



DECISION NOTICE

To: ABN AMRO Bank N.V. (DIFC Branch)

DFSA Reference: F001198

Address: Office 601, Level 6
Currency House Building 1
Dubai International Financial Centre
PO Box 506507
Dubai
UNITED ARAB EMIRATES

Date: 2 November 2015

ACTION

1. For the reasons given in this Notice and pursuant to Article 90(2) of the Regulatory Law (DIFC Law 1 of 2004) (the Regulatory Law), the Dubai Financial Services Authority (the DFSA) has decided to:
 - 1.1. impose on ABN AMRO Bank N.V. (DIFC Branch) (the Firm or ABN) a fine of US\$640,000 (the Fine); and
 - 1.2. direct ABN to take, and complete, remedial steps in relation to its AML – related systems and controls, as set out in paragraph 79 of this Notice (the Direction).
2. The widespread nature of ABN’s contraventions merits the imposition of a significant financial penalty. However, in deciding to take the action in this Notice, the DFSA has had regard to the following mitigating factors and considerations:
 - 2.1. ABN and its current senior management in the DIFC have cooperated fully with the DFSA during the DFSA investigation and have taken significant steps to investigate its failings. They have remained open and co-operative with the DFSA and have taken proactive measures to report regularly to the DFSA the findings of its internal investigations and internal audit and to remediate its deficiencies; and
 - 2.2. ABN and its current senior management in the DIFC have taken substantial steps, at significant cost, to remediate the issues referenced in this Notice, including by conducting a comprehensive review and remediation of the customer risk assessment and customer due diligence (CDD) information for all Private Banking

International (PBI) client relationships, making improvements to its AML-related systems and controls and increasing the resourcing of its control functions.

3. As a result of the mitigating factors and considerations referred to in paragraph 2 and having regard to the DFSA's policy for determining the appropriate level of financial penalties, the DFSA decided to reduce the fine it would have otherwise imposed on ABN by 20%.
4. ABN also agreed to settle this matter at an early stage following the conclusion of the DFSA's investigation and therefore qualified for a 20% discount under the DFSA's policy for early settlement.
5. Were it not for the mitigating factors and settlement discount, the DFSA would have imposed a fine of US\$1,000,000 on the Firm. ABN has also agreed not to refer the matter to the Financial Markets Tribunal (the FMT).

SUMMARY OF REASONS

6. The DFSA decided to impose the Fine on ABN and make the Direction as a result of ABN's failure to supervise its staff properly and deficiencies in its Anti-Money Laundering (AML) systems and controls. In particular, over the period from around 1 January 2013 to 31 December 2014 (the Relevant Period), ABN did not:
 - 6.1. identify and assess adequately the money laundering risk to which its business was exposed;
 - 6.2. ensure that the policies, procedures, systems and controls it had in place operated effectively in practice to prevent opportunities for money laundering in relation to the activities of its PBI business line;
 - 6.3. establish and maintain adequate systems and controls to monitor and supervise effectively the activities of all of its employees, in particular Relationship Managers within PBI;
 - 6.4. ensure that all of its employees were adequately trained and sufficiently understood ABN's policies, procedures, systems and controls related to money laundering and could recognise and deal with transactions and other activities which may be related to money laundering;
 - 6.5. in a number of cases, undertake sufficiently and document an adequate risk-based assessment of every customer, in that it did not :
 - (a) identify the ultimate beneficial owner of a number of customers;
 - (b) obtain adequate information on the purpose and intended nature of the business relationships for a number of customers; and
 - (c) take into consideration the nature of the customer, its ownership and control structure and its beneficial ownership;
 - 6.6. in a number of cases, ensure that it did not establish a business relationship with customers where the ownership or control arrangements of the customers prevented ABN from identifying adequately one or more of the customers beneficial owners;
 - 6.7. assign an appropriate risk rating to every customer that was proportionate to the relevant customer's money laundering risks;

- 6.8. undertake sufficiently and document adequate CDD for every customer and undertake adequate Enhanced Due Diligence (EDD) for customers it had assigned a high risk rating for money laundering risks. In particular, ABN did not adequately:
 - (a) identify, and verify the identity, of every customer and its beneficial owner;
 - (b) identify every politically exposed person associated with its customers;
 - (c) demonstrate an understanding and verify this understanding of every customer's source of wealth and source of funds and, in relation to every high risk customer, verify information on source of wealth and source of funds; and
 - (d) where applicable, ensure that any first payment made by every high risk customer was carried out through a bank account in the customer's name with a Prescribed Low Risk Customer;
 - 6.9. undertake adequate ongoing CDD in relation to its customers in that it did not :
 - (a) periodically review the adequacy of the CDD information it held for all customers;
 - (b) adequately monitor transactions undertaken in customer accounts to ensure that transactions were consistent with the firm's knowledge of the customer, the customer's business and assigned risk rating; and
 - (c) increase appropriately the degree and nature of monitoring of the business relationship of its high risk customers; and
 - 6.10. ensure that the policies, procedures, systems and controls it had in place were adequate to monitor and detect suspicious activity or transactions in relation to potential money laundering or terrorist financing.
7. As set out in this Notice, ABN did not comply with a number of specific provisions of the Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module of the DFSA Rulebook. As a result, the DFSA considers that ABN contravened the following Principles for Authorised Firms (AFs):
 - 7.1. Principle 2 – Due skill, care and diligence - in that ABN did not conduct its business activities with due skill care and diligence, contrary to Rule 4.2.2 of the General Module of the DFSA's Rulebook (GEN);
 - 7.2. Principle 3 – Management, systems and controls – in that ABN did not ensure that its affairs were managed effectively and responsibly and did not have adequate systems and controls to ensure, as far as is reasonably practicable, that it complies with legislation applicable in the DIFC, contrary to GEN Rule 4.2.3; and
 - 7.3. Principle 4 – Resources – in that ABN did not maintain adequate resources to conduct and manage its affairs. In particular, ABN's Compliance Department resources were inadequate to monitor and control the activities of the RMs employed in its PBI business line or identify and mitigate the money laundering risks to which ABN's business was exposed, contrary to GEN Rule 4.2.4.
 8. The DFSA decided to impose the Direction on ABN to rectify the contraventions arising from this matter and to mitigate the risks caused by those contraventions until they are rectified.

DEFINITIONS

9. Defined terms are identified in this Notice by the capitalisation of the initial letter of a word, or of each word in a phrase, and are defined in the Glossary Module of the DFSA Rulebook. Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.
10. Further, the definitions below are used in this Preliminary Notice.
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|--------------------------------|--|
| “ABN” | ABN AMRO Bank N.V. (DIFC Branch) |
| “AF” | Authorised Firm |
| “AML” | Anti-money laundering |
| “AML Module” | The Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module of the DFSA Rulebook |
| “AML Rule” | An AML Module rule |
| “CARC” | ABN’s Client Acceptance and Review Committee |
| “CDD” | Customer due diligence |
| “Client File Review” | The AML focused review of ABN client relationships undertaken by the DFSA as part of its investigation |
| “DFSA” | Dubai Financial Services Authority |
| “DIFC” | Dubai International Financial Centre |
| “Directions” | The directions imposed on ABN in this Notice |
| “EDD” | Enhanced customer due diligence |
| “Fine” | The fine imposed on ABN in this Notice |
| “FMT” | The Financial Markets Tribunal as set out in Chapter 4 of the Regulatory Law |
| “GEN” | The General Module of the DFSA Rulebook |
| “Investigation” | The DFSA’s investigation as described in paragraph 26 of this Notice |
| “PBI” | The Private Banking International business line of ABN, DIFC Branch |
| “PIC” | Personal Investment Company |
| “Prescribed Low Risk Customer” | Defined at AML Rule 3.2.1 |
| “Principle 2” | GEN Rule 4.2.2 – Principle 2 for AFs – Due skill, care and diligence |
| “Principle 3” | GEN Rule 4.2.3 – Principle 3 for AFs – Management, systems and controls |
| “Principle 4” | GEN Rule 4.2.4 – Principle 4 for AFs – Resources |
| “Regulatory Law” | DIFC Law No.1 of 2004 |
| “Relevant Period” | 1 January 2013 to 31 December 2014 |

“RM”	Relationship Manager employed by ABN’s PBI business line in the DIFC
“RPP”	Regulatory Policy and Process Sourcebook
“SIM”	ABN AMRO Bank N.V. Security and Intelligence Management Department
“UAE”	United Arab Emirates
“UBO”	Ultimate beneficial owner

FACTS AND MATTERS RELIED ON

Background

11. ABN was licensed by the DFSA on 24 February 2010 as a Category 1 Authorised Firm to provide the following financial services:
 - 11.1. Accepting Deposits;
 - 11.2. Advising on Financial Products or Credit;
 - 11.3. Arranging Credit or Deals in Investments;
 - 11.4. Arranging Custody;
 - 11.5. Dealing in Investments as Agent;
 - 11.6. Dealing in Investments as Principal;
 - 11.7. Managing Assets; and
 - 11.8. Providing Credit.
12. ABN is a branch of ABN AMRO Bank N.V., The Netherlands, which is regulated by De Nederlandsche Bank N.V. (DNB). ABN provides the financial services of investment management and advising and arranging to high net worth individuals and professional customers.
13. ABN has two business lines operating in the DIFC, the largest of which is its PBI business line.

ABN Internal Investigation and notification to the DFSA

14. Between 24 June 2014 and 8 October 2014 and in March 2015, ABN AMRO Bank N.V. received a number of anonymous whistleblowing complaints about the operations of PBI, which included specific allegations concerning the conduct of certain employees of PBI.
15. On 4 July 2014, ABN AMRO Bank N.V. commenced a preliminary internal investigation (the First SIM Investigation), conducted by its Security and Intelligence Management Department (SIM), into the allegations set out in the whistleblowing complaints. On 24 August 2014, ABN notified the DFSA of the whistleblowing complaints and the start of a formal internal investigation. ABN provided updates to the DFSA on 2 September 2014, 3 November 2014, 16 November 2014, 8 December 2014 and in the course of 2015.

16. On 19 December 2014, SIM produced a report of its internal investigation into the whistleblowing complaints and, on 20 January 2015, ABN provided a copy of that report to the DFSA (the First SIM Investigation Report).
17. The First SIM Investigation Report, which was based on a detailed review of 68 PBI client relationships, identified a number of serious deficiencies in ABN's AML-related systems and controls and practices. In particular, the First SIM Investigation Report disclosed that:
 - 17.1. ABN's AML-related policies and procedures (in particular, its policies and procedures governing client acceptance and anti-money laundering and wealth structuring activities) had not been adhered to a material degree including that:
 - (a) ABN's client files did not contain adequate documentation to demonstrate that its policies and procedures had been followed;
 - (b) the CDD information and documentation maintained by ABN for clients with complex structures (which comprised 20 of the 68 client relationships reviewed) was inadequate to evidence the UBO, the client's source of wealth and source of funds, and the purpose for opening the account; and
 - (c) a certain number of ABN's RMs were found to have been involved in arranging or providing wealth structuring activities for clients, in breach of ABN's own policies and procedures relating to wealth structuring activities;
 - 17.2. In eight of 68 client relationships reviewed, it was found that the registered UBO was not the actual UBO of the client;
 - 17.3. In the case of each misidentified UBO, the relevant RM had sufficient information to know (or ought to have reasonably suspected) that the registered UBO was not the actual UBO of the client. In some cases, the relevant RM was found to have known that the UBO of a client had been misrepresented from the time of account opening;
 - 17.4. Out of 68 client relationships reviewed, 42 private banking accounts of the clients had been used to send or receive funds to or from third parties unconnected to the client or its UBO. Such third party transactions are only allowed under ABN AMRO policies on an exceptional basis and where they are:
 - (a) in line with the customer risk assessment and CDD information;
 - (b) supported by relevant documentation contained in the client file; and
 - (c) for private banking/private wealth management purposes (and not commercial purposes);
 - 17.5. For a number of client relationships with third party payments, it was further found that ABN's customer risk assessment and CDD information was inadequate and did not support ABN's assessment that third party transactions were in-line with the customer's risk assessment and CDD information;
 - 17.6. A number of RMs in the DIFC did not understand ABN's own policies and procedures in relation to third party transactions for client relationships that are PICs;
 - 17.7. In 12 of 40 customer relationships, the initial funding of accounts opened for clients that were PICs was via a third party transaction. These payments were found to be not in-line with ABN's customer risk assessment and CDD information for the client;

- 17.8. At least 40 of the incoming third party transactions reviewed involved the receipt of funds from exchange houses located in the UAE. Documentation received by ABN for these transactions was either inadequate or non-existent;
- 17.9. ABN's transaction monitoring scenarios for PIC accounts were not calibrated for commercial account transactions. As a result, ABN's transaction monitoring system did not adequately identify third party transactions in PIC accounts;
- 17.10. 37 invoices, obtained by RMs in response to transaction alerts (raised in relation to transactions in client accounts), were identified as being suspicious;
- 17.11. Four loan and investment agreement documents, which had been obtained as part of CDD performed for clients to justify a client's source of wealth, were identified as being suspicious;
- 17.12. Six undated and pre-signed trade orders, pertaining to at least three clients, were identified in ABN's office and were being held under the direction of RMs. ABN's policies and procedures prohibit the use of pre-signed transaction order forms;
- 17.13. A small number of RMs had been involved in providing additional intermediary services to persons connected to ABN clients. These services included:
 - (a) an RM providing a loan to a non-client;
 - (b) RMs facilitating third party payments into client accounts;
 - (c) an RM being involved in providing cash exchange services, i.e. receiving cash payments from an ABN client to a UAE based services provider; and
 - (d) an RM coordinating and organising payments between an account in the name of a company controlled by a UAE based services provider and third parties (one ABN client and three non-clients); and
- 17.14. In relation to the services provided by certain RMs referred to in paragraph 17.13 above:
 - (a) ABN email accounts were used by the relevant RMs to communicate with outside parties; and
 - (b) the relevant RMs failed to disclose their activities to ABN, as required under ABN policies and procedures.
18. The conduct of RMs referred to in paragraph 17.13 above raises significant concerns about the adequacy of ABN's monitoring and control of the activities of its RMs and of the culture of compliance within ABN's PBI business line in the DIFC over the Relevant Period.
19. The First SIM Investigation Report also identified concerns about ABN's dealings with introducers (that is, entities contracted to ABN to introduce new clients to its PBI business line in the DIFC for a commission). In particular, it identified that:
 - 19.1. due diligence conducted by ABN on introducers was inadequate and did not meet the standards required under ABN's policy governing the use of intermediaries; and
 - 19.2. certain introducers were permitted by ABN RMs to have an ongoing role in relation to PBI client relationships.

20. Between 19 January 2015 and 5 February 2015, ABN AMRO Bank N.V.'s Group Audit and Compliance Department conducted a further review of ABN PBI. On 8 February 2015, ABN produced a copy of the findings of that review to the DFSA, which, *inter alia*, identified a number of remedial steps to be undertaken in respect of ABN's AML-related systems and controls and practices.
21. On 5 February 2015, ABN provided the DFSA with details of a remediation plan under which it would review all of its PBI client relationships by October 2015.
22. On 7 March 2015, ABN AMRO Bank N.V. received further whistleblowing allegations regarding the conduct of certain PBI RMs. As a result, on 30 March 2015, ABN AMRO's SIM Department commenced a further internal investigation into the allegations by SIM (the Second SIM Investigation).
23. On 7 July 2015, ABN provided the DFSA with a copy of a report dated 15 June 2015 resulting from the Second SIM Investigation.
24. On 30 September 2015, the DFSA received a copy of another report, dated 16 July 2015, arising from the second investigation (the Second SIM Investigation Report). The DFSA also received two further reports dated 18 June 2015 and 17 July 2015 relating to the conduct of individual ABN employees arising from the whistleblowing allegations made on 7 March 2015.
25. The Second SIM Investigation Report and related investigation reports identified concerns in relation to the historical AML systems and controls and practices of ABN and of the conduct of further RMs.

DFSA Investigation

26. On 8 February 2015, the DFSA commenced an investigation into suspected contraventions by ABN of the DFSA's Principles for Authorised Firms and AML Rules relating to AML systems and controls, business risk assessment, customer risk assessment and CDD requirements (the Investigation).
27. As part of the Investigation, the DFSA conducted a detailed, AML focused review of a sample of 26 client relationships of ABN PBI. The DFSA has also reviewed 68 client relationships that were the subject of the First SIM Investigation (collectively referred to as the Client File Review).

DFSA FINDINGS

28. The findings of the Investigation and contraventions of relevant DFSA rules are set out in paragraphs 29 to 70 below.

Assessment of AML risks

Business Risk Assessment

29. As required by Chapter 5 of the AML Rulebook, an Authorised Firm must take appropriate steps to identify and assess money laundering risk to which its business is exposed, taking into account the nature, size and complexities of its activities. AML Rule 5.1.1(b)

specifies the type of risks faced by the Firm that should be included in any such Business Risk Assessment.

30. The DFSA reviewed ABN's Business Risk Assessment of 2013 and 2014 and found each to be inadequate in that they did not sufficiently identify and assess the specific risks associated with ABN's PBI business. The DFSA found that ABN had not adequately identified and assessed the specific risks posed by:
 - 30.1. the characteristics of its PBI customer base including, in particular, the risks posed to ABN by:
 - (a) the countries and regions in which its clients operated; and
 - (b) the legal structure of its clients, including its clients that were PIC clients, had complex ownership structures or were incorporated in offshore jurisdictions;
 - 30.2. the actual transactional activity undertaken in PBI client accounts – in particular the risks created by PBI client accounts being used to conduct incoming and outgoing third party payments - was not identified and assessed.
 - 30.3. the rapid commercial growth of its PBI business line over the period from a newly licensed Firm in 2010 to 2014, and the impact of this growth on the effectiveness of its control functions; and
 - 30.4. its use of introducers (that is, entities contracted by ABN to introduce new clients to PBI).
31. As a result, ABN did not properly identify and assess the risks to which its business is exposed (contrary to AML Rule 5.1.1(a)).

Customer Risk Assessments

32. AML Rule 6.1 requires an Authorised Firm to undertake a risk based assessment of every customer, and assign the customer a risk rating proportionate to the customer's money laundering risk.
33. AML Rule 6.1.1(5) sets out the minimum requirements that must be addressed by an Authorised Firm when undertaking a customer risk assessment, including, *inter alia*, that it must:
 - 33.1. identify the ultimate beneficial owner of a number of customers;
 - 33.2. obtain adequate information on the purpose and intended nature of the business relationships for a number of customers; and
 - 33.3. take into consideration the nature of the customer, its ownership and control structure and its beneficial ownership.
34. AML Rule 6.1.2 provides that an Authorised Firm must not establish a business relationship with a customer that is a legal entity if the ownership or control arrangements of the customer prevent the Authorised Firm from identifying one or more of the customer's beneficial owners.
35. The Client File Review found 21 of 26 customer risk assessments to be inadequate when measured against the requirements of AML Rule 6.1.1(5). In particular, the DFSA found that:

- 35.1. a number of ABN customer risk assessments were incomplete and/or contained inconsistent or contradictory information;
 - 35.2. five of 26 customer risk assessments failed to identify the actual UBO of the client;
 - 35.3. the majority of customer risk assessments reviewed by the DFSA described the purpose and intended nature of business of the client relationship for the relevant client in an inadequate and superficial way;
 - 35.4. a number of customer risk assessments reviewed identified the client's intention to conduct third party transactions but did not provide adequate justification as to why such activity would be undertaken in a private banking account or identify and address the money laundering risks associated with such activity;
 - 35.5. risk assessments performed by ABN for clients that were offshore companies and/or complex structures did not adequately explain and justify why the UBO was seeking to open an account using that structure;
 - 35.6. risk assessments performed by ABN did not provide an adequate analysis of the client's source of wealth and source of funds.
36. Accordingly, the DFSA finds that ABN contravened AML Rule 6.1.1 and 6.1.2 in that ABN:
- 36.1. did not undertake sufficiently and document an adequate risk-based assessment of every customer; and
 - 36.2. in a number of cases, established a business relationship with customers where the ownership or control arrangements of the customers prevented ABN from identifying adequately one or more of the customer's beneficial owners.

Customer Risk Rating

37. AML Rule 6.1.1(b) requires an Authorised Firm to assign every customer a risk rating that is proportionate to the customer's money laundering risks.
38. Approximately 75% of ABN's PBI clients were classified as "Increased Risk" with the remaining clients classified as "Neutral Risk".
39. The Investigation found that ABN's customer AML risk ratings process was inadequate in that the "Increased Risk" rating assigned to 75% of client relationships did not differentiate between the wide range of risk profiles contained within this group of clients. Clients that had been rated "Increased Risk" as a result of one increased risk factor, such as the client or UBO operating in a high risk jurisdiction, were not differentiated from clients that presented a much higher money laundering risk. The DFSA also found inconsistencies in respect of the risk ratings assigned to clients within the Client File Review:
40. Accordingly, ABN did not assign an appropriate risk rating to every customer that is proportionate to the customer's money laundering risks (contrary to AML Rule 6.1.1(b)).

Customer Due Diligence

41. AML Rule 7.1.1 requires an Authorised Firm to undertake CDD for each of its customers and, in addition, undertake EDD in respect of any customer it has assigned as high risk.
42. AML Rule 7.2.1 provides that an Authorised Firm must undertake appropriate CDD when establishing a business relationship with a customer and also if, at any time, it doubts the

veracity or adequacy of the CDD information it holds for an existing customer, it suspects money laundering, or there is a change in the risk-rating of the customer or it is otherwise warranted by a change in the customer's circumstances.

43. In conducting CDD, AML Rule 7.3.1(1) requires that an Authorised Firm must:
 - 43.1. verify the identity of the customer and any beneficial owner on the basis of original or properly certified documents, data or information issued by or obtained from a reliable and independent source;
 - 43.2. understand the customers source of funds;
 - 43.3. understand the customers source of wealth;
 - 43.4. undertake on-going CDD of the customer business relationship.
44. Further, in conducting EDD, AML Rule 7.4.1 requires that an Authorised Firm must, to the extent applicable to the customer, also:
 - 44.1. obtain and verify additional:
 - (a) identification information on the customer and any beneficial owner;
 - (b) information on the intended nature of the business relationship; and
 - (c) information on the reasons for a transaction;
 - 44.2. update more regularly the CDD information it holds for the customer;
 - 44.3. verify information on the customer's source of funds and the customers source of wealth;
 - 44.4. increase the degree and nature of monitoring of the business relationship, in order to determine whether the customers transactions or activities appear unusual or suspicious;
 - 44.5. obtain the approval of senior management to commence a business relationship with a customer; and
 - 44.6. where applicable, require that any first payment made by a customer in order to open an account with a relevant person must be carried out through a bank account in the customer's name with a Prescribed Low Risk Customer.

Identification and verification of customers and UBOs

45. The Client File Review found that 22 of 26 client relationships had adequate evidence of the identification and verification of customers and of the stated UBOs (i.e. of the UBO identified by ABN in its initial customer risk assessment). However, four client files contained no evidence confirming the identity of the customer and/or UBO. All four client files had been rated "Increased Risk", which meant that each should have been the subject of EDD.
46. In addition, a further five client files reviewed by the DFSA did not evidence the identity of the actual UBO of the client because ABN had failed to identify the actual UBO. Four of the five customers were rated "Increased Risk", which meant that each should have been the subject of EDD.

47. This meant that, in respect of nine client relationships reviewed by the DFSA (out of 26), ABN did not properly demonstrate that it had adequately identified and verified the UBO of its customer.

Identification of PEPs

48. The Client File Review found two instances where ABN had failed to identify a PEP connected to its clients.

Source of Wealth and Source of Funds

49. The Client File Review found that 21 of 26 client files reviewed did not demonstrate an adequate understanding and, where applicable, verification of the customer's source of wealth and source of funds. In particular:
 - 49.1. two of three client files for customers assigned a "Neutral Risk" rating did not demonstrate an adequate understanding of the customer's source of wealth and source of funds; and
 - 49.2. 19 of 23 Client files for customers assigned an "Increased Risk" rating (and therefore in respect of which ABN was required to undertake EDD) did not demonstrate an adequate understanding or verification of source of wealth and source of funds.
50. The DFSA further found that a number of customer relationships were initially funded from a source inconsistent with source of funds identified (but not verified) by the CDD undertaken by ABN.

Enhanced Customer Due Diligence

51. None of the 23 client files reviewed by the DFSA that were rated "Increased Risk" contained evidence of adequate EDD having been performed.

Inadequate CDD and EDD

52. Accordingly, ABN did not undertake and document adequate CDD for every customer. ABN also did not undertake adequate EDD for every customer it had assigned a high risk rating for money laundering risks.

Ongoing CDD and Transaction Monitoring

53. AML Rule 7.6.1 requires that, when undertaking CDD, an Authorised Firm must, using a risk based approach:
 - 53.1. monitor transactions undertaken during the course of its customer relationship to ensure that transactions are consistent with the firm's knowledge of the customer, his business and risk rating;
 - 53.2. 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;
 - 53.3. enquire into the background and purpose of the transactions in 53.2 above;

- 53.4. periodically review the adequacy of the CDD information it holds on customers and UBOs; and
- 53.5. periodically review each customer to ensure that the risk rating assigned to the customer remains appropriate.

Periodic reviews of CDD and customer risk ratings

54. The Client File Review found that ABN generally performed periodic reviews of customer relationships on an annual basis for “Increased Risk” customers and on a three year basis for “Neutral Risk” customers. However, the DFSA’s review of ABN client relationships found that three of 26 client files were not reviewed within the frequency required under ABN procedures.
55. Further, the DFSA found the periodic reviews of client relationships performed by ABN to be inadequate for the same reasons it found initial customer risk assessments and CDD performed by ABN to be inadequate.
56. Accordingly, ABN did not undertake adequate ongoing CDD in relation to its customers in that it did not periodically review the adequacy of the CDD information it held for all PBI customers.

Transaction Monitoring

57. The Client File Review identified concerns in relation to the transaction monitoring undertaken by ABN in relation to 16 of 26 client relationships.
58. As part of the Investigation, the DFSA reviewed a sample of internal ABN communications related to the escalation and discounting of transaction alerts generated by ABN’s transaction monitoring system. This review identified concerns about the adequacy of ABN’s transaction monitoring process. In particular, the DFSA found that:
 - 58.1. internal transaction alerts were, in a number of cases, discounted on the basis of superficial and inadequate explanations provided by RMs to the effect that flagged transactions were determined to be in line with ABN’s CDD information for the relevant customer.
 - 58.2. in some cases, ABN accepted explanations provided by RMs to discount transaction alerts which were subsequently shown to be false;
 - 58.3. in several cases, inadequate and/or suspicious supporting documentation (such as suspicious invoices) were accepted by ABN to discount alerts. ABN did not adequately verify the authenticity of the documentation that was provided to explain transactions subject of alerts; and
 - 58.4. in several cases, ABN allowed transaction alerts to remain open for an unacceptable period of time (for example, some alerts remained open for several months).
59. The Investigation reviewed a number of ABN client relationships that had been used to conduct third party transactions. This activity, which took place over the Relevant Period, was outside the scope of ABN’s own AML business risk assessment. In respect of certain customer accounts, the probability of third party transaction activity in the account had been flagged by ABN prior to account opening, despite such activity being inconsistent with ABN’s business risk assessment.

60. ABN also disclosed to the DFSA, in the First SIM Investigation Report, that its transaction monitoring system was not calibrated to identify third party transactions effectively. For example, the system did not apply alert parameters and scenarios designed to identify third party commercial transactions for client relationships that were structured as a capital PIC.
61. Accordingly, ABN did not undertake adequate ongoing CDD in relation to its customers in that it did not :
 - 61.1. monitor transactions undertaken in customer accounts adequately to ensure that transactions were consistent with the Firm's knowledge of the customer, the customer's business and assigned risk rating; and
 - 61.2. increase the degree and nature of monitoring of the business relationship of its high risk customers as appropriate.

Compliance and Senior Management oversight

62. The Investigation found that ABN's Compliance Department did not challenge with sufficient rigour information and documentation it had been provided with and it routinely provided neutral advice in respect of:
 - 62.1. customer risk assessments that were inadequate, incomplete or contradictory or which contained information that indicated that the relationship was inconsistent with ABN's policies and business risk assessment;
 - 62.2. CDD information and documentation that were inadequate, incomplete and which did not meet DFSA requirements for CDD and EDD; and
 - 62.3. periodic customer risk assessments and CDD information and documentation that were inadequate, incomplete and which did not meet DFSA requirements.
63. ABN operated a committee to approve the opening and period review of client relationships (the Client Acceptance and Review Committee (CARC)). The Investigation found that CARC routinely did not challenge adequately the information and documentation it had been provided with in respect of:
 - 63.1. customer risk assessments that were inadequate, incomplete or contradictor or which contained information that indicated that the relationship was inconsistent with ABN's policies and business risk assessment;
 - 63.2. CDD information and documentation that were inadequate, incomplete and which did not meet DFSA requirements for CDD and EDD; and
 - 63.3. periodic customer risk assessments and CDD information and documentation that were inadequate, incomplete and which did not meet DFSA requirements.
64. The Investigation further found that ABN's Compliance Department did not challenge the explanations and documentation it was provided in response to transactions alerts and, as a result, inappropriately discounted transactions alerts. Periodically, late or non-responses to transactions alerts were escalated to senior management of ABN in the DIFC during the Relevant Period. However, senior management of ABN in the DIFC did not take adequate steps to ensure that transaction alerts were responded to and investigated in an appropriate manner.

65. The Investigation also found that, in the Relevant Period, ABN and its senior management in the DIFC did not take adequate steps to:
- 65.1. monitor and control the activities of all of its employees, in particular RMs employed in its PBI business line; and
 - 65.2. ensure that ABN's AML-related policies and procedures were understood and were being followed consistently by all its employees, in particular RMs employed in its PBI business line.
66. Accordingly, ABN did not :
- 66.1. ensure that the policies, procedures, systems and controls it had in place operated effectively in practice to prevent opportunities for money laundering in relation to the activities of its PBI business line;
 - 66.2. establish and maintain adequate systems and controls to monitor and supervise effectively the activities of all of its employees, in particular RMs within its PBI business line; and
 - 66.3. ensure that all of its employees were adequately trained and sufficiently understood its policies, procedures, systems and controls related to money laundering and could recognise and deal with transactions and other activities which may be related to money laundering.

Suspicious Activity Reports

67. AML Rule 13.2.1 requires Authorised Firms to establish and maintain policies, procedures, systems and controls in order to monitor and detect suspicious activity or transactions in relation to potential money laundering or terrorist financing.
68. During the course of the Investigation, the DFSA noted reference to activity in customer accounts that should have led to the filing of internal suspicious activity reports and which should have been investigated by ABN to determine whether a SAR should have been lodged.
69. The DFSA has further noted several instances in which SARs have subsequently been filed by ABN in respect of activity that ABN could and indeed should, have identified, reported and investigated at a much earlier stage.
70. Accordingly, the DFSA considers that ABN did not ensure that the policies, procedures, systems and controls it had in place were adequate to monitor and detect suspicious activities or transactions to prevent potential money laundering or terrorist financing.

CONTRAVENTIONS

71. For the reasons set out in paragraphs 29 to 70 above, the DFSA considers that ABN contravened a number of specific provisions of the AML Module. Its failings relating to customer risk assessments, CDD and transaction monitoring were widespread and exposed its business, and the DIFC, to a high risk of financial crime and money laundering.
72. As a result, the DFSA considers that ABN has contravened the following Principles for Authorised Firms:

- 72.1. Principle 2 in that, in conducting its business activities, ABN did not act with due skill, care and diligence (GEN Rule 4.2.2);
- 72.2. Principle 3 in that ABN did not ensure that its affairs were managed effectively and responsibly and it did not have adequate systems and controls to ensure, as far as is reasonably practical, that it complied with legislation applicable in the DIFC (GEN Rule 4.2.3); and
- 72.3. Principle 4 in that ABN did not maintain adequate resources to conduct and manage its affairs properly. In particular, ABN's Compliance Department resources were inadequate to monitor and control the activities of the RMs employed in its PBI business line or identify and mitigate the money laundering risks to which its business was exposed (GEN Rule 4.2.4).

ACTION

73. In deciding to take the action set out in this Notice, the DFSA has taken into account the factors set out in section 6-2 and 6-3 of the RPP.
74. The DFSA considers the following factors to be of particular relevance in this matter:
 - 74.1. 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;
 - 74.2. the deterrent effect of the financial penalty and the importance of deterring ABN and others from committing further or similar contraventions;
 - 74.3. action taken by the DFSA in previous similar cases.
75. The DFSA has considered the sanctions and other options available to it and has concluded that a financial penalty and directions is the most appropriate action given the circumstances of this matter.

The Fine

Determination of financial penalty

76. The DFSA considers that a single financial penalty calculation is appropriate in the circumstances of this case as the contraventions arise from the same underlying failures by ABN.
77. In deciding the appropriate level of the fine to impose on ABN, the DFSA has taken into account the factors set out in sections 6-4 and 6-5 of the RPP as follows:

Step 1: Disgorgement

- 77.1. There was no evidence to suggest that ABN made a profit or avoided a loss as a result of the contraventions. Accordingly, this step was not considered to be relevant.
- 77.2. The figure after Step 1 is therefore US\$0.

Step 2: The seriousness of the contravention

- 77.3. In assessing the seriousness of the contraventions, the DFSA takes into consideration a number of factors concerning the impact and nature of the matter and whether it was committed deliberately or recklessly. The DFSA considers ABN's contraventions to be serious because:
- (a) ABN did not exercise adequate oversight over the activities of certain of its employees and its PBI operation;
 - (b) ABN did not ensure that certain of its employees were carrying out their duties in compliance with DFSA administered laws and rules;
 - (c) ABN carried out inadequate CDD on its customers and did not carry out adequate EDD for its high risk customers;
 - (d) ABN did not adequately monitor transactions;
 - (e) the contraventions revealed serious and widespread weaknesses in ABN's procedures and its management systems or internal controls relating to a significant part of ABN's business; and
 - (f) the contraventions created significant risk for ABN, particularly the risk that ABN may provide unsuitable Financial Services to Customers, and the risk of ABN facilitating money laundering, sanctions breaches and financial crime.
- 77.4. Taking these factors into account, the DFSA considers that a figure of US\$1,000,000 appropriately reflects the seriousness of the contraventions.

Step 3: Mitigating and aggravating factors

- 77.5. In considering the appropriate level of the Fine, the DFSA had regard to the factors set out in RPP 6-5-8. The DFSA has taken into consideration the following mitigating factors in determining the appropriate level of the Fine:
- (a) After identifying its failures, ABN took immediate steps to address them, including by way of conducting an internal investigation and audit and quickly and effectively brought its failures to the DFSA's attention;
 - (b) ABN has remained open and co-operative with the DFSA and has taken proactive measures to report regularly to the DFSA about the findings of its internal investigations and internal audit and to remediate its deficiencies.
 - (c) ABN and its current senior management in the DIFC have cooperated fully with the DFSA during the DFSA's investigation and have taken significant steps to investigate its failings; and
 - (d) ABN and its current senior management in the DIFC have taken substantial steps, at significant cost, towards remediating the issues referenced in this Notice, including by conducting a comprehensive review of its client relationships; remediating its CDD policies and practices; making improvements to its AML-related systems and controls; and increasing the resourcing of its control functions.
- 77.6. As result of these mitigating factors, the DFSA considers it appropriate to adjust the figure after Step 2. Accordingly, the DFSA has decided to reduce the figure after Step 2 by 20%. The figure after Step 3 is therefore US\$800,000.

Step 4: Adjustment for deterrence

- 77.7. Under RPP 6-5-9, if the DFSA considers that the level of fine which it has arrived at after Step 3 is insufficient to deter the firm who committed the contravention, or others, from committing further or similar contraventions, the DFSA may increase the fine. RPP 6-5-9 sets out the circumstances where the DFSA may do this.
- 77.8. The DFSA considers that the figure after Step 3 is sufficient for the purposes of deterring ABN and others from committing further or similar contraventions. Accordingly, the DFSA does not consider it appropriate to adjust the amount of the Fine arrived at after Step 3 for the purposes of deterrence.

Step 5: Settlement discount

- 77.9. Where the DFSA and the firm on whom a fine is to be imposed agree on the amount of the fine and other terms, RPP 6-5-10 provides that the amount of the fine which might otherwise have been payable will be reduced to reflect the stage at which the DFSA and the firm reached agreement.
- 77.10. In the present case, the DFSA and ABN have reached agreement on the relevant facts and matters relied on and the amount of the Fine to be imposed. Having regard to the stage at which this agreement has been reached and in recognition of the benefit of this agreement to the DFSA, the DFSA has applied a 20% discount to the level of Fine which the DFSA would have otherwise imposed.

The level of fine imposed

78. Given the factors and considerations set out in paragraph 77 above, the DFSA has determined that it is proportionate and appropriate to impose on ABN a fine of US\$640,000.

The Direction

79. Given the deficiencies in ABN's AML systems, controls and procedures, and pursuant to Article 90(2)(f) of the Regulatory Law, the DFSA directs ABN to complete its ongoing remediation of its AML-related systems and controls and of the customer risk assessment and CDD information it holds for all of its PBI clients and to certify the completion of remediation to the DFSA.
80. The direction under paragraph 79 shall cease to have effect when ABN can demonstrate, to the satisfaction of the DFSA, that it has complied with the direction.

PROCEDURAL MATTERS

Decision Making Committee

81. The decision to take the action in this Decision Notice was made by the DFSA's Decision Making Committee with agreement from ABN and is given under the Regulatory Law.

Manner and time for payment

82. The Fine must be paid by ABN by no later than 16 November 2015.

If the Fine is not paid

- 83. If all or any of the Fine is outstanding on 17 November 2015, the DFSA may recover the outstanding amount as a debt owed by ABN and due to the DFSA.

Evidence and other material considered

- 84. Under paragraph 4(2)(c) of Schedule 3 to the Regulatory Law, ABN 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 Decision Notice.

Appeal rights

- 85. Under Articles 29 and 90(5) of the Regulatory Law, ABN has the right to refer this matter to the FMT for review. However, in agreeing to the action set out in this Decision Notice and deciding to settle this matter, ABN has agreed that it will not refer this matter to the FMT.

Confidentiality and publicity

- 86. Under Article 116(2) of the Regulatory Law, the DFSA may publish in such form and manner as it regards appropriate, information and statements relating to decisions of the DFSA and of the Court, censures, and any other matters which the DFSA considers relevant to the conduct of affairs under the DIFC.
- 87. 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.
- 88. ABN will be notified of the date on which the DFSA intends to publish information about this decision.

Signed:

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