphs 68 to 70 above. Inadequate action was taken by MGL in response to her concerns; and

178.6 MGL has a poor disciplinary record and compliance history – see paragraphs 14 to 26 above.

179. In deciding to impose the action in this Notice, the DFSA has also taken into account the fact that MGL has co-operated with Enforcement in relation to the Investigation since its commencement on 21 March 2018. While this does not mitigate MGL's contraventions, the DFSA has taken this into consideration into account in deciding to take the action in this Notice.

180. As a result of these factors, the DFSA considers that overall these factors aggravate the seriousness of the contraventions by MGL. Accordingly, the DFSA has decided to increase the figure after Step 2 by 50%, which amounts to USD117,408.71.

181. Accordingly, the figure after Step 3 is USD352,226.13 (ie USD234,817.42 plus USD117,408.71).

Step 4 – Adjustment for deterrence

182. If the DFSA considers that the level of the financial penalty which it has arrived at after Step 3 is insufficient to deter the firm which committed the contravention, or others, from committing further or similar contraventions, then the DFSA may increase it. RPP 6-5-9 sets out some circumstances where the DFSA may do this.

183. The DFSA considers that the Step 3 figure of USD352,226.13 represents a sufficient deterrent to MGL and others, and so has not increased the penalty at Step 4. Accordingly, the figure after step 4 is USD352,226.13.

Step 5 – Settlement discount

184. Where the DFSA and the person on whom the financial penalty is to be imposed agree on the amount and other terms, RPP 6-5-10 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.

185. A settlement has been reached between the DFSA and MGL. 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 30% discount to the fine which would otherwise have been imposed. The figure, after the 30% discount which amounts to USD105,667.84, would be USD246,558.29 (ie USD352,226.13 minus USD105,667.84).

The level of the Fine imposed

186. Given the factors and considerations set out in paragraphs 171 to 185 above and the circumstances of this matter, the DFSA has decided that it is proportionate and appropriate to impose on MGL a fine of USD246,558.29.

PROCEDURAL MATTERS

Decision Making Committee

187. The decision which gave rise to the obligation to give this Notice was made by the Decision Making Committee of the DFSA. This Notice is given to MGL under Schedule 3 to the Regulatory Law.

Manner and time for payment

188. The Fine must be paid by MGL by no later than 28 days from the date of this Notice.

If the Fine is not paid

189. If any or all of the Fine is outstanding after the due date, the DFSA may seek to recover the outstanding amount as a debt owed by MGL and due to the DFSA.

190. If all or any part of the Fine remains outstanding on the date by which it must be paid, the DFSA may recover the outstanding amount as a debt owed by MGL and due to the DFSA. Before taking any action to recover any outstanding amount, the DFSA will consider MGL's circumstances at that time and the corresponding implications of enforcing the Fine for MGL's creditors.

Evidence and other material considered

191. Annex A sets out extracts from some statutory and regulatory provisions and guidance relevant to this Notice.

192. In accordance with paragraphs 5(2) of Schedule 3 to the Law, the DFSA provided MGL with a copy, or access to a copy, of the relevant materials that were considered in making the decisions in this Notice.

Right of review of the decision by the FMT

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

Publicity

194. Under Article 116(2) of the 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.

195. In accordance with Article 116(2) of the Law, the DFSA intends to publicise the action taken in this Decision Notice and the reasons for that action. This may include publishing this Decision Notice itself, in whole or in part.

196. The DFSA will notify MGL of the date on which the DFSA intends to publish information about this Decision Notice.

DFSA contacts

197. For more information concerning this matter generally, please contact the Administrator to the DMC on +971 4 362 1500 or by email at DMC@dfsa.ae.

Signed:

……..

Martin Wilding

On behalf of the Decision Making Committee of the DFSA

ANNEX A – RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. Relevant Legislation

Regulatory Law - DIFC Law No. 1 of 2004

41B General prohibition against misconduct

(1) A person must not, in or from the DIFC, engage in conduct in connection with a Financial Product or a Financial Service that is:

(a) misleading or deceptive or likely to mislead or deceive;

(b) fraudulent; or

(c) dishonest.

(2) The DFSA shall make Rules prescribing what constitutes a Financial Product for the purposes of Article 41B(1).

(3) Nothing in this Article limits the scope or application of any other provision in legislation administered by the DFSA.

66 False or Misleading Information

A person shall not:

(a) provide information which is false, misleading or deceptive to the DFSA; or

(b) conceal information where the concealment of such information is likely to mislead or deceive the DFSA.

69 Compliance with an order or requirement of the DFSA

Where the DFSA makes an order, issues a direction or prohibition, or makes any requirement in relation to a person pursuant to a provision of this Law or Rules or legislation administered by the DFSA, such person must, unless he has a reasonable excuse, comply with such order, direction, prohibition or requirement.

75 Imposing Prohibitions or Restrictions on Business

(1) Subject to Article 77, the DFSA may impose any one or more of the following prohibitions or requirements:

(a) a prohibition on an Authorised Person from:

(i) entering into certain specified transactions or types of transaction;

(ii) soliciting business from certain specified persons or types of person;

(iii) carrying on business in a specified manner or other than in a specified manner;

(iv) using a particular name or description in respect of the Authorised Person; or

(v) using a particular name for a Fund or a sub-fund of a Fund; or

(b) a requirement that an Authorised Person carry on business in, and only in, a specified manner.

(2) The prohibitions or requirements in Article 75(1) may be imposed on the Fund Manager in relation to the management of a Fund or on the Fund itself, even where the Fund has no legal personality.

(3) The procedures in Schedule 3 apply to a decision of the DFSA under Article 75(1).

(4) If the DFSA decides to exercise its power under Article 75(1), the Authorised Person may refer the matter to the FMT for review.

76 Restriction on Dealing with Property

(1) In this Article:

(a) "dealing" in relation to property includes the maintaining, holding, disposing and transferring of property; and

(b) "relevant property", in relation to an Authorised Person, means:

(i) any property held by the person on behalf of any of the clients of the person, or held by any other person on behalf of or to the order of the person; or

(ii) any other property which the DFSA reasonably believes to be owned or controlled by the person.

(2) Subject to Article 77, the DFSA may:

(a) prohibit an Authorised Person from:

(i) dealing with any relevant property in a specified manner or other than in a specified manner; or

(ii) assisting, counselling or procuring another person to deal with any relevant property in a specified manner or other than in a specified manner;

(b) require an Authorised Person to deal with any relevant property in a specified manner.

(c) require an Authorised Person to deal with any relevant property such that:

(i) the property remains of the value and of the description that appear to the DFSA to be desirable with a view to ensuring that the person will be able to meet its liabilities in relation to the business which constitutes a Financial Service for which it holds a Licence; and

(ii) the person is able at any time readily to transfer or dispose or otherwise deal with of the property when instructed to do so by the DFSA.

(d) withdraw an existing prohibition or requirement imposed on an Authorised Person; or

(e) substitute or vary an existing prohibition or requirement imposed on an Authorised Person.

(3) The DFSA may in any prohibition or requirement imposed under Article 76(2) direct that,

for the purposes of such requirement, property of a specified description shall or shall not be taken into account.

(4) The procedures in Schedule 3 apply to a decision of the DFSA under this Article.

(5) If the DFSA decides to exercise its power under this Article, the Authorised Person may refer the matter to the FMT for review.

80. Powers to Obtain Information and Documents for Investigation

(1) Where the DFSA considers that a person is or may be able to give information or produce a document which is or may be relevant to an investigation, it may:

(a) enter the business premises of such person during normal business hours for the purpose of inspecting and copying information or documents stored in any form on such premises;

(b) require such person to give, or procure the giving of, specified information in such form as it may reasonably require;

(c) require such person to produce, or procure the production of, specified documents;

(d) require such person (the interviewee) to attend before an officer, employee or agent of the DFSA (the interviewer) at a specified time and place to answer questions in private (compulsory interview); or

(e) require such person to give it any assistance in relation to the investigation which the person is able to give.

(2) Where the DFSA exercises its power under Article 80(1)(a) to enter business premises, it may:

(a) require any appropriate person to make available any relevant information stored at those premises for inspection or copying;

(b) require any appropriate person to convert any relevant information into a form capable of being copied; and

(c) use the facilities of the occupier of the premises, free of charge, to make copies.

(3) Where the DFSA exercises its power under Article 80(1)(d) to conduct a compulsory interview, it may give a direction:

(a) concerning who may be present;

(b) preventing any person present during any part of the compulsory interview from disclosing to any other person any information provided to the interviewee or questions asked by the interviewer during the compulsory interview;

(c) concerning the conduct of any person present, including as to the manner in which they will participate in the interview;

(d) requiring the interviewee to swear an oath or give an affirmation that the answers of

the interviewee will be true; and

(e) requiring the interviewee to answer any questions relevant to the investigation.

,,,,

Collective Investment Law – DIFC Law No. 2 of 2010

(1) An Authorised Firm may only Offer a Unit of a Foreign Fund if:

(a) the Foreign Fund meets either:

(i) the criteria for a Designated Fund in a Recognised Jurisdiction; or

(ii) other criteria prescribed in the Rules;

(b) the Authorised Firm has a reasonable basis for recommending the Unit of the Foreign Fund as suitable for the particular Client to whom the Offer is made; or

(c) the Foreign Fund is a type of Fund that:

(i) has its Units offered to persons only by way of a private placement;

(ii) has its Units offered to persons who meet the criteria to be classified as Professional Clients; and

(iii) requires an initial subscription of at least US$50,000 to be paid by a person to become a Unitholder in the Fund.

(iv) requires an initial subscription of at least US$50,000 to be paid by a person to become a Unitholder in the Fund.

(2) For the purposes of Article 54(1), the DFSA may, by Rules, prescribe any additional criteria, requirements or conditions that apply to the Offer of Units of Foreign Funds including:

(i) disclosure to be made to persons to whom such Offers are made;

(ii) when an offer document produced in accordance with the legislation applicable in a jurisdiction other than the DIFC is to be taken to comply with the requirements of this Law and any Rules made for the purposes of this Law;

(iii) whether such Funds are required to be Open-ended or Closed-ended, listed or unlisted or meet any additional requirements relating to its legal form or manner of distribution; and

(iv) the circumstances in which the Islamic quality of the Fund may be promoted by using the words Shari'a compliant or Islamic in the name of the Foreign Fund or otherwise holding out that the Fund is in any way Islamic or Shari'a compliant.

…

2. Relevant DFSA Rulebook Provisions

DFSA Rulebook, Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module [VER11/02-16]

7.6 Ongoing Customer Due Diligence

7.6.1

When undertaking ongoing Customer Due Diligence under Rule 7.3.1(1)(d), a Relevant Person must, using the risk-based approach:

(a) monitor transactions undertaken during the course of its customer relationship to ensure that the transactions are consistent with the Relevant Person's knowledge of the customer, his business and risk rating;

(b) pay particular attention to any complex or unusually large transactions or unusual patterns of transactions that have no apparent or visible economic or legitimate purpose;

(c) enquire into the background and purpose of the transactions in (b);

(d) periodically review the adequacy of the Customer Due Diligence information it holds on customers and beneficial owners to ensure that the information is kept up to date, particularly for customers with a high risk rating; and

(e) periodically review each customer to ensure that the risk rating assigned to a customer under Rule 6.1.1(1)(b) remains appropriate for the customer in light of the money laundering risks.

DFSA Rulebook, Collective Investment Rules (CIR) [VER22/02-17]

15.1 Access to Foreign Funds and availability of Prospectus

15.1.3 Prospectus disclosure relating to Foreign Funds

(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.";

(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);and

(f) in the case of an Offer of a Unit in a Money Market Fund , contains the risk warning referred to in Rule 14.4.7.

15.1.6 Other Foreign Fund Criteria

(1) The criteria prescribed for the purposes of Article 54(1)(a)(ii) of the Law to enable an Authorised Firm to Offer a Unit of a Foreign Fund are as follows:

(a) the Fund :

(i) has both a custodian who meets one of the requirements in (2) and an investment manager who meets one of the requirements in (3); or

(ii) has both the custody and investment management activities of the Fund being performed by a Person who meets the requirements in (4); or

(iii) the Fund has been rated or graded as at least "investment grade" by Moody's, Fitch or Standard & Poor's or such other international rating agency acceptable to the DFSA.

and,

(b) if the Fund is a Property Fund , it meets the requirements in CIR Rule 15.1.7.

(2) For the purposes of (1)(a)(i), the custodian is the Person who is responsible for providing safe custody of the Fund Property and such Person must be:

(a) an Eligible Custodian;

(b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and the activities of the custodian are included within the scope of that supervision;

(c) appointed under an agreement by a Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of that Regulator; or

(d) a Person as to whom the Authorised Firm is satisfied has adequate custody and asset safety arrangements in respect of the Foreign Fund after performing due diligence taking into consideration each of the following factors:

(i) whether the Person providing custody is authorised and supervised by a Financial Services Regulator for the purposes of providing custody;

(ii) the extent of segregation of assets;

(iii) independence and management of conflicts of interests;

(iv) the terms of the safe custody agreement; and

(v) periodic reporting requirements.

(3) For the purposes of (1)(a)(i), the investment manager is a Person who makes investment decisions for or on behalf of the Fund and must be a Person who is:

(a) authorised and supervised by the DFSA or a Financial Services Regulator located in a Recognised Jurisdiction in respect of its activities in relation to investment management;

(b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and the activities of the investment manager are included within the scope of the supervision; or

(c) appointed under an agreement by another Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of the Regulator.

(4) For the purposes of (1)(a)(ii), the Person carrying out both the custody and investment management activities of the Fund must be a Person who is:

(a) authorised and supervised by the DFSA or a Financial Services Regulator located in a Recognised Jurisdiction in respect of both of its custody and investment management activities;

(b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and its custody and investment management activities are included within the scope of that supervision; or

(c) appointed under an agreement by another Person who is subject to supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of that Regulator.

DFSA Rulebook, Conduct of Business Module (COB) [VER29/08-17]

3.2 Communication of information and marketing material

3.2.1

When communicating information to a Person in relation to a financial product or financial service, an Authorised Firm must take reasonable steps to ensure that the communication is clear, fair and not misleading.

A6.4 Client Accounts in relation to Client Investments

A6.4.1

An Authorised Firm which Provides Custody or holds or controls Client Investments must register or record all Safe Custody Investments in the legal title of:

(a) a Client Account; or

(b) the Authorised Firm where, due to the nature of the law or market practice, it is not feasible to do otherwise.

A6.4.2

A Client Account in relation to Client Investments is an account which:

(a) is held with a Third Party Agent or by an Authorised Firm which is authorised under its Licence to Provide Custody ;

(b) is established to hold Client Assets ;

(c) when held by a Third Party Agent , is maintained in the name of;

(i) if a Domestic Firm , the Authorised Firm ; or

(ii) if not a Domestic Firm , a Nominee Company controlled by the Authorised Firm ; and

(d) includes the words 'Client Account' in its title.

A6.5 Holding or Arranging Custody with Third Party Agents

A6.5.1

(1) Before an Authorised Firm holds a Safe Custody Investment with a Third Party Agent, it must undertake an assessment of that Third Party Agent and have concluded on reasonable grounds that the Third Party Agent is suitable to hold those Safe Custody Investments.

(2) An Authorised Firm must have systems and controls in place to ensure that the Third Party Agent remains suitable.

(3) When assessing the suitability of the Third Party Agent , the Authorised Firm must ensure that the Third Party Agent will provide protections equivalent to the protections conferred in this appendix.

A6.6 Safe Custody Agreements with Third Party Agents

A6.6.1

Before an Authorised Firm passes, or permits to be passed, Safe Custody Investments to a Third Party Agent it must have procured a written acknowledgement from the Third Party Agent stating:

(a) that the title of the account sufficiently distinguishes that account from any account containing Investments belonging to the Authorised Firm, and is in the form requested by the Authorised Firm;

(b) that the Client Investment will only be credited and withdrawn in accordance with the instructions of the Authorised Firm;

(c) that the Third Party Agent will hold Client Investments separately from assets belonging to the Third Party Agent;

(d) the arrangements for recording and registering Client Investments, claiming and receiving dividends and other entitlements and interest and the giving and receiving of instructions;

(e) that the Third Party Agent will deliver a statement to the Authorised Firm (including the frequency of such statement), which details the Client Investments deposited to the account;

(f) that all Investments standing to the credit of the account are held by the Authorised Firm as agent and that the Third Party Agent is not entitled to combine the account with any other account or to exercise any charge, mortgage, lien, right of set-off or counterclaim against Investments in that account in respect of any sum owed to it on any other account of the Authorised Firm; and

(g) the extent of liability of the Third Party Agent in the event of default.

DFSA Rulebook, General Module (GEN) [VER35/02-16]

4.2 The Principles for Authorised Firms

4.2.1 Principle 1 - Integrity

An Authorised Firm must observe high standards of integrity and fair dealing.

4.2.2 Principle 2 - Due skill, care and diligence

In conducting its business activities an Authorised Firm must act with due skill, care and diligence.

4.2.3 Principle 3 - Management, systems and controls

An Authorised Firm must ensure that its affairs are managed effectively and responsibly by its senior management. An Authorised Firm must have adequate systems and controls to ensure, as far as is reasonably practical, that it complies with legislation applicable in the DIFC.

4.2.4 Principle 4 - Resources

An Authorised Firm must maintain and be able to demonstrate the existence of adequate resources to conduct and manage its affairs. These include adequate financial and system resources as well as adequate and competent human resources.

4.2.6 Principle 6 - Information and interests

An Authorised Firm must pay due regard to the interests of its customers and communicate information to them in a way which is clear, fair and not misleading.

4.2.7 Principle 7 - Conflicts of interest

An Authorised Firm must take all reasonable steps to ensure that conflicts of interest between itself and its customers, between its Employees and customers and between one customer and another are identified and then prevented or managed, or disclosed, in such a way that the interests of a customer are not adversely affected.

4.2.8 Principle 8 - Suitability

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.

4.2.9 Principle 9 - Customer assets and money

Where an Authorised Firm has control of or is otherwise responsible for assets or money belonging to a customer which it is required to safeguard, it must arrange proper protection for them in accordance with the responsibility it has accepted.

4.2.10 Principle 10 - Relations with regulators

An Authorised Firm must deal with Regulators in an open and co-operative manner and keep the DFSA promptly informed of significant events or anything else relating to the Authorised Firm of which the DFSA would reasonably expect to be notified.

4.2.11 Principle 11 - Compliance with high standards of corporate governance

An Authorised Firm must have a corporate governance framework as appropriate to the nature, scale and complexity of its business and structure, which is adequate to promote the sound and prudent management and oversight of the Authorised Firm's business and to protect the interests of its customers and stakeholders.

4.2.12 Principle 12 - Compliance with high standards of corporate governance

An Authorised Firm must have a remuneration structure and strategies which are well aligned with the long term interests of the firm, and are appropriate to the nature, scale and complexity of its business.

4.4 The Principles for Authorised Individuals

4.4.1 Principle 1 - Integrity

An Authorised Individual must observe high standards of integrity and fair dealing in carrying out every Licensed Function.

4.4.2 Principle 2 – Due skill, care and diligence

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

4.4.5 Principle 5 - Management, systems and control

An Authorised Individual who has significant responsibility must take reasonable care to ensure that the business of the Authorised Firm for which he is responsible is organised so that it can be managed and controlled effectively.

4.4.6 Principle 6 - Compliance

An Authorised Individual who has significant responsibility must take reasonable care to ensure that the business of the Authorised Firm for which he is responsible complies with any legislation applicable in the DIFC.

5.3 Systems and controls

5.3.1 General requirement

(1) An Authorised Person must establish and maintain systems and controls, including but not limited to financial and risk systems and controls, that ensure that its affairs are managed effectively and responsibly by its senior management.

(2) An Authorised Person must undertake regular reviews of its systems and controls.

5.3.17 Management information

An Authorised Person must establish and maintain arrangements to provide its Governing Body and senior management with the information necessary to organise, monitor and control its

activities, to comply with legislation applicable in the DIFC and to manage risks. The information must be relevant, accurate, comprehensive, timely and reliable.

3. Other Relevant Regulatory Provisions

The DFSA's policy in relation to its approach to enforcement is set out in Chapter 5 of the DFSA's Regulatory Policy and Process Rulebook (RPP) (February 2017 Edition).

Chapter 6 of RPP sets out the DFSA's approach to imposing a penalty, which includes a financial penalty, and the matters the DFSA will take into account when determining a penalty.

ANNEX B – DEFINITIONS

AML	DFSA Rulebook, Anti-Money Laundering, Counter-Terrorist, Financing and Sanctions Module, versions 11 to 13 inclusive, as in force from time to time during the relevant period
Bank E	A bank in the UAE in which Client B held an account
Broker 1	The current broker for MGL
Broker 2	The former broker for MGL
CAD	Canadian dollars
CDD	Customer due diligence
CIL	The Collective Investment Law 2010 (DIFC Law No. 2 of 2010), as amended
CIR	DFSA Rulebook, Collective Investments Rules version 22 as in force from time to time during the relevant period
CJ	A fund promoted by MGL
Client B	A client of MGL who invested in Company S
Client G	A client of MGL who invested in the EANR Fund
Client P1	A company beneficially owned by the P Clients
Client P2	A company beneficially owned by the P Clients
Client P3	One of the ultimate beneficial owners of Clients P1 and P2
Client P4	One of the ultimate beneficial owners of Clients P1 and P2
COB	DFSA Rulebook, Conduct of Business Module, versions 28 and 29 as in force from time to time during the relevant period
Company S	A company listed on the Toronto Stock Exchange
Concerns Letter	The letter from the DFSA to MGL referred to in paragraph 17 above
CSSF	The Commission de Surveillance du Secteur Financier
Director 1	A current director of MGL
DMC	The DFSA's Decision Making Committee
Domiciliation Agent	The Luxembourg law firm referred to in paragraph 29.3 above
DT1	The MGL deal ticket referred to in paragraph 77 above

DT2	The MGL deal ticket referred to in paragraph 80 above
DT3	The MGL deal ticket referred to in paragraph 96 above
DT4	The MGL deal ticket referred to in paragraph 96 above
EANR Fund	The Essel Africa Natural Resource Fund
EE1	An ex-employee of MGL
EE2	An ex-employee of MGL
EE3	An ex-employee of MGL
EE4	An ex-employee of MGL
EE5	An ex-employee of MGL
EE6	An ex-employee of MGL
EE7	An ex-employee of MGL
EGME	Essel Group ME DMCC
EGME Bank Account	The bank account referred to in paragraph 36 above
Enforcement	The DFSA's Enforcement Department
Escrow Agreements	The agreements referred to in paragraphs 39 and 40 above
FD1	A former director of MGL
FD2	A former director of MGL
Fine	The fine referred to in paragraph 1 above
FMT	The Financial Markets Tribunal
GEN	DFSA Rulebook, General Module, versions 35 to 41 as in force from time to time during the relevant period
GLO	DFSA Rulebook, Glossary Module versions 34 to 39 as in force from time to time during the relevant period
GP	The General Partner in the EANR Fund
Investigation	The DFSA's investigation referred to in paragraph 16 above
Investment Principal	Amounts of capital belonging to Client 2 and used to fund investments recommended by MGL – see paragraph 88 above
January 2019 Prohibitions	The prohibitions imposed by the DFSA on MGL referred to in paragraph 24 above

Law	The Regulatory Law 2004 (DIFC Law No. 1 of 2004), as amended
LPIA	The Limited Partner Investment Agreement, also called a Private Placement Memorandum, for the EANR Fund
LP and LPs	A Limited Partner or the Limited Partners in the EANR Fund
May 2018 Prohibitions	The prohibitions imposed by the DFSA on MGL referred to in paragraph 20 above
MGL	Morgan Gatsby Limited
MLRO	Money Laundering Reporting Officer
P Clients	The P Clients include: • Client P1; • Client P2; • Client P3; and • Client P4.
SM1	A member of the senior management of MGL
SM2	A member of the compliance function and senior management of MGL
SM3	A member of the senior management of MGL
SM4	A member of the senior management of MGL
Relevant Period	The fourth quarter of 2017 to the third quarter of 2018 (February 2017 edition)
RPP	The DFSA's Regulatory Policy and Process Sourcebook
Sidra	Sidra Capital (DIFC) Ltd
UCITS	Refers to the European Parliament and Council Directives on the coordination of laws, regulations and administrative provisions relating to Undertakings for the Collective Investment in Transferable Securities
Undertaking	The undertaking given by MGL to the DFSA referred to in paragraph 14 above
USD	United States dollars