

## 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 [REDACTED] ([REDACTED]).

#### Recital of Facts

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

1. GFS Investments (Middle East) Limited ("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 deal with customers who are not Clients as defined in the DFSA Rulebook, Conduct of Business Module.<sup>1</sup>
3. [REDACTED] was a Licensed Director and Finance Officer of GFS, having held these positions from the time GFS was Authorised and Licensed until his resignation today.
4. In addition to [REDACTED]'s duties as a Licensed Director, his duties as Finance Officer include supervising and monitoring the financial well being of GFS by reviewing financial reports and monitoring GFS' bank statements. [REDACTED] is also responsible for ensuring that the financial activities of GFS are properly, accurately and efficiently executed and that the general financial health of the company is maintained. [REDACTED] was not directly

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



involved with the day to day operations of GFS or its sales and marketing activities.

5. Customers were introduced to GFS by employees known as Business Associates who facilitated access, by customers, to an online foreign currency trading platform offered by GFS Inc. These customers were not Clients.
6. When introducing a number of customers, the Business Associates knowingly recorded incorrect particulars of customers' current net worth, liquid assets and financial experience in their Customer Account Applications.
7. Business Associates also conducted trading on the GFS Inc platform on behalf of a number of customers when not authorised by the DFSA to do so.
8. The 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.
9. A number of GFS customers suffered losses as a result of the unauthorised trading conducted by Business Associates.

### **Areas of Concerns**

██████ acknowledges the following concerns of the DFSA about his conduct as an Authorised Individual of GFS:

10. The DFSA is concerned that ██████ 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 Individuals as set out in the General Module of the DFSA Rulebook.

**Principle 2 - Due skill, care and diligence,**

**Principle 5 - Management, Systems and Controls and**

**Principle 6 - Compliance.**

- a. While [REDACTED] was an Authorised Individual of GFS:
- i. GFS provided Financial Services to GFS customers who did not qualify as Clients<sup>2</sup>;
  - ii. Business Associates traded on behalf of GFS customers<sup>3</sup>; and
  - iii. certain Business Associates employed by GFS were not fit and proper, competent and adequately trained to comply with obligations applicable in the DIFC<sup>4</sup>.

and therefore [REDACTED]:

- iv. failed to act with due skill, care and diligence;
- v. failed to take reasonable care to ensure that the business of GFS was organised so that it can be managed and controlled effectively; and
- vi. failed to take reasonable care to ensure that the business of GFS complied with any legislation applicable in the DIFC.

**Terms and Conditions of Undertaking**

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

11. [REDACTED] undertakes to procure, by 26 October 2008, payment of the amount of USD\$502,037.38 into a bank account maintained and administrated by GFS for the sole purpose of paying compensation to GFS customers in accordance with the terms of the Enforceable Undertaking (and it's

<sup>2</sup> In breach of COB 3.2.1 (COB/VER13/12-07)

<sup>3</sup> In breach of Article 41(1)

<sup>4</sup> GEN 5.3.19(1)



Annexure A) between GFS and the DFSA. In the event that such deposit is not made by GFS, [REDACTED] undertakes to make such deposit himself.

12. [REDACTED] undertakes to pay a sum of USD\$5000 to the DFSA within 30 days from the date of this Enforceable Undertaking.
13. [REDACTED] undertakes not to disclose to any person, apart from his legal advisor 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**

14. Should [REDACTED] 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*.

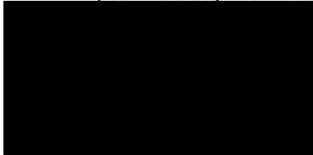
#### **Acknowledgements**

15. The DFSA acknowledges that [REDACTED] has confirmed that he will resign as a Licensed Director and Authorised Individual of GFS within 5 business days from the date of this Enforceable Undertaking.
16. The DFSA acknowledges that [REDACTED] has confirmed his intention not to perform any function in connection with the provision of Financial Services or Ancillary Services in or from the DIFC or to re-apply for Authorised Individual Status in the DIFC in the future.
17. The facts as set out in this undertaking are without prejudice to the DFSA or [REDACTED] 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. [REDACTED] does not acknowledge any liability with respect to matters raised herein except solely to the extent

of the undertakings set out in paragraphs 12 to 18 above.

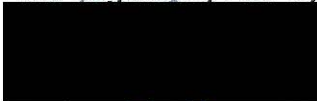
18. This undertaking does not affect the DFSA's power to investigate or take further action in relation to any other concerns not the subject of the facts as recited above, or arising from future conduct.

19. The DFSA may issue a media release on 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.



Sept 4 2008  
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Date

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



7.09.08  
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Date

Director and Head of Enforcement, DFSA