

ENFORCEABLE UNDERTAKING

Article 89, Regulatory Law (DIFC Law No. 1 of 2004, as amended, DIFC Law No. 7 of 2006)

This Enforceable Undertaking is made under and for the purposes described in Article 89 of the *Regulatory Law 2004* (*the Regulatory Law*). The Dubai Financial Services Authority ("DFSA") accepts this Enforceable Undertaking from GFS Investments (Middle East) Limited ("GFS").

Recital of Facts

This Enforceable Undertaking is based on the admission, by GFS, of the following facts:

1. GFS is a wholly owned subsidiary of GFS Forex and Futures Inc ("GFS Inc") and was licensed by the DFSA on 17 May 2007 as a Category 4 Authorised Firm.
2. Under its license GFS is Authorised to arrange credit or deals in Investments and advise on Financial Products or credit in respect of Options or Futures. GFS is not authorised to Deal in Investments as Agent or to deal with customers who are not Clients, as defined in the DFSA Rulebook, Conduct of Business Module.¹
3. [REDACTED] also known as [REDACTED] was the Senior Executive Officer ("SEO") and one of the Licensed Directors of GFS from the time GFS was Authorised and Licensed to the date of this Enforceable Undertaking.
4. Robert Da Silva ("DA SILVA") was the Compliance and Anti Money Laundering Reporting Officer ("Compliance Officer") of GFS from the time GFS was licensed to 31 October 2007.

¹ Conduct of Business Rules 3.2.1.(1) and (2) COB/VER13/12-07)



5. Mervyn Francis ("FRANCIS") was the Compliance Officer of GFS from 10 December 2007 to the date of this Enforceable Undertaking [or the date his EU was executed].
6. Alfred Tang ("TANG") was a Licensed Director and Finance Officer of GFS from the time GFS was Authorised and Licensed to the date of this Enforceable Undertaking.
7. Stephen Cheung GA KIN ("GA KIN") was a Licensed Director of GFS having held this position from the time GFS was Authorised and Licensed to the date of this Enforceable Undertaking.
8. Issa Mohammed Saif AL RAWAHI ("AL RAWAHI") was a Licensed Director of GFS having held this position from the time GFS was Authorised and Licensed to the date of this Enforceable Undertaking.
9. From the time of its Authorisation to March 2008, GFS had a total of 37 customers. There were no customers who satisfied the Client definition as set out in DFSA Legislation². As a result all 37 clients were retail customers. GFS's licence does not Authorise it to provide financial services to retail customers.
10. Customers were introduced to GFS by employees, known as Business Associates, who facilitated access to an online foreign currency trading platform offered by GFS Inc.
11. When introducing some customers, Business Associates knowingly recorded incorrect particulars of customers' current net worth, liquid assets and financial experience in their Customer Account Applications.
12. [REDACTED] and FRANCIS knew of and permitted Business Associates to knowingly record incorrect information in Customer Account Applications so that customers appeared to satisfy the Client definition.

² DFSA Rulebook Conduct of Business Module (VER13/12-07) Rule 3.2.2.

13. Business Associates also conducted trading, on the GFS Inc platform, on behalf of some customers when not authorised by the DFSA to do so.
14. This trading was in a number of instances unsuitable and not made in the best interests of the customers. These trades were characterised by the high number and frequency of transactions and resulted in high commissions and fees being paid by customers.
15. A number of GFS customers suffered losses as a result of unauthorised trading conducted by Business Associates.
16. [REDACTED] and FRANCIS knew Business Associates were trading on behalf of customers and did not take adequate steps to stop them.
17. GFS failed to implement effective compliance systems and controls, as set out in its own Compliance Manual, and as required by DFSA Legislation and Rules.

Areas of Concerns

GFS acknowledges the following concerns of the DFSA about its conduct as a DFSA licensed firm:

18. GFS contravened Article 41(1) of the Regulatory Law³ by carrying on a Financial Service in or from the DIFC that it was not Licensed or Authorised to provide.
19. GFS breached the conditions of its Licence and DFSA Legislation (the Regulatory Law and DFSA Rules) by dealing in Forex contracts as agent for its customers.
20. GFS breached the conditions of its Licence and DFSA Legislation by advising and dealing for customers that GFS knew did not satisfy the Client definition as set out in DFSA Legislation⁴.

³ DIFC Law No.1 of 2004

⁴ DFSA Rulebook Conduct of Business Module (VBR13/12-07) Rule 3.2.2.

21. GFS contravened Article 85 of the Regulatory Law by failing to do an act or thing that a person is required to do, namely comply with the following Principles for Authorised Firms as set out in the General Module of the DFSA Rulebook.

Principle 1 - Integrity

a. GFS failed to observe high standards of integrity and fair dealing⁵ in that:

- i. [REDACTED] and FRANCIS knew Business Associates were trading on behalf of customers, permitted them to do so and did not take adequate steps to stop them. Further, this occurred in circumstances where the trading conducted by Business Associates on behalf of customers was in a number of instances unsuitable and not in the best interests of customers;
- ii. [REDACTED] and FRANCIS knew of and permitted Business Associates to knowingly record incorrect information in Customer Account Applications so that customers appeared to meet the Client definition;
- iii. FRANCIS, with the approval of [REDACTED], obtained backdated undertakings from Business Associates stating that they did not trade for customers, despite being aware that such trading had occurred; and
- iv. FRANCIS, with the approval of [REDACTED], obtained backdated acknowledgements from customers acknowledging they were not Clients in circumstances where customers were not made aware of the Client restriction.

⁵ General Module, Rule 4.2, Principle 1

Principle 2 – Due Skill Care and Diligence

Principle 3 – Management Systems and Controls

b. GFS:

- i. provided Financial Services to GFS customers who did not qualify as Clients⁶;
- ii. allowed its Business Associates to trade on behalf of its customers⁷; and
- iii. employed certain Business Associates that were not fit and proper, competent and adequately trained to comply with obligations applicable in the DIFC⁸,

therefore GFS:

- iv. failed to act with due skill, care and diligence in conducting its business activities⁹; and
- v. failed to ensure that its affairs are managed effectively and responsibly by its senior management¹⁰ and to have adequate systems and controls to ensure, as far as is reasonably practical, that it complies with legislation applicable in the DIFC¹¹

Principle 5 – Market Conduct

- c. GFS failed to observe proper standards of conduct in financial markets in GFS allowed Business Associates to trade on behalf of a number of customers, outside the scope of its License and in circumstances where the trading conducted was in a number

⁶ In breach of COB 3.2.1 (COB/VER13/12-07)

⁷ In breach of Article 41(1)

⁸ GEN 5.3.19(1)

⁹ Ibid, Principle 2

¹⁰ General Module, Rule 4.2, Principle 3

¹¹ Ibid.



of instances unsuitable and not in the best interests of customers.

Terms and Conditions of Undertaking

The terms and conditions of this Enforceable Undertaking are as follows:

22. GFS undertakes not to provide any Financial Services or Ancillary Services in or from the Dubai International Financial Centre until such time that the DFSA is satisfied that:

- a. Appropriate Authorised Individuals, who meet all of the standards of fitness and propriety required in DFSA Legislation¹² have been appointed to GFS;
- b. GFS has established systems and controls to ensure that its activities are within the terms and conditions of its Licence and that its affairs are managed effectively and responsibly by its senior management;
- c. GFS has established clear reporting lines that take into account the nature, scale and complexity of its business and has demonstrated to the DFSA that:
 - i. these reporting lines have been communicated to all employees and documented within GFS; and
 - ii. GFS has clearly identified the employees who will be delivering Financial Services to its customers, and their respective lines of accountability and supervision.
- d. GFS has established adequate compliance arrangements, including processes and procedures that ensure and evidence, as far as reasonably practicable, that GFS complies with all legislation applicable in the DIFC, including the terms and conditions of GFS's Licence.

¹² Authorisation Module Rule 9.5

- e. GFS has established systems and controls that enable it to satisfy itself that all of its employees are:
- i. fit and proper;
 - ii. competent and capable of performing the functions which are assigned to those employees; and
 - iii. trained in the requirements of the legislation applicable in the DIFC.

23. GFS undertakes to pay an amount of USD\$25000 to the DFSA within 30 days from the date of this Enforceable Undertaking.

24. GFS undertakes to compensate GFS customers whose accounts were:

- a. traded, at any time, by Business Associates (and/or by third parties arranged by Business Associates); and
- b. loss making as a result of transactions initiated prior to 7 April 2008 .

In accordance with the method of calculating compensation payments set out in Annexure A.

25. GFS undertakes to deposit, from a bank account maintained and administrated by GFS for the sole purpose of paying compensation to GFS Customers, the amounts set out in 3.1 of Annexure A into the accounts of the relevant individuals or organisations named in 3.1 of Appendix A (each amount, a "Compensation Payment"). GFS undertakes to pay from its own resources all costs associated with the administration and distribution of each Compensation Payment. Each Compensation Payment will be made no later than 60 days from the date of this undertaking, namely 3 November 2008.

26. GFS undertakes that it will, within 10 business days from the date of this undertaking, send a letter, in a form acceptable to the DFSA, to



each of its current or former customers (set out in Annexure A) and advise them of their undertaking to pay compensation in accordance with the terms of this Enforceable Undertaking and Annexure A.

27. GFS undertakes that it will, as soon as is practical, and in any event by 30 November 2008 submit a written report to the DFSA, confirming to the DFSA:

- a. whether each Compensation Payment has been made; and
- b. whether any additional claims have been lodged with GFS by customers for compensation and for each such claim:
 - i. Whether the claim has been assessed or dismissed; and
 - ii. If the claim has been accepted, whether it has been paid.

28. GFS undertakes not to disclose to any person, apart from his legal advisor/s for the purpose of obtaining legal advice, any details of this undertaking until otherwise advised in writing by the DFSA, save as otherwise required by the legislation, rules and regulations of any other financial services regulator.

Remedies for Breach of Undertaking

29. Should GFS fail to satisfy the terms and conditions of this Enforceable Undertaking as determined by the DFSA, in its sole discretion, the DFSA reserves the right to pursue any remedy available to it in law without further notice, including but not limited to those listed in Article 89(4) of the Regulatory Law.

Acknowledgements

30. This undertaking has been drafted and agreed between the DFSA and GFS. The Compensation Payments listed in the Appendix represent the relevant payments that the DFSA and GFS have agreed are due to various individuals and organisations, based on the facts known to



them as at the date of this undertaking. No further payments are, in the opinion of GFS (based on the facts known as at the date of this undertaking), due to any other individuals or organisations.

31. The facts as set out in this undertaking are without prejudice to the DFSA or GFS in any other proceedings including, without limitation, any civil, administrative or criminal actions or proceedings that may be brought by any other person or agency.

32. This undertaking does not affect the DFSA's power to investigate or take further action in relation to any other concerns not the subject of the facts as recited above, or arising from future conduct.

33. The DFSA may issue a media release upon execution of this undertaking referring to its terms and the concerns of the DFSA that led to its execution. Further the DFSA may make this undertaking available for public inspection.

[Redacted Signature]

4th SEPT, 2008
Date

CEO of GFS

Accepted by the Dubai Financial Services Authority under Article 89 of the Regulatory Law by its authorised delegate:

[Redacted Signature]

0709.2009.
Date

Stephen Glynn
Director and Head of Enforcement, DFSA