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DECISION NOTICE

To: Mr Prabhakar Kamath

DFSA Reference: I002927

Date: 14 September 2017

1. ACTION

- 1.1. For the reasons given in this Notice and pursuant to Article 90(2)(b) of the Regulatory Law, the DFSA has decided to publish a statement to the effect that Mr Prabhakar Kamath has contravened legislation administered by the DFSA (the Censure).

2. DEFINITIONS

- 2.1. Defined terms are identified in this Notice by an acronym, 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). Unless the context states otherwise, where capitalisation of the initial letter is not used, an expression has its natural meaning.

3. SUMMARY OF REASONS

- 3.1. Mr Kamath was the Finance Officer of a PIB Category 4 Authorised Firm (the Firm). Mr Kamath was responsible for the Firm's compliance with the applicable requirements in PIB, and for submitting monthly financial reports to the DFSA to monitor such compliance. The PIB Rules required the Firm to maintain an amount of liquid assets which exceeded its Expenditure Based Capital Minimum (EBCM), which was USD600,000 (the Liquid Assets Requirement).

- 3.2. On 7 June 2015, Mr Kamath provided the DFSA with the monthly financial report for May 2015 (the May 2015 Financial Report). The May 2015 Financial Report represented that the Firm's current account balance remained the same as the previous month and that the Firm continued to meet the Liquid Assets Requirement. However, both representations were incorrect. In fact, the Firm's current account balance, and therefore its liquid assets, were significantly less than USD600,000.
- 3.3. Mr Kamath failed to identify the inaccuracies in the May 2015 Financial Report because he had not verified the balance of the Firm's current account. In particular, Mr Kamath had failed to obtain and review the Firm's bank statements for that month. While Mr Kamath had attempted to obtain the bank statements from [REDACTED], [REDACTED] ([REDACTED]), [REDACTED] told him that they were not available. [REDACTED] represented to Mr Kamath that there had been no transactions in the Firm's bank account in May 2015. That information subsequently transpired to be false. In fact, [REDACTED] had withdrawn AED1,697,000 (USD462,083) in cash from the Firm's current account during the month.
- 3.4. The DFSA considers that Mr Kamath's conduct described in this Notice fell below the standard reasonably expected of him under the DFSA's Principles for Authorised Individuals. In particular, by virtue of Article 85 of the Regulatory Law, Mr Kamath contravened:
- (a) Principle 2 (GEN Rule 4.4.2) because he failed to exercise sound judgement and diligence in performing his role; and
 - (b) Principle 6 (GEN Rule 4.4.6) because he had significant responsibility and failed to take reasonable care to ensure that the business of the Firm, for which he was responsible, complied with legislation applicable in the DIFC (namely, the applicable regulatory requirements in PIB).
- 3.5. Breaches such as those committed by Mr Kamath have, in the past, led the DFSA to impose a fine. However, given the specific circumstances of this case, in particular the conduct of [REDACTED] in not informing anyone at the Firm of [REDACTED] cash withdrawals in May 2015, and Mr Kamath's subsequent cooperation with the DFSA, the DFSA considers it appropriate to impose the Censure on Mr Kamath rather than a fine or other sanction.
- 3.6. The Censure will take the form of this Notice which will be published, in whole or in part, on the DFSA's website.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. The Firm was licensed to provide the Financial Services of Arranging Credit or Deals in Investments, Advising on Financial Products or Credit, and Arranging Custody. Part of the Firm's business included providing private banking advisory services and arranging investments for clients with third parties. In November 2015, the Firm was put into liquidation.

4.2.



4.3. Since 30 October 2014 and at the time of his alleged misreporting in June 2015, Mr Kamath was authorised by the DFSA to perform the Licensed Functions of Finance Officer and Senior Manager at the Firm. The firm outsourced the Finance Officer function to Mr Kamath, who was employed by a consulting firm. In the capacity of Finance Officer, Mr Kamath reported directly to [REDACTED]. As the Finance Officer, Mr Kamath had responsibility for the Firm's compliance with the applicable rules in PIB and the submission of monthly financial reports to the DFSA to monitor such compliance.

4.4. The Firm's financial reports for each month were required to be submitted to the DFSA by the 7^h day of the following month. The reports contained representations of, among other things, the Firm's current account balance and whether it had complied with the Liquid Assets Requirement. To verify these representations, Mr Kamath was provided with the Firm's financial statements, and supporting documents including the Firm's bank statements as independent confirmation of the Firm's bank balances, prior to the submission of the report.

The Firm's failure to comply with its Liquid Assets Requirement

4.5. Pursuant to the Liquid Assets Requirement in PIB Rule 3.5.3(1), the Firm was required to maintain, at all times, an amount which exceeded its EBCM in the form of liquid assets. The Firm's EBCM, calculated in accordance with PIB section 3.7, was USD600,000. For the purposes of PIB Rule 3.5.3(1), liquid assets include the Firm's cash and its money deposited with a bank, such as in a current account.

4.6. On 7 May 2015, Mr Kamath, after obtaining and reviewing the Firm's bank statements for April 2015, submitted the Firm's monthly financial report for that month. The report showed that the Firm's current account balance was USD627,781 which, when combined with cash in hand of USD602, amounted to liquid assets of USD628,383. This amount was in excess of the Firm's EBCM of USD600,000 and, therefore, the Firm had complied with the Liquid Assets Requirement in April 2015.

4.7. In the period from 5 to 13 May 2015 [REDACTED], without informing anyone at the Firm, withdrew AED1,697,000 (USD462,083) in cash from the Firm's current account using 12 different cheques which [REDACTED] signed personally. This meant that, from 5 May 2015 and continuing throughout that month, the Firm held liquid assets below its EBCM of USD600,000. Therefore, the Firm had failed to comply with its Liquid Assets Requirement.

Mr Kamath's failure to review the Firm's bank statements before submitting the May 2015 Financial Report

4.8. On 7 June 2015, Mr Kamath asked [REDACTED] to provide him with the bank statements for May 2015 so that Mr Kamath could prepare and submit the financial

report for that month. [REDACTED] informed Mr Kamath that the bank statements were not available, but claimed there were no transactions in the bank account during May 2015. The implication of [REDACTED]'s claim was that the bank balance would remain the same as the previous month and that the Firm had complied with the Liquid Assets Requirement.

- 4.9. In his conversation with [REDACTED], Mr Kamath initially refused to submit the financial report without seeing the bank statements. Mr Kamath also emailed his staff, who were assisting with the monthly report, and told them not to submit the report to the DFSA until they had seen the Firm's bank statements. However, Mr Kamath eventually agreed to submit the financial report, having regard to [REDACTED]'s claim regarding an emergency family medical situation, if [REDACTED] sent him an email setting out in writing that there were no bank transactions during May 2015. [REDACTED] instructed an employee at the Firm to send the email and the employee did so.
- 4.10. While preparing the May 2015 Financial Report, Mr Kamath refused the Firm's request to include a particular revenue item in the amount of USD500,000. After seeking supporting documents from the Firm and reviewing those documents, Mr Kamath came to the view that the revenue was from a related party, that it was not a legitimate transaction, and that it should not be included as revenue.

Mr Kamath's submission to the DFSA of the May 2015 Financial Report, which was inaccurate

- 4.11. Later on 7 June 2015, Mr Kamath submitted the May 2015 Financial Report to the DFSA, despite not having first obtained and reviewed the bank statements for that month, or seeing any other independent information, to verify the accuracy of the information in the May 2015 Financial Report. Following his submission of the report, Mr Kamath continued to seek the bank statements from the Firm, and he believed that the bank statements would be forthcoming as soon as possible. As events transpired, the bank statements were not forthcoming.
- 4.12. The May 2015 Financial Report represented that the Firm's current account balance as at 31 May 2015 was the same as the previous month (USD627,781) and that it was therefore meeting the Liquid Assets Requirement. In fact, the Firm's current account balance as at 31 May 2015 was only USD38,755, which was significantly less than the Liquid Assets Requirement. Therefore, the effect of the Firm's May 2015 Financial Report was that it incorrectly represented to the DFSA that the Firm was meeting its Liquid Assets Requirement when, in fact, it was not.

5. CONTRAVENTIONS

Contravention of Authorised Individual Principle 2 (due skill, care and diligence) and Principle 6 (compliance)

- 5.1. As the Firm's Finance Officer, Mr Kamath had responsibility for the Firm's compliance with the applicable rules in PIB and for submitting monthly financial reports to the DFSA. As an Authorised Individual, Mr Kamath was also required to ensure that his conduct met the standard expected under the DFSA's Principles for Authorised Individuals.

- 5.2. Before providing the DFSA with the May 2015 Financial Report, Mr Kamath was required, but was ultimately unable, to obtain and review the Firm's bank statements for that month. He had failed to verify the information in the report and, instead, relied on ██████████'s uncorroborated claim that the bank statements were not available and there were no transactions in the bank account in May 2015.
- 5.3. In the circumstances, a diligent Finance Officer in the same position as Mr Kamath would have taken steps to prevent such a materially inaccurate financial report from being submitted to the DFSA. For example, Mr Kamath could have refused to submit the report and informed the DFSA that, unlike all previous months, the Firm had not provided him with the bank statements so he could not independently verify the information in the report. He could have added that, for that reason, he had decided not to submit the report rather than risk providing the DFSA with inaccurate information regarding the Firm's financial position.
- 5.4. Alternatively, it would have been reasonable for Mr Kamath to have submitted the report, but with appropriate disclosures to the DFSA, including notes recording:
- (a) that, unlike all previous months, the Firm had not provided him with the bank statements, so he could not independently verify the information in the report;
 - (b) that ██████████ had informed him that there were no transactions in the bank account during the month, the absence of such transactions was unusual for an actively trading business, and he had not verified the absence of transactions; and
 - (c) his queries to ██████████ why there were no transactions for the month and why the bank statements were not available, and any answers to those queries.
- 5.5. However, Mr Kamath failed to take any such steps and instead accepted ██████████'s representation that there were no transactions during the month, and included the corresponding incorrect representations in the May 2015 Financial Report.
- 5.6. Accordingly, the DFSA considers that as the Firm's Finance Officer, Mr Kamath's conduct described in this Notice fell below the standard reasonably expected of him under the DFSA's Principles for Authorised Individuals in GEN section 4.4. In particular, by submitting the May 2015 Financial Report without having verified the accuracy of the information contained within it, or without taking appropriate steps to bring to the DFSA's attention the circumstances in which he was submitting the report, Mr Kamath failed:
- (a) to exercise sound judgement and diligence in carrying out his duties as the Firm's Finance Officer; and
 - (b) to take reasonable care to ensure that the business of the Firm for which he was responsible complied with legislation applicable in the DIFC (namely, the applicable regulatory requirements in PIB).
- 5.7. In so doing, by virtue of Article 85 of the Regulatory Law, Mr Kamath contravened Principle 2 (GEN Rule 4.4.2) and Principle 6 (GEN Rule 4.4.6) of the DFSA's Principles for Authorised Individuals.

6. ACTION

- 6.1. In deciding to take the action set out in this Notice, the DFSA has taken into account the factors and considerations set out in sections 6-2 and 6-3 of the DFSA's Regulatory Policy and Process Sourcebook (RPP).
- 6.2. The DFSA considers the following factors in sections 6-2 and 6-3 of the RPP to be relevant to its decision to take action in this matter:
- (a) the deterrent effect of the action, that is, the importance of deterring Mr Kamath and others from committing further or similar contraventions;
 - (b) the nature, seriousness and impact of the contraventions. Mr Kamath's contravention was not deliberate or reckless, but it was negligent. The DFSA also recognises that Mr Kamath's conduct was limited to an isolated series of events in June 2015;
 - (c) the degree of involvement of ██████████ in the circumstances which led to the inaccurate May 2015 Financial Report being submitted to the DFSA by Mr Kamath. ██████████'s withdrawals in May 2015 caused the Firm to breach the Liquid Assets Requirement. ██████████'s incorrect claim that there were no transactions in the bank account in May 2015, and ██████ claimed inability to provide the bank statements owing to the emergency family medical situation, were the catalyst for Mr Kamath including the incorrect information in the May 2015 Financial Report;
 - (d) the fact that Mr Kamath gained no benefit as a result of his contraventions. In fact, he is a creditor of the Firm which is in liquidation;
 - (e) the conduct of Mr Kamath after the contravention including in particular that, during his interview with the DFSA, he acknowledged that he had made an error of judgement by relying on ██████████'s representation which led to the misreporting to the DFSA; and
 - (f) the disciplinary record and compliance history of Mr Kamath. Mr Kamath has an unblemished disciplinary record and compliance history.
- 6.3. The DFSA has considered the sanctions and other options available to it. While conduct such as that carried out by Mr Kamath has in the past justified the DFSA in imposing a fine, the DFSA has concluded that a public censure is the most appropriate action given the circumstances of this matter. In particular, the DFSA has taken into account the conduct of ██████████ and Mr Kamath's subsequent cooperation with the DFSA. The DFSA also considers that sufficient deterrence can be effectively achieved by imposing a public censure on Mr Kamath.

7. PROCEDURAL MATTERS

Decision Making Committee

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

7.2. This Notice is given to Mr Kamath under Paragraph 4 of Schedule 3 to the Regulatory Law.

Evidence and other material considered

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

7.4. In accordance with paragraphs 4(2)(c) and 4(3) of Schedule 3 to the Regulatory Law, Mr Kamath is entitled to a copy, or access to a copy, of the relevant materials that were considered in making the decision which gave rise to the obligation to give this Notice.

Appeal rights

7.5. Under Articles 29 and 90(5) of the Regulatory Law, Mr Kamath has the right to refer the matter to the Financial Markets Tribunal (FMT) for review. However, in agreeing to the action set out in this Decision Notice and deciding to settle this matter, Mr Kamath has agreed that he will not refer this matter to the FMT.

Confidentiality and Publicity

7.6. Under Article 116(2) of the Regulatory Law, the DFSA may publish, in such form and manner as it regards appropriate, information and statements relating to decisions of the DFSA and of the Court, censures, and any other matters which the DFSA considers relevant to the conduct of affairs in the DIFC.

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

7.8. Mr Kamath will be notified of the date on which the DFSA intends to publish information about this decision.

DFSA contacts

7.9. 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:

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Mark McGinness
On behalf of the Decision Making Committee of the DFSA

ANNEX A - RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. LAWS

Regulatory Law - DIFC Law No. 1 of 2004 (Regulatory Law 2004)

PART 6: CONTRAVENTIONS AND FINES

85. General Contravention Provision

- (1) A person who:
- (a) does an act or thing that the person is prohibited from doing by or under the Law, Rules or other legislation administered by the DFSA;
 - (b) does not do an act or thing that the person is required or directed to do by or under the Law, Rules or other legislation administered by the DFSA; or
 - (c) otherwise contravenes a provision of the Law, Rules or other legislation administered by the DFSA;

commits a contravention of the Law, Rules or other legislation, as the case may be, by virtue of Article 85 unless another provision of the Law, Rules or other legislation administered by the DFSA provides that the person commits, or does not commit, a contravention.

- (2) In Article 85, 'person' does not include the DFSA or the President.

PART 7: ENFORCEMENT

90. Sanctions and directions

- (1) Where the DFSA considers that a person has contravened a provision of any legislation administered by the DFSA, other than in relation to Article 32, the DFSA may exercise one or more of the powers in Article 90(2) in respect of that person.
- (2) For the purposes of Article 90(1) the DFSA may:
- (a) fine the person such amount as it considers appropriate in respect of the contravention;
 - (b) censure the person in respect of the contravention;
 - (c) make a direction requiring the person to effect restitution or compensate any other person in respect of the contravention within such period and on such terms as the DFSA may direct;
 - (d) make a direction requiring the person to account for, in such form and on such terms as the DFSA may direct, such amounts as the DFSA determines to be profits or unjust enrichment arising from the contravention;

- (e) make a direction requiring the person to cease and desist from such activity constituting or connected to the contravention as the DFSA may stipulate;
- (f) make a direction requiring the person to do an act or thing to remedy the contravention or matters arising from the contravention; or
- (g) make a direction prohibiting the person from holding office in or being an employee of any Authorised Person, DNFBP, Reporting Entity or Domestic Fund.

(...)

- (5) If the DFSA decides to exercise its power under this Article in relation to a person, the person may refer the matter to the FMT for review.

PART 10: MISCELLANEOUS

116. Publication by the DFSA

(...)

- (2) The DFSA may publish in such form and manner as it regards appropriate information and statements relating to decisions of the DFSA and of the Court, censures, and any other matters which the DFSA considers relevant to the conduct of affairs in the DIFC.

SCHEDULE 3: DECISION-MAKING PROCEDURES

4. Opportunity to make representations before a decision

- (1) If the DFSA proposes to make a decision to which this Schedule applies, it must first give the Relevant Person:
 - (a) a written notice (a "Preliminary Notice") containing the information in sub-paragraph (2); and
 - (b) an opportunity to make representations to the DFSA in person and in writing concerning the decision the DFSA proposes to take.
- (2) The Preliminary Notice must:
 - (a) specify the proposed decision;
 - (b) specify the reasons for that proposed decision, including any proposed findings of fact;
 - (c) include a copy of the relevant materials which were considered in making the proposed decision;
 - (d) inform the person that they may make representations to the DFSA concerning the proposed decision; and
 - (e) specify how and by when any representations may be made.
- (3) For the purposes of sub-paragraph (2)(c), the DFSA:

- (a) may refer to materials (instead of providing a copy) if they are already held by the Relevant Person or are publicly available; and
 - (b) is not required to provide material that is the subject of legal professional privilege.
- (4) If the DFSA does not receive any representations within the period specified in the Preliminary Notice, it may proceed to make the proposed decision and give the person a Decision Notice in accordance with paragraph 5.
- (5) If the DFSA receives representations within the period specified in the Preliminary Notice, it must consider the representations in making the decision.
- (6) If, after considering the representations, the DFSA decides:
- (a) to make the proposed decision (either as proposed or with variations), then it must give the person a Decision Notice under paragraph 5; or
 - (b) not to make the proposed decision, then it must as soon as practicable notify the person in writing that it has decided not to make the decision.
- (7) If the DFSA concludes that any delay likely to arise as a result of complying with the procedures in this paragraph would be prejudicial to the interests of direct or indirect users of financial services in the DIFC or otherwise prejudicial to the interests of the DIFC:
- (a) the requirements in sub-paragraphs (1) to (6) do not apply; and
 - (b) instead the DFSA must provide the person with an opportunity to make representations in accordance with the procedures in paragraph 6 after it has made the decision.

5. Decision Notice

- (1) If the DFSA decides to make a decision to which this Schedule applies, it must, as soon as practicable, give the Relevant Person a written notice (a "Decision Notice") specifying:
- (a) the decision;
 - (b) the reasons for the decision, including its findings of fact;
 - (c) the date on which the decision is to take effect;
 - (d) if applicable, the date by which any relevant action must be taken by the person; and
 - (e) the person's right to seek review of the decision by the FMT (where applicable).
- (2) The Decision Notice must include a copy of the relevant materials which were considered in making the decision.
- (3) For the purposes of sub-paragraph (2), the DFSA:

- (a) may refer to materials (instead of providing a copy) if they are already held by the Relevant Person or are publicly available; and
- (b) is not required to provide material that is the subject of legal professional privilege.

2. RULES

The DFSA Rulebook

General Module (GEN)

Chapter 4 – Core Principles

Principle 2 - Due skill, care and diligence (Rule 4.4.2)

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

Principle 6 – Compliance (Rule 4.4.6)

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.

Regulatory Policy and Process Sourcebook Module (RPP) (February 2017 Edition)

5-17 Publicity

General policy on publicity of enforcement actions

5-17-2

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

5-17-3

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

(...)

Commencement of proceedings

The Decision Making Committee (DMC)

5-17-7

The DMC will generally be the decision maker for enforcement decisions under Article 90 of the Regulatory Law. Information about matters before the DMC (e.g. a Preliminary Notice) are not normally published prior to the issuing of a notice of decision (see RPP 5-17-9 to 5-17-11). Reasons for this include:

- (a) oral and written submissions in regard to a matter before the DMC are confidential and made in private;
- (b) DMC hearings are held in private; and
- (c) the release of information by the DMC prior to a full and complete consideration of all submissions and facts may be contrary to the DFSA's objectives or not in the public interest.

6-2 DECIDING TO TAKE ACTION

6-2-1

When determining a penalty, the DFSA will consider all relevant facts and circumstances. Set out below is a list of factors that may be relevant for this purpose. The list is not exhaustive: not all of these factors may be applicable in a particular case, and there may be other factors, not listed, that are relevant. The factors include:

- (a) the DFSA's objectives;
- (b) the deterrent effect of the penalty on:
 - (i) Persons that have committed or may commit the contraventions; and
 - (ii) other Persons that have committed or may commit similar contraventions;
- (c) the nature, seriousness and impact of the contravention, including whether the contravention was deliberate or reckless;
- (d) if the contravention involved a number of Persons, the degree of involvement and specific role of each Person;
- (e) the benefit gained (whether direct or indirect, pecuniary or non-pecuniary) or loss avoided as a result of the contravention;
- (f) the conduct of the Person after the contravention;
- (g) the difficulty in detecting and investigating the contravention that is the subject of the penalty;
- (h) whether the Person committed the contravention in such a way as to avoid or reduce the risk that the contravention would be discovered. A Person's incentive to commit a contravention may be greater where the contravention is, by its nature, harder to detect. The DFSA may impose a more significant penalty where it considers that a Person committed a contravention in such a way as to avoid or reduce the risk that the contravention would be discovered;

- (i) the disciplinary record and compliance history of the Person on whom the penalty is imposed;
- (j) whether the Person acted in accordance with DFSA guidance and other published materials. The DFSA will not take action against a Person for behaviour that it considers to be in line with guidance or other materials published by the DFSA in support of its Rulebook and Sourcebook which were current at the time of the behaviour in question;
- (k) action taken by the DFSA in previous similar cases; and
- (l) action taken by other domestic or international regulatory authorities. Where other regulatory authorities propose to take action in respect of the contravention which is under consideration by the DFSA, or one similar to it, the DFSA will consider whether the other authority's action would be adequate to address the DFSA's concerns, or whether it would be appropriate for the DFSA to take its own action.

Actions against Key Persons

6-2-2

In addition to the general factors in paragraph 6-2-1, there are some additional considerations that may be relevant when the DFSA decides whether to take action against a Key Person. The list is not exhaustive: not all of these factors may be applicable in a particular case, and there may be other factors, not listed that are relevant. The factors include:

- (a) the Key Person's position and responsibilities. The more senior the Key Person responsible for the misconduct, the more seriously the DFSA is likely to view the misconduct, and the more likely it is to take action against the Key Person; and
- (b) whether disciplinary action against the firm rather than the Key Person would be a more appropriate regulatory response.

6-3 FINANCIAL PENALTY OR PUBLIC CENSURE

6-3-1

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

6-3-2

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

- (a) whether or not deterrence may be effectively achieved by issuing a public censure;
- (b) depending upon the nature and seriousness of the contravention:
 - (i) whether the Person has brought the contravention to the attention of the DFSA;
 - (ii) whether the Person has admitted the contravention and provides full and immediate co-operation to the DFSA, and takes steps to ensure that those who

have suffered loss due to the contravention are fully compensated for those losses;

- (c) the DFSA's approach in similar previous cases: the DFSA will seek to achieve a consistent approach to its decisions on whether to impose a financial penalty or issue a public censure; and
- (d) the impact on the Person concerned. It would only be in an exceptional case that the DFSA would be prepared to agree to issue a public censure rather than impose a financial penalty if a financial penalty would otherwise be the appropriate sanction. Examples of such exceptional cases could include:
 - (i) where the application of the DFSA's policy on serious financial hardship (set out in section 6-7) results in a financial penalty being reduced to zero;
 - (ii) where there is verifiable evidence that the Person would be unable to meet other regulatory requirements, particularly financial resource requirements, if the DFSA imposed a financial penalty at an appropriate level; or
 - (iii) where there is the likelihood of a severe adverse impact on a Person's shareholders or a consequential impact on market confidence or market stability if a financial penalty were imposed. However, this does not exclude the imposition of a financial penalty even though this may have an impact on a Person's shareholders.

6-3-3

Some particular considerations that may be relevant when the DFSA determines whether to issue a financial penalty rather than impose a public censure are:

- (a) if the Person has made a profit or avoided a loss as a result of the contravention, on the basis that a Person should not be permitted to benefit from its contravention;
- (b) if the contravention is more serious in nature or degree, on the basis that the sanction should reflect the seriousness of the contravention; other things being equal, the more serious the contravention, the more likely the DFSA is to impose a financial penalty; and
- (c) if the Person has a poor disciplinary record or compliance history, on the basis that it may be particularly important to deter future cases.

Prudential – Investment, Insurance Intermediation and Banking (PIB)

Chapter 3 – Capital

Part 3 – Calculating the Capital Requirement

3.5 Capital Requirements for Categories 3B, 3C and 4

3.5.1

This section applies to an Authorised Firm in Category 3B, 3C or 4.

3.5.2

The Capital Requirement for such an Authorised Firm is calculated as the higher of:

- (a) the applicable Base Capital Requirement as set out in section 3.6; or

- (b) the Expenditure Based Capital Minimum as set out in section 3.7.

3.5.3

- (1) An Authorised Firm to which this section applies must, at all times, maintain an amount which exceeds its Expenditure Based Capital Minimum in the form of liquid assets.
- (2) For the purpose of this Rule, and subject to (3), liquid assets comprise any of the following:
 - (a) cash in hand;
 - (b) money deposited with a regulated bank or deposit-taker which has a short-term credit rating of A1 or P1 (or equivalent) and above from an ECAI;
 - (c) demand deposits with a tenor of 1 year or less with a bank or deposit-taker in (b);
 - (d) time deposits with a tenor of 1 year or less which have an option to redeem the deposit at any time. In such cases, the deposit amount eligible to be included as liquid assets must be calculated as net of any costs associated with such early redemption;
 - (e) cash receivable from a regulated clearing house and cash deposits with such clearing houses, other than any fees or contributions to guarantee or reserve funds of such clearing houses; or
 - (f) any other asset which may be approved by the DFSA as comprising a liquid asset for the purpose of this Rule.
- (3) For the purpose of this Rule, liquid assets do not include:
 - (a) any investment, asset or deposit which has been pledged as security or Collateral for any obligations or liabilities assumed by it or by any other third party; or
 - (b) cash held in Client Money or Insurance Money accounts.