
DECISION NOTICE

To: Mr Andrew Grimes

DFSA Reference No.: I004926

Date: 3 May 2017

1. DECISION

- 1.1. For the reasons given in this Decision Notice, the DFSA imposes on Mr Andrew Grimes (Mr Grimes):
- a. a financial penalty of US\$52,500 pursuant to Article 90(2) of the Regulatory Law (the Fine); and
 - b. a restriction, pursuant to Article 59(1) of the Regulatory Law, restricting Mr Grimes from performing any function in connection with the provision of Financial Services in or from the DIFC (the Restriction). The Restriction takes effect from the date of this Decision Notice.

2. DEFINITIONS

- 2.1. Defined terms are identified in this Decision 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 Decision Notice or in the DFSA Rulebook, Glossary Module (GLO). Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.
- 2.2. Annex B contains a list of the specific terms used in this Decision Notice.

3. SUMMARY OF REASONS

- 3.1. In the period from 2 April 2013 to 2 September 2014, Mr Grimes was the SEO and a Licensed Director of CDL. CDL is a DFSA Authorised Firm which is Licensed to carry on the Financial Service activities of Insurance Intermediation and Insurance Management.
- 3.2. As an Insurance Intermediary in the DIFC, CDL was, at the relevant time, restricted by COB Rule 7.2.2(b) from acting in relation to a Contract of Insurance for a risk situated in the U.A.E., unless the risk was situated in the DIFC or the contract was one of re-insurance.
- 3.3. The DFSA found that, between 8 January 2014 and 8 July 2014, CDL intermediated 21 Contracts of Insurance for customers with risks situated in the U.A.E. and outside the DIFC, which were not contracts of re-insurance in breach of COB Rule 7.2.2(b).
- 3.4. When providing the Financial Service of Insurance Intermediation to customers, CDL was required to on-board those customers as Clients in accordance with the relevant DFSA-administered Rules.
- 3.5. However, the DFSA found that CDL did not classify its customers, provide key information, enter into Client Agreements, conduct AML customer risk assessments or undertake CDD for its customers as required under the relevant DFSA Rules. In so doing, CDL contravened a number of specific Rules set out in the COB and AML Modules of the DFSA Rulebook.
- 3.6. As the SEO, Mr Grimes was ultimately responsible for the day-to-day management, supervision and control of the Financial Services activities carried on by CDL in or from the DIFC. Mr Grimes was actively involved in intermediating some of the 21 Contracts of Insurance and failed to ensure that the customers for whom CDL carried out the Financial Service of Insurance Intermediation had been on-boarded properly as Clients.
- 3.7. In so doing, the DFSA considers that, as CDL's SEO (with knowledge of and responsibility for CDL's Insurance Intermediation activities), Mr Grimes was knowingly concerned in CDL's breaches of COB and AML Rules and Principle 2 of the DFSA's Principles for Authorised Firms, namely the requirement to conduct business activities with due skill, care and diligence. Those breaches were set out in the Decision Notice given to CDL on 21 September 2016.
- 3.8. Further, the DFSA considers that, while an Authorised Individual, Mr Grimes did not take reasonable care to ensure that CDL's business, for which he was responsible as SEO, complied with legislation applicable in the DIFC - in contravention of Principle 6 of the DFSA's Principles for Authorised Individuals (GEN Rule 4.4.6).
- 3.9. Further, in a meeting with the DFSA on 27 April 2014, Mr Grimes told the DFSA that CDL had not intermediated any direct insurance (as opposed to re-insurance) in the U.A.E. and claimed that any insurance sold directly through CDL's website was pursuant

to a re-insurance arrangement in place with a U.A.E. Licensed Insurer. In fact, CDL had intermediated 12 contracts of direct insurance by this date without there being an appropriate re-insurance arrangement in place. The DFSA therefore considers that Mr Grimes provided information to the DFSA that was false and misleading and concealed relevant information from the DFSA.

- 3.10. In so doing, the DSFA considers that, while an Authorised Individual, Mr Grimes:
- a. was not open and cooperative with the DFSA and failed to disclose appropriately information of which the DFSA would reasonably expect to be notified - in contravention of Principle 4 of the DFSA's Principles for Authorised Individuals (GEN Rule 4.4.4); and
 - b. provided information which was false, misleading or deceptive to the DFSA, or concealed information where the concealment of such information was likely to mislead or deceive the DFSA – in contravention of Article 66 of the Regulatory Law.
- 3.11. The DFSA considers Mr Grimes' contraventions to be serious in that his conduct resulted in CDL acting contrary to DFSA administered legislation and he misled the DFSA about CDL's Insurance Intermediation activities. The DFSA therefore considers it appropriate in the circumstances to impose the Fine on Mr Grimes and to demonstrate the importance placed by the DFSA on the accountability of senior management in the operation of their business.
- 3.12. Further, the DFSA also considers that Mr Grimes' conduct demonstrates that he is not fit and proper to perform functions in connection with the provision of Financial Services in or from the DIFC. Notwithstanding the fact that Mr Grimes is no longer employed by CDL or resident in the U.A.E., the DFSA considers it appropriate to impose the Restriction to maintain the integrity and reputation, and to protect direct and indirect users, of the DIFC.

4. FACTS AND MATTERS RELIED ON

Background – CDL and Mr Grimes

- 4.1. CDL is a wholly owned subsidiary of Clements Europe Limited, a company based in the UK and regulated by the UK Financial Conduct Authority. Clements Europe Limited is a subsidiary of Clements & Company Inc. which is based in Washington DC, USA. Each of these companies is part of the group of companies known as Clements Worldwide. CDL's main business activity is to provide Insurance Intermediation for insurance products underwritten by Clements Worldwide.
- 4.2. On 2 April 2013, CDL was authorised by the DFSA as a PIB Category 4 Authorised Firm, to provide the Financial Services of Insurance Intermediation and Insurance Management.

- 4.3. With reference to GEN Rule 2.19.1, Insurance Intermediation includes:
- a. advising on insurance;
 - b. acting as agent for another Person in relation to the buying or selling of insurance for that other Person; or
 - c. making arrangements with a view to another Person, whether as principal or agent, buying insurance.
- 4.4. Also on 2 April 2013, Mr Grimes was authorised by the DFSA to carry out the Licensed Functions of SEO and Licensed Director at CDL.
- 4.5. As the SEO of CDL, Mr Grimes was ultimately responsible for the day-to-day management, supervision and control of the Financial Services activities carried on by CDL in or from the DIFC. His roles and responsibilities included:
- a. building a physical and commercial presence for CDL in the Middle East insurance market;
 - b. establishing and managing the operations of CDL in the DIFC;
 - c. performing the day-to-day management of CDL and ensuring staff development;
 - d. leading the development and implementation of the marketing and sales strategy for CDL;
 - e. developing, marketing and selling commercially relevant re-insurance products; and
 - f. ensuring CDL complied with local laws and reporting requirements.

Legal restrictions on insurance business and intermediation in the U.A.E.

- 4.6. Article 4(4) of the U.A.E. Federal Law No. 8 of 2004 Regarding the Financial Free Zones (the Federal FFZ Law) restricts firms not licensed by the U.A.E. Insurance Authority from carrying out direct insurance for risks situated in the U.A.E. and outside the Financial Free Zones (such as the DIFC).
- 4.7. Consistent with the Federal FFZ Law, COB Rule 7.2.2(b), as it then was, restricted Insurance Intermediaries, which are DFSA Authorised Firms, from acting in relation to a Contract of Insurance for a risk situated in the U.A.E., unless the risk was situated in the DIFC or the contract is one of re-insurance.
- 4.8. Therefore, as CDL was not licensed by the U.A.E. Insurance Authority, it was prohibited from acting in relation to a Contract of Insurance, which related to a risk situated in the U.A.E., unless the risk was situated in the DIFC, or the contract was one of re-insurance.

- 4.9. Further, to intermediate re-insurance in the U.A.E., which was outside the DIFC, CDL needed to have in place an arrangement under which:
- a. an insurer licensed by the U.A.E. Insurance Authority (a U.A.E. Licensed Insurer) would underwrite direct insurance for customers based in the U.A.E.; and
 - b. CDL, through Clements Worldwide and its insurance arrangements, would re-insure the insurance risk taken on by the U.A.E. Licensed Insurer.

Events leading up to the DFSA Investigation

- 4.10. On 27 April 2014, the DFSA met with members of CDL's senior management including Mr Grimes to discuss the concern that CDL's website may enable persons in the U.A.E. to purchase insurance policies directly online. The DFSA was concerned that CDL may not be complying with the Federal FFZ Law restriction on carrying out insurance in the U.A.E. from Financial Free Zones. At the meeting, Mr Grimes told the DFSA that CDL was not carrying out direct insurance for risks situated in the U.A.E.
- 4.11. On or shortly after 25 August 2014, the Chairman of CDL became aware of the existence of insurance policies issued to U.A.E. residents (outside the DIFC) that had been intermediated by CDL. CDL took steps to restrict its business pending a review of its operations carried out by a law firm (the Review).
- 4.12. On 4 November 2014, the law firm provided Clements Worldwide with a report containing its preliminary findings of the Review (the Report). The Report raised, among other things, the concern that CDL may have carried out a number of insurance activities in breach of COB Rule 7.2.2(b) and other regulatory requirements. On 13 November 2014, CDL provided a copy of the Report to the DFSA.
- 4.13. On 2 February 2015, the DFSA commenced an investigation, pursuant to Article 78 of the Regulatory Law, into suspected contraventions of DFSA-administered legislation (the Investigation). The relevant findings of the Investigation are set out below.

Insurance Intermediation

Attempts to put in place a re-insurance agreement

- 4.14. CDL did not have in place the appropriate arrangements with a U.A.E. Licensed Insurer that would have allowed CDL to intermediate re-insurance outside the DIFC in the U.A.E.
- 4.15. From January 2013, Mr Grimes attempted to put in place re-insurance agreements with two separate U.A.E. Licensed Insurers.
- 4.16. In December 2013, the negotiations to put in place a re-insurance agreement with the first U.A.E. Licensed Insurer had failed, and a re-insurance agreement was never put in place.

- 4.17. From January 2014, Mr Grimes attempted to negotiate a re-insurance agreement with the second U.A.E. Licensed Insurer. However, the negotiations to finalise the second re-insurance agreement also failed. In particular, the following relevant events occurred:
- a. from January 2014, Mr Grimes commenced discussions with the U.A.E. Licensed Insurer and provided the necessary documentation with a view to entering into re-insurance agreement;
 - b. in February 2014, the U.A.E. Licensed Insurer agreed to enter into a re-insurance agreement with CDL (through Clements Worldwide) and the fee it would charge to front insurance policies;
 - c. at the end of March 2014, Mr Grimes asked the U.A.E. Licensed Insurer to provide a letter confirming that, with effect from 1 March 2014, the U.A.E. Licensed Insurer and Clements Worldwide had entered into a re-insurance agreement that would enable the U.A.E. Licensed Insurer to front insurance policies on behalf of Clements Worldwide;
 - d. the U.A.E. Licensed Insurer provided the letter requested by Mr Grimes (referred to in paragraph 4.17.c. above) although, at that time, the re-insurance agreement between the U.A.E. Licensed Insurer and Clements Worldwide had, in fact, not been signed;
 - e. in April 2014, a lawyer engaged by Clements Worldwide to review the draft re-insurance agreement provided Mr Grimes with a revised version of the draft re-insurance agreement for him to review; and
 - f. in June 2014, Mr Grimes received an email from a senior employee at Clements Worldwide requesting a conversation with Mr Grimes about the revised version of the re-insurance agreement and asking Mr Grimes to review the draft agreement.
- 4.18. Accordingly, despite the letter from the U.A.E. Licensed Insurer at the end of March 2014, Mr Grimes knew that there was no formal re-insurance agreement in place with the U.A.E. Licensed Insurer that would have allowed CDL to intermediate contracts of re-insurance in the U.A.E. (outside the DIFC).
- 4.19. Despite there not being a re-insurance agreement in place, the U.A.E. Licensed Insurer underwrote and issued eight Contracts of Insurance on behalf of CDL on an ad-hoc basis between February and May 2014, with CDL acting as the re-insurance broker for each one of the Contracts of Insurance.
- 4.20. In the Report referred to in paragraph 4.12 above, CDL confirmed to the DFSA that no re-insurance agreement with any U.A.E. Licensed Insurer was ever finalised.

Direct insurance intermediated by CDL

4.21. The DFSA reviewed the insurance policies sold to customers by Clements Worldwide and various insurance companies licensed by the U.A.E. Insurance Authority. The DFSA's review identified that, between 8 January 2014 and 8 July 2014, CDL intermediated 21 Contracts of Insurance for individuals and commercial customers with risks situated in the U.A.E. (outside the DIFC) which were not contracts of re-insurance. In summary, the 21 Contracts of Insurance (excluding the eight Contracts referred to in paragraph 4.19 above) consisted of:

Type of Insurance	No. of policies intermediated
Term Life Insurance	9
Health Insurance	4
Personal Accident Insurance	1
Automobile Insurance	1
Commercial Insurance	6

4.22. CDL arranged for the 21 Contracts of Insurance to be issued in that:

- a. CDL's employees communicated directly with the customers;
- b. CDL obtained the details required to process the insurance applications on behalf of the customers; and
- c. CDL subsequently arranged for the insurance policies to be issued to the customers.

4.23. None of the 21 Contracts of Insurance was underwritten by a U.A.E. Licensed Insurer pursuant to a re-insurance arrangement.

4.24. Therefore, CDL contravened COB Rule 7.2.2(b), as it then was, by intermediating each of the 21 Contracts of Insurance.

4.25. The Investigation found that Mr Grimes was aware of CDL's Insurance Intermediation activities, including a number of the 21 Contracts of Insurance.

4.26. Further, Mr Grimes was clearly aware of the restrictions on CDL's ability to intermediate Contracts of Insurance for risks situated in the U.A.E. which were outside the DIFC. In particular:

- a. on or around 6 November 2013, Mr Grimes attended compliance training delivered by CDL's compliance department which outlined the restriction relating to the

intermediation of insurance for risks situated in the U.A.E. which were outside the DIFC pursuant to COB Rule 7.2.2(b);

- b. on 20 November 2013, Mr Grimes gave his signed confirmation that he had read and understood CDL's compliance manual. The compliance manual described, among other things, the restrictions that apply to CDL under both the Federal FFZ Law and COB Rule 7.2.2(b);
- c. on 25 November 2013, Mr Grimes attended the first meeting of CDL's board of directors. At the meeting it was resolved, among other things, that CDL would not intermediate direct insurance into the U.A.E. outside the DIFC; and
- d. he had attempted, albeit unsuccessfully, to negotiate re-insurance agreements with two separate U.A.E. Licensed Insurers that would have allowed CDL to intermediate re-insurance outside the DIFC in the U.A.E.

4.27. Despite being aware of the restrictions on intermediating insurance in the U.A.E., Mr Grimes allowed CDL to intermediate the 21 Contracts of Insurance, in breach of DFSA-administered legislation.

4.28. Between February 2014 and June 2014, Mr Grimes was involved in intermediating at least seven of the 21 Contracts of Insurance for individual and commercial customers with risks situated in the U.A.E. which were outside the DIFC and did not relate to a contract of re-insurance. In particular, Mr Grimes:

- a. directly interacted with two customers and was personally involved in arranging for their insurance policies to be issued. Mr Grimes:
 - i. sent emails to a commercial customer requesting they provide the details required to process a medical health insurance policy application and then liaised with the insurance provider to arrange the policies for the customer; and
 - ii. attended meetings in which a customer requested that CDL arrange term life and personal accident insurance for him personally. Mr Grimes arranged quotations for this insurance by contacting underwriters at Clements Worldwide and CDL subsequently intermediated the relevant insurance policies for the customer;
- b. received emails from CDL's employees forwarding email correspondence demonstrating that CDL was arranging insurance policies for a customer; and
- c. sent emails to CDL's employees outlining the details they needed to obtain from a customer to enable CDL to arrange the insurance policy for that customer.

4.29. Mr Grimes clearly knew that CDL was prohibited from acting in relation to a Contract of Insurance which related to a risk in the U.A.E., unless the risk was situated in the DIFC

or the contract was one of re-insurance. Despite this, he was involved in intermediating at least seven Contracts of Insurance in the U.A.E. outside the DIFC, which were not re-insurance. Mr Grimes was also aware of CDL's Insurance Intermediation activities, which were subsequently found by the DFSA to contravene COB Rule 7.2.2.(b), yet he failed to take steps to prevent this from happening and in some instances provided instructions to CDL employees to assist them in arranging insurance for customers.

Failure to on-board Clients properly

Client classification

- 4.30. Pursuant to COB Rule 2.3.1, before carrying on a Financial Service with or for a Person, CDL was required to determine whether that Person was a Professional Client in relation to the particular Financial Service or products it offered. Pursuant to COB Rule 2.3.5, if CDL did not determine that a Person was a Professional Client, CDL was required to treat them as a Retail Client.
- 4.31. Further, pursuant to COB Rule 3.3.2, before carrying on a Financial Service with or for a Person, CDL was required to provide the Person with the key information specified in COB Appendix 2, and enter into a Client Agreement containing the same key information.
- 4.32. Therefore, in arranging the 21 Contracts of Insurance summarised in paragraph 4.21 above, CDL carried on the Financial Service of Insurance Intermediation as defined in GEN Rule 2.19.1 (see paragraph 4.3 above).
- 4.33. However, before intermediating the 21 Contracts of Insurance, CDL did not undertake any assessment to determine whether customers for which CDL intermediated Contracts of Insurance were Retail Clients or Professional Clients. In so doing, CDL contravened COB Rule 2.3.1.
- 4.34. Further, before intermediating the 21 Contracts of Insurance, and carrying on a Financial Service, CDL did not provide the key information or enter into any Client Agreements with those Clients as required by the DFSA's Rules. In so doing, CDL contravened COB Rule 3.3.2.

Customer risk assessments and CDD

- 4.35. Pursuant to AML Rule 6.1.1, CDL was required to undertake a risk-based assessment of every customer, and assign the customer a risk rating proportionate to the customer's money laundering risks.
- 4.36. Further, pursuant to AML Rule 7.1.1, CDL was required to undertake CDD for each of its customers.
- 4.37. CDL did not conduct AML customer risk assessments, nor did it undertake CDD before establishing a business relationship with the customers for which CDL arranged the 21

Contracts of Insurance. Accordingly, CDL contravened AML Rules 6.1.1 and 7.1.1. Its failure to conduct any CDD for each of its customers in accordance with AML Rule 7.1.1 resulted in CDL being unable to comply with specific CDD requirements under Chapter 7 of the AML Module.

Mr Grimes' failure to ensure Clients were on-boarded properly

4.38. As set out above, Mr Grimes was personally involved in providing the Financial Service of Insurance Intermediation to a number of CDL's customers. He was also aware of CDL's Insurance Intermediation activities and that CDL needed to on-board its customers as Clients in accordance with relevant DFSA-administered legislation before CDL could provide a Financial Service. In particular:

- a. in November 2013, Mr Grimes attended compliance and AML training delivered by CDL's compliance department which included specific training on CDL's Client on-boarding process and the relevant requirements under COB and AML;
- b. between June 2013 and October 2013, Mr Grimes received a series of emails in which he was specifically advised by CDL's compliance department of the need to on-board customers as Clients before providing them with any Financial Services; and
- c. on 20 November 2013, Mr Grimes gave his signed confirmation that he had read and understood CDL's compliance manual. The compliance manual described the need to ensure customers are on-boarded as Clients in accordance with DFSA-administered legislation before providing them with Financial Services.

4.39. Despite knowing that customers must be on-boarded as Clients in accordance with the relevant DFSA legislation, Mr Grimes did not take any steps to ensure that this occurred.

4.40. Further, Mr Grimes did not disclose CDL's Insurance Intermediation activity to CDL's compliance department. His failure to do so meant that CDL's compliance department was unable to take steps to ensure that the customers for whom CDL intermediated insurance were on-boarded as Clients in accordance with DFSA-administered legislation.

Provision of false and misleading information to the DFSA

4.41. On 27 April 2014, the DFSA met with members of CDL's senior management, including Mr Grimes (the DFSA Meeting), to discuss the DFSA's concern that CDL's website may enable persons in the U.A.E. (and outside the DIFC) to purchase insurance policies directly online.

4.42. At the DFSA Meeting, Mr Grimes stated that:

- a. CDL had not intermediated any direct insurance in the U.A.E.; and

- b. there was a re-insurance arrangement in place that enabled Clements Worldwide to sell insurance products through the website, and that any insurance business conducted by CDL would be carried out through the re-insurance arrangement.

4.43. In fact, both statements made by Mr Grimes in paragraph 4.42 above were untrue.

4.44. Mr Grimes knew before the DFSA Meeting that CDL had in fact intermediated Contracts of Insurance for risks situated in U.A.E., which were outside the DIFC and were not contracts of re-insurance. Further, none of those Contracts of Insurance were intermediated pursuant to a re-insurance arrangement with a U.A.E Licensed Insurer. In particular:

- a. CDL commenced intermediating Contracts of Insurance for risks situated in the U.A.E., which were outside the DIFC, on 8 January 2014 and Mr Grimes was aware of CDL's Insurance Intermediation activities; and
- b. for at least two Contracts of Insurance intermediated by CDL prior to the DFSA Meeting, Mr Grimes attended meetings with an individual customer who requested CDL arrange term life and personal accident insurance for him personally. The insurance policies were issued to the customer in February 2014. No re-insurance arrangements were put in place for the two insurance policies issued and intermediated by CDL.

4.45. Further, CDL did not have in place a re-insurance agreement with a U.A.E. Licensed Insurer (see paragraph 4.17 above).

4.46. Therefore, the DFSA considers that the information provided by Mr Grimes to the DFSA on 27 April 2014 was false and misleading and that he concealed relevant information from the DFSA, with the result that the DFSA was misled as to the true extent of CDL's Insurance Intermediation activities.

4.47. Further, by knowingly providing false information to the DFSA, Mr Grimes failed to deal with the DFSA in an open and cooperative way and failed to disclose information of which the DFSA reasonably expected to be notified.

CONTRAVENTIONS

Knowing concern in CDL's contraventions

4.48. On 21 September 2016, the DFSA gave CDL a Decision Notice imposing a financial penalty of US\$85,191 for contraventions of DFSA-administered legislation. In particular, the DFSA found that CDL operated its business in such a way that allowed prohibited Insurance Intermediation activities to occur and it failed to have in place adequate systems and controls to detect, monitor and prevent such Insurance Intermediation activities from occurring. Further, CDL did not classify its customers as Clients, provide key information, enter into Client Agreements, conduct AML customer risk assessments or undertake CDD as required under the relevant DFSA Rules. As a result, over the

period from 8 January to 11 September 2014, CDL failed to comply with a number of specific provisions of the COB and AML Modules of the DFSA Rulebook and failed:

- a. to conduct its business activities with due skill, care and diligence (contrary to Principle 2 of the DFSA's Principles for Authorised Firms, set out in GEN Rule 4.2.2); and
- b. to ensure that its affairs were managed effectively and responsibly and did not have adequate systems and controls to ensure, as far as reasonably practicable, that it complied with legislation applicable in the DIFC (contrary to Principle 3 of the DFSA's Principles for Authorised Firms, set out in GEN Rule 4.2.3).

4.49. Until his employment with CDL ended on 17 September 2014, Mr Grimes was the most senior employee in CDL's DIFC office. In this role he had responsibility for, knowledge of and involvement in:

- a. CDL's prohibited Insurance Intermediation activities; and
- b. CDL's failure to classify its customers as Clients, provide key information, enter into Client Agreements, conduct AML customer risk assessments or undertake CDD as required under the relevant DFSA Rules.

4.50. Accordingly, the DFSA considers that Mr Grimes was knowingly concerned in CDL's contravention of Principles 2 and 3 of the DFSA's Principles for Authorised Firms, set out in GEN Rule 4.2. The DFSA therefore considers that, by virtue of Article 86 of the Regulatory Law, Mr Grimes has also committed a contravention.

Breach of duties as an Authorised Individual

4.51. In the period from 2 April 2013 to 2 September 2014, Mr Grimes was authorised by the DFSA to carry out the Licensed Function of SEO at CDL. Accordingly, in performing that function, he was ultimately responsible for the day-to-day management, supervision and control of the Financial Services carried on by CDL in or from the DIFC. As an Authorised Individual, Mr Grimes was also bound to comply with the DFSA's Principles for Authorised Individuals set out in GEN Rule 4.4 (the AI Principles).

4.52. On the basis of the facts and matters set out in paragraphs 4.21 to 4.40 above, the DFSA considers that Mr Grimes' conduct fell short of the standards reasonably to be expected of him as an Authorised Individual performing the SEO Licensed Function for CDL. Given the extent of CDL's failings in relation to its Insurance Intermediation activities, client on-boarding and the inadequacy of CDL's compliance systems and controls, the DFSA considers that Mr Grimes failed to take reasonable care to ensure that CDL's business, for which he was responsible as SEO, complied with legislation applicable in the DIFC. As a result, Mr Grimes contravened Principle 6 of the AI Principles (set out in GEN Rule 4.4.6).

Providing false and misleading information to the DFSA

- 4.53. Further, on the basis of the facts and matters set out in paragraphs 4.41 to 4.47 above, the DFSA considers that Mr Grimes:
- a. failed to deal with the DFSA in an open and cooperative manner and disclose information of which the DFSA would reasonably be expected to be notified (in contravention of Principle 4 of the AI Principles, set out GEN Rule 4.4.4); and
 - b. provided information to the DFSA which was false, misleading or deceptive and concealed information, where the concealment of such information was likely to mislead or deceive the DFSA (in contravention of Article 66 of the Regulatory Law).

5. SANCTIONS

- 5.1. In deciding whether to take the action set out in this Decision 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).
- 5.2. The DFSA considers the following factors to be of particular relevance in this matter:
- a. the DFSA's objectives, in particular to prevent, detect and restrain conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC, through appropriate means including the imposition of sanctions (Article 8(3)(d));
 - b. the deterrent effect of the action and the importance of deterring Mr Grimes and others from committing further or similar contraventions;
 - c. the seriousness of Mr Grimes's conduct providing information, in April 2014, that was false and misleading and concealing relevant information from the DFSA with the result that the DFSA was misled as to the true extent of CDL's Insurance Intermediation activities; and
 - d. Mr Grimes' position and responsibilities. As a Licensed Director, the SEO and the most senior executive employee at CDL, Mr Grimes was ultimately responsible for the day-to-day management, supervision and control of the Financial Services carried on by CDL in or from within the DIFC.
- 5.3. The DFSA has also taken into consideration the fact that Mr Grimes cooperated with the DFSA during the Investigation by voluntarily agreeing to be interviewed and that he is no longer employed by CDL or resident in the U.A.E.
- 5.4. The DFSA has considered the sanctions and other options available to it and has concluded that a fine is appropriate action given the circumstances of this matter.

Determination of the Fine

- 5.5. In determining the appropriate level of financial penalty to impose in this matter, the DFSA has taken into account the factors and considerations set out in Sections 6-4 and 6-6 of the RPP as follows.

Step 1 – Disgorgement

- 5.6. This step is not considered to be relevant as Mr Grimes did not gain any direct financial benefit as a result of his conduct. The amount of the financial penalty after Step 1 is therefore US\$0.

Step 2 – The seriousness of the contraventions

- 5.7. The DFSA considers Mr Grimes' contraventions to be serious because:
- a. of the nature of the laws and Rules contravened (RPP 6-6-4(a)), in particular the provision of false information to, and the concealment of relevant information from, the DFSA; but also the breaches of Rule 7.2.2(b) of the COB Module, clearly in force at the time;
 - b. Mr Grimes held a senior position in CDL (RPP 6-6-4(k)). As the CEO, Mr Grimes occupied the most senior executive position in CDL and was responsible for managing the day-to-day affairs of the company. CDL relied on Mr Grimes to ensure CDL's affairs were managed effectively and responsibly;
 - c. Mr Grimes knew that his conduct breached CDL's policies and procedures in place at the time (RPP 6-6-5(c)). Mr Grimes was aware of CDL's Insurance Intermediation activities, was personally involved in some of this activity, and yet he did not take any steps to prevent it from breaching CDL's policies and procedures;
 - d. the contraventions (apart from the provision of false information) were repeated (RPP 6-6-5(h)); and
 - e. Mr Grimes failed to disclose CDL's Insurance Intermediation activity to CDL's compliance department. His failure to do so meant that CDL's compliance department was unable to take steps to ensure that the customers to whom CDL intermediated insurance were on-boarded in accordance with DFSA-administered legislation.
- 5.8. Taking the above factors into account, the DFSA considers that a financial penalty of US\$70,000 appropriately reflects the seriousness of the contraventions.

Step 3 – Mitigating and aggravating factors

- 5.9. The DFSA has considered the circumstances of this matter and the factors set out in RPP 6-6-8 and considers the following factors have a mitigating effect on the contraventions:
- a. on 1 February 2017, the prohibition in Rule 7.2.2(b) of the COB Module of the DFSA Rulebook was amended with the effect that 'acting' (in relation to a Contract of Insurance where the contract is in relation to a risk situated within the U.A.E. but outside the DIFC) is now limited to "acting as agent" in relation to such a Contract of Insurance. (An extract of the amended prohibition, Rule 7.2.2(2), is contained in Annex A). There is no evidence that CDL or Mr Grimes was in fact acting as agent in the 21 Contracts for Insurance that they intermediated. Consequently, although at the relevant time Mr Grimes' conduct constituted breaches of DFSA Rules, and he had been so recently and clearly advised that this conduct was contrary to DFSA Rules, the subsequent change in the DFSA Rules has been taken into account in reducing the penalty;
 - b. in agreeing to be interviewed voluntarily in July 2015, Mr Grimes dealt with the DFSA in a cooperative manner; and
 - c. Mr Grimes' previously unblemished disciplinary record.

- 5.10. The DFSA has taken these mitigating factors into account and considers that the circumstances outlined in paragraph 5.9(a) do reduce the seriousness of the contraventions highlighted in paragraph 5.7 above. A percentage adjustment in the order of 25% is considered appropriate in these circumstances. Accordingly, the figure after Step 3 is reduced to US\$52,500.

Step 4 – Adjustment for deterrence

- 5.11. Pursuant to RPP 6-6-9, if the DFSA considers that the level of the financial penalty which it has arrived at after Step 3 is insufficient to deter the individual who committed the contravention, or others, from committing further or similar contraventions, then the DFSA may increase it. RPP 6-6-9 sets out the circumstances where the DFSA may do this.
- 5.12. The DFSA considers that the figure after Step 3 is sufficient for the purposes of deterring 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.
- 5.13. Accordingly, the figure after Step 4 is US\$52,500.

Step 5 – Settlement discount

- 5.14. Where the DFSA and the person on whom the financial penalty is to be imposed agree on the amount and other terms, RPP 6-6-10 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which agreement is reached.
- 5.15. No such agreement was reached. Accordingly, the DFSA has not applied any settlement discount after Step 5.

The level of the Fine imposed

- 5.16. Given the factors and considerations set out in paragraphs 5.1 to 5.15 above and the circumstances of this matter, the DFSA has determined that it is proportionate and appropriate to impose on Mr Grimes a fine of US\$52,500.

Restriction

- 5.17. The DFSA considers it appropriate and proportionate in the circumstances to restrict Mr Grimes from performing any function in connection with the provision of Financial Services in or from the DIFC.
- 5.18. The DFSA's policy in relation to its exercise of the restriction power under Article 59(1) of the Regulatory Law is set out in section 4-10 of the RPP Sourcebook.
- 5.19. RPP 4-10-3 says that, in determining whether to exercise its power under Article 59(1), the DFSA may have regard to all relevant matters including, but not limited to, the criteria for assessing the fitness and propriety of Authorised Individuals as set out in GEN Chapter 7 and Section 2-3 of the RPP Sourcebook.
- 5.20. In deciding to impose the Restriction, the DFSA has considered the:
- a. issues giving rise to concerns about Mr Grimes' fitness and propriety and, in particular, whether those concerns are such as to affect all possible functions in connection with the provision of Financial Services in or from the DIFC which a person may perform;
 - b. materiality of the issue giving rise to concerns as to Mr Grimes' fitness and propriety, in particular, the fact he failed to be candid and truthful with the DFSA;
 - c. nature of the function Mr Grimes was performing; namely, that he was the CEO of CDL, the most senior executive position in CDL where he was responsible for managing the day-to-day affairs of the company. CDL relied on Mr Grimes to ensure CDL's affairs were managed effectively and responsibly; and
 - d. level of risk which Mr Grimes currently poses, and may pose in the future, to regulated entities, customers and the integrity of the DIFC.

- 5.21. Given that Mr Grimes does not currently perform any Licensed Function, or hold any Authorised Individual status or known position in the DIFC, the DFSA does not consider that he poses an imminent risk to any regulated entity, customers and the integrity of the DIFC.
- 5.22. However, given the seriousness and scale of Mr Grimes' improper conduct, the DFSA considers the Restriction appropriate to protect direct and indirect users and prospective users of the financial services industry in the DIFC should Mr Grimes seek to perform any functions in connection with the provision of Financial Services (e.g. by seeking employment with an Authorised Firm to perform such functions) in the DIFC in the future.

6. PROCEDURAL MATTERS

Decision Making Committee

- 6.1. The decision which gave rise to the obligation to give this Decision Notice was made by Decision Making Committee of the DFSA.
- 6.2. This Decision Notice is given to Mr Grimes under Paragraph 5 of Schedule 3 to the Regulatory Law.

Evidence and other material considered

- 6.3. In accordance with paragraph 5(2) of Schedule 3 to the Regulatory Law, the DFSA provided Mr Grimes with a copy of the relevant materials that were considered in making the decisions in this Decision Notice.
- 6.4. Annex A sets out extracts from some statutory and regulatory provisions and guidance relevant to this Decision Notice. Full copies can be located on the DFSA website at www.dfsa.ae.

Right of review of decision by Financial Markets Tribunal ("FMT")

- 6.5. Under Articles 29, 59(6) and 90(5) of the Regulatory Law, Mr Grimes has the right to refer the matter to the FMT for review.
- 6.6. The FMT is operationally independent of the DFSA and has the power to conduct a full merits review of the DFSA's decision. After review of the DFSA's decision, the FMT has the power to make a new decision using the powers available to the DFSA. This could involve:
- a. confirming the decision set out in this Decision Notice;
 - b. substituting the DFSA decision with a new decision; or
 - c. referring the matter back to the DFSA with a direction for the DFSA to make a new decision.

- 6.7. Should Mr Grimes wish to have this matter reviewed by the FMT, Mr Grimes must exercise that right within 30 days from the date he is notified of this decision. Any reference made after that date would have to be approved by the FMT where it is satisfied that such approval is appropriate in the circumstances, pursuant to Article 29(3)(b) of the Regulatory Law.
- 6.8. Proceedings before the FMT are commenced by submitting a Notice of Appeal (“Form FMT 1”) to the Registrar of the FMT.
- 6.9. The Rules of Procedure of the FMT, as well as a template Form FMT 1 and the Registrar’s contact details can be found on the DFSA’s website at:
- <http://www.dfsa.ae/en/About-Us/Our-Structure#Financial-Market-Tribunal>
- 6.10. Under paragraph 26 of the FMT Rules of Procedure, Mr Grimes is required to send a copy of Form FMT 1 to the DFSA on the same date it is filed with the Registrar of the FMT.

Manner and time for payment

- 6.11. The Fine must be paid by Mr Grimes by no later than 30 days from the date on which this Decision Notice is given to Mr Grimes.

If the fine is not paid

- 6.12. If any or all of the Fine is outstanding on the day after the date in paragraph 6.11 above, the DFSA may seek to recover the outstanding amount as a debt owed by Mr Grimes and due to the DFSA.

Publicity

- 6.13. 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.
- 6.14. RPP 5-17-8 to 5-17-10 is relevant to the publication of information about the matter to which this Decision Notice relates. Under these paragraphs, the DFSA will generally make public any decision made by the DMC and will do so in a timely manner after any relevant period to refer a matter to the FMT has expired or the appeal process has come to an end.
- 6.15. In the event that Mr Grimes refers this matter to the FMT, and as set out in RPP 5-17-8, the DFSA expects to publish information about the hearing or commencement of proceedings before the FMT or Court unless otherwise ordered by the FMT or Court.

DFSA contacts

6.16. For more information concerning this matter generally, please contact the Administrator to the DMC on +971 4 362 1586 or by email at DMC@dfsa.ae.

Signed:

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

ANNEX A - RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. STATUTORY PROVISIONS

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

PART 3: LICENCES, AUTHORISATION AND REGISTRATION

Chapter 7 – Restriction, suspension and withdrawal of Authorised Individual or Key Individual status

59. Restricting persons from performing functions in the DIFC

- (1) If the DFSA believes on reasonable grounds that a person is not a fit and proper person to perform any functions in connection with the provision of Financial Services in or from the DIFC, it may restrict the person from performing all or any such functions.
- (2) A restriction under this Article may relate to a function whether or not it is a Licensed Function.
- (3) The DFSA may vary or withdraw a restriction imposed under this Article.
- (4) A person who performs a function in breach of a restriction under this Article commits a contravention.
- (5) The procedures in Schedule 3 apply to a decision of the DFSA under Article 59(1).
- (6) If the DFSA decides to exercise its power under Article 59(1), the person may refer the matter to the FMT for review.

PART 4: GENERAL REGULATION AND ANTI-MONEY LAUNDERING PROVISIONS

Chapter 1 – General Provisions

66. False or Misleading Information

A person shall not:

- (a) provide information which is false, misleading or deceptive to the DFSA; or
- (b) conceal information where the concealment of such information is likely to mislead or deceive the DFSA.

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

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. REGULATORY PROVISIONS (DFSA RULEBOOK AND SOURCEBOOK)

General Module (GEN)

Chapter 2 – Financial Services

Rule 2.19.1

- (1) In Rule 2.2.2, Insurance Intermediation means:
 - (a) advising on insurance;
 - (b) acting as agent for another Person in relation to the buying or selling of insurance for that other Person; or
 - (c) making arrangements with a view to another Person, whether as principal or agent, buying insurance.

Chapter 4 – Core Principles

4.4 The Principles for Authorised Individuals

Principle 4 - Relations with the DFSA

4.4.4 An Authorised Individual must deal with the DFSA in an open and cooperative manner and must disclose appropriately any information of which the DFSA would reasonably be expected to be notified.

Principle 6 - Compliance

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.

Conduct of Business Module (COB)

Chapter 2 – Client Classification

2.3 Types of Client

2.3.1

- (1) Subject to (2), before carrying on a Financial Service with or for a Person, an Authorised Firm must determine whether such a Person is a Professional Client in accordance with Rule 2.3.2, in respect of all or particular Financial Services or products offered by the Authorised Firm.
- (2) An Authorised Firm is not required to comply with (1) in relation to a particular Person where it:
 - (a) treats that Person as a Retail Client; or
 - (b) carries on an activity of the kind described in GEN Rule 2.26.1 that constitutes marketing with that Person and provides no other Financial Service to that Person.
- (3) If an Authorised Firm is aware that a Client with or for whom it is intending to carry on a Financial Service is acting as an agent for another Person (the 'second person') in relation to a particular Transaction then, unless the Client is another Authorised Firm or a Regulated Financial Institution, the Authorised Firm must treat that second person as its Client in relation to that Transaction.

Professional Client

2.3.2

(1) An Authorised Firm may classify a Person as a Professional Client only if such a Person:

(a) either:

(i) has net assets of at least \$500,000 calculated in accordance with Rule 2.4.1; or

(ii) is, or has been in the previous 2 years:

(A) an Employee of the Authorised Firm; or

(B) an Employee in a professional position in another Authorised Firm;

(b) subject to (2), appears, on reasonable grounds, to the Authorised Firm, to have sufficient experience and understanding of relevant financial markets, products or transactions and any associated risks following the analysis specified in Rule 2.5.1; and

Retail Client

2.3.5

A Client is a Retail Client to the extent he is not a Professional Client.

Chapter 3 – Core Rules – Investment Business, Accepting Deposits, Providing Credit and Providing Trust Services

3.3 Key information and Client Agreement

3.3.2

(1) Subject to (2), an Authorised Firm must not carry on a Financial Service with or for a Person unless:

(a) there is a Client Agreement entered into between the Authorised Firm and that Person containing the key information specified in App2; and

(b) before entering into the Client Agreement with the Person, the Authorised Firm has provided to that Person the key information referred to in (a) in good time to enable him to make an informed decision relating to the relevant Financial Service.

Chapter 7 – Core Rules - Insurance

7.2 Insurance business and intermediation restrictions

7.2.2 *(As it was, prior to 1 February 2017)*

An Authorised Firm must ensure that it does not:

- (a) if it is an Insurer, Effect a Contract of Insurance or Carry Out a Contract of Insurance through an establishment maintained by it in the DIFC; or
- (b) if it is an Insurance Intermediary, act in relation to a Contract of Insurance;

where the contract is in relation to a risk situated within the U.A.E, unless the risk is situated in the DIFC, or the contract is one of re-insurance.

7.2.2 *(As it is, since 1 February 2017)*

- (1) An Insurer must ensure that it does not Effect a Contract of Insurance or Carry Out a Contract of Insurance through an establishment maintained by it in the DIFC where the contract is in relation to a risk situated within the State, unless the risk is situated in the DIFC, or the contract is one of re-insurance.
- (2) An Insurance Intermediary must ensure that it does not act as agent in relation to a Contract of Insurance where the contract is in relation to a risk situated within the State, unless the risk is situated in the DIFC, or the contract is one of re-insurance.
- (3) An Insurance Manager must ensure that it does not act in relation to a Contract of Insurance where the contract is in relation to a risk situated within the State, unless the risk is situated in the DIFC, or the contract is one of re-insurance.

App2 Key information and Client Agreement

General

A2.1.1

The key information which an Authorised Firm is required to provide to a Client and include in the Client Agreement with that Client pursuant to Rule 3.3.2 must include:

- (a) the core information set out in:
 - (i) Rule A2.1.2 (1) if it is a Retail Client; and
 - (ii) Rule A2.1.2 (2) if it is a Professional Client; and

- (b) where relevant, the additional information required under Rules A2.1.3 and A2.1.4.

Core information

A2.1.2

(1) In the case of a Retail Client, the core information for the purposes of A2.1.1(a) is:

- (a) the name and address of the Authorised Firm, and if it is a Subsidiary, the name and address of the ultimate Holding Company;
- (b) the regulatory status of the Authorised Firm;
- (c) when and how the Client Agreement is to come into force and how the agreement may be amended or terminated;
- (d) sufficient details of the service that the Authorised Firm will provide, including where relevant, information about any product or other restrictions applying to the Authorised Firm in the provision of its services and how such restrictions impact on the service offered by the Authorised Firm. If there are no such restrictions, a statement to that effect;
- (e) details of fees, costs and other charges and the basis upon which the Authorised Firm will impose those fees, costs and other charges;
- (f) details of any conflicts of interests for the purposes of disclosure under Rule 3.5.1(2)(b);
- (g) details of any Soft Dollar Agreement required to be disclosed under Rules 3.5.6 and 3.5.7; and
- (h) key particulars of the Authorised Firm's Complaints handling procedures and a statement that a copy of the procedures is available free of charge upon request in accordance with GEN Rule 9.2.11.

A2.1.1 (2)

In the case of a Professional Client, the core information for the purposes of A2.1.1(a) is the information referred to in (1)(a), (b), (c) and (e).

Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module (AML)

Chapter 6 – Customer Risk Assessment

6.1 Assessing customer AML risks

6.1.1

- (1) A Relevant Person must:
 - (a) undertake a risk-based assessment of every customer; and
 - (b) assign the customer a risk rating proportionate to the customer's money laundering risks.
- (2) The customer risk assessment in (1) must be completed prior to undertaking Customer Due Diligence for new customers, and whenever it is otherwise appropriate for existing customers.
- (3) A Relevant Person may assign a low risk rating to a Prescribed Low Risk Customer without the need to undertake the risk-based assessment of the customer under (1)(a).
- (4) Where a Relevant Person has assigned a customer a low risk rating under (3) and the customer ceases to meet the criteria to be a Prescribed Low Risk Customer the Relevant Person must undertake the risk-based assessment of the customer under (1)(a).
- (5) When undertaking a risk-based assessment of a customer under (1)(a) a Relevant Person must:
 - (a) identify the customer and any beneficial owner;
 - (b) obtain information on the purpose and intended nature of the business relationship;
 - (c) take into consideration the nature of the customer, its ownership and control structure, and its beneficial ownership (if any);
 - (d) take into consideration the nature of the customer business relationship with the Relevant Person;
 - (e) take into consideration the customer's country of origin, residence, nationality, place of incorporation or place of business;
 - (f) take into consideration the relevant product, service or transaction; and
 - (g) take into consideration the outcomes of business risk assessment

Chapter 7 – Customer Due Diligence

7.1 Requirement to undertake customer due diligence

7.1.1

(1) A Relevant Person must:

(a) undertake Customer Due Diligence under Rule 7.3.1 for each of its customers;
and

(b) in addition to (a), undertake Enhanced Customer Due Diligence under Rule 7.4.1 in respect of any customer it has assigned as high risk.

(2) A Relevant Person may undertake Simplified Customer Due Diligence in accordance with Rule 7.5.1 by modifying Customer Due Diligence under Rule 7.3.1 for any customer it has assigned as low risk.

7.7 Failure to conduct or complete customer due diligence

7.7.1

(1) Where, in relation to any customer, a Relevant Person is unable to conduct or complete the requisite Customer Due Diligence in accordance with Rule 7.1.1 it must, to the extent relevant:

(a) not carry out a transaction with or for the customer through a bank account or in cash;

(b) not open an account or otherwise provide a service;

(c) not otherwise establish a business relationship or carry out a transaction;

(d) terminate or suspend any existing business relationship with the customer;

(e) return any monies or assets received from the customer; and

(f) consider whether the inability to conduct or complete Customer Due Diligence necessitates the making of a Suspicious Activity Report under Rule 13.3.1(c).

(2) A Relevant Person is not obliged to comply with (1) (a) to (e) if:

(a) to do so would amount to "tipping off" the customer, in breach of Article 16 of the Federal Law No. 4 of 2002; or

(b) the AMLSCU directs the Relevant Person to act otherwise.

Regulatory Policy and Process Sourcebook Module (RPP)

February 2017 Edition

Chapter 2 – Authorisation – Becoming Regulated

Section 2-3 – Assessing the Fitness and Propriety of Authorised Individuals, Principal Representatives and Key Individuals

Introduction

2-3-1 This section sets out the matters which the DFSA takes into consideration when assessing the fitness and propriety of:

(a) in the case of an Authorised Firm, an Authorised Individual or Principal Representative under section 7.6 of the GEN module and section 4.2 of the REP module, respectively; and

(b) in the case of an Authorised Market Institution, a Key Individual under chapter 5 of the AMI module.

Integrity

2-3-5 In determining whether an individual has satisfied the DFSA as to his integrity, the DFSA may have regard to matters including, but not limited to, the following:

(a) the propriety of an individual's conduct whether or not such conduct may have resulted in the commission of a criminal offence, the contravention of a law or the institution of legal or disciplinary proceedings of whatever nature;

(...)

(d) a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under or by a recognised self-regulatory organisation, Authorised Market Institution, regulated exchange or regulated clearing house or Financial Services Regulator;

(...)

(f) a dismissal or a request to resign from any office or employment;

(g) whether an individual has been or is currently the subject of or has been concerned with the management of a Body Corporate which has been or is currently the subject of an investigation into an allegation of misconduct or malpractice;

(...)

(n) whether the individual has been censured, disciplined, publicly criticised by, or has been the subject of a court order at the instigation of, the DFSA, or any officially appointed inquiry, or Financial Services Regulator; and

(o) whether the individual has been candid and truthful in all his dealings with the DFSA.

Chapter 4 - Supervisory and Enforcement Powers

4-10 Power to Restrict Individuals

4-10-1 Under Article 59(1), if the DFSA reasonably believes that a natural person is not fit and proper to perform any functions in connection with the provision of Financial Services, it may restrict that Person from performing any or all such functions.

4-10-2 Article 59 enables the DFSA to impose a restriction in respect of all functions or in respect of specific functions. The restriction may also apply to functions whether or not they are Licensed Functions. Whether a general restriction, or a more specific restriction, is imposed by the DFSA may depend on the facts of the matter, including:

(a) the concerns upon which the DFSA determines that a natural person is not fit and proper to perform any functions; and

(b) the need to protect the integrity of the DIFC and ensure the confidence of participants in the market.

4-10-3 In determining whether to exercise its power under Article 59(1), the DFSA may have regard to all relevant matters including, but not limited to, the criteria for assessing the fitness and propriety of Authorised Individuals as set out in chapter 7 of GEN, for Key Individuals the criteria set out in chapter 3 of AMI and section 2-3 of this Sourcebook.

Chapter 5 - Enforcement

5-8 Fines

5-8-1

The DFSA may seek to impose a fine under Article 90 on a Person whom it considers has contravened a provision of the Law. The DFSA may impose a fine in any amount considered appropriate.

5-8-2

In determining whether to impose a fine and the quantum of the fine, the DFSA will take into consideration the circumstances of the conduct and will be guided by the penalty guidance set out in chapter 6 of the RPP.

5-8-3

The decision to impose a fine on a Person will be made by the DMC.

5-8-4

Prior to making a decision, the DMC will follow the procedures set out in Schedule 3 of the Regulatory Law (see also chapter 7 of the RPP).

5-8-5

If a Person receives a notice imposing a fine and does not pay the full amount of the fine, the DFSA may recover so much of the fine as remains outstanding as a debt due, together with costs incurred by the DFSA in recovering such amount.

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:

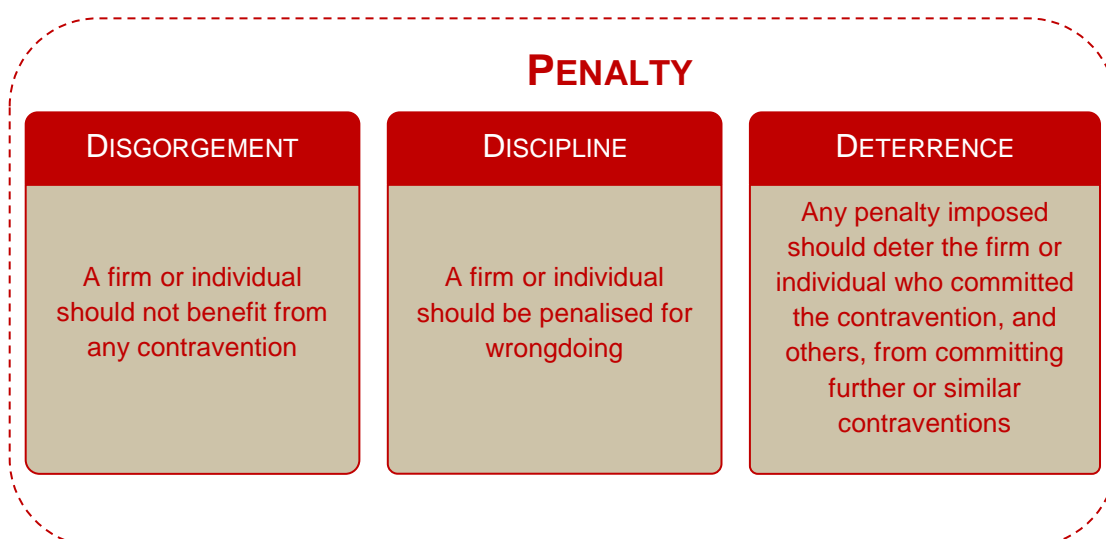
- (a) oral and written submissions in regard to a matter before the DMC are confidential and made in private;
- (b) DMC hearings are held in private; and
- (c) the release of information by the DMC prior to a full and complete consideration of all submissions and facts may be contrary to the DFSA's objectives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

Chapter 6 – Penalty Guidance

6-4 Determining the Appropriate Level of Financial Penalty

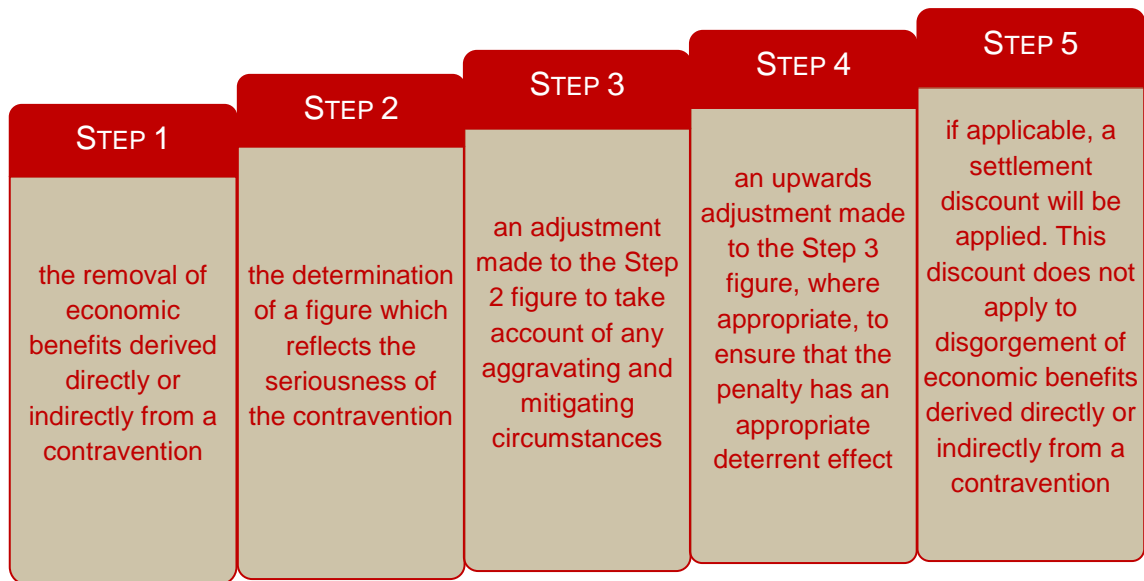
6-4-1

The DFSA's penalty-setting regime is based on three principles:



6-4-2

The total amount payable by a Person subject to enforcement action may be made up of two elements: (i) disgorgement of the benefit received as a result of the contravention; and (ii) a financial penalty reflecting the seriousness of the contravention. These elements are incorporated in a five-step framework, which can be summarised as follows:



6-4-3

The DFSA recognises that a penalty must be proportionate to the contravention. These steps will apply in all cases, although the details of Steps 1 to 4 will differ for cases against firms (section 6-5), and cases against individuals (section 6-6).

6-4-4

The lists of factors and circumstances in sections 6-5 and 6-6 are not exhaustive. Not all of the factors or circumstances listed will necessarily be relevant in a particular case and there may be other factors or circumstances not listed which are relevant.

6-4-5

The DFSA will not, in determining its policy with respect to the amount of penalties, take account of expenses which it incurs, or expects to incur, in discharging its functions.

6-6 Financial Penalties Imposed on an individual

Step 1: Disgorgement

6-6-1

The DFSA will seek to deprive an individual of the economic benefits derived directly or indirectly from the contravention (which may include the profit made or loss avoided) where it is possible to quantify this. The DFSA will ordinarily also charge interest on the benefit.

Step 2: The seriousness of the contravention

6-6-2

The DFSA will determine a financial penalty figure that reflects the seriousness of the contravention. In determining such a figure, the DFSA will take into account various factors, which will usually fall into the following four categories:

- (a) factors relating to the impact of the contravention;
- (b) factors relating to the nature of the contravention;
- (c) factors tending to show whether the contravention was deliberate; and
- (d) factors tending to show whether the contravention was reckless.

6-6-3

Factors relating to the impact of a contravention committed by an individual include:

- (a) the level of benefit gained or loss avoided, or intended to be gained or avoided, by the individual from the contravention, either directly or indirectly;
- (b) the loss or risk of loss, as a whole, caused to consumers, investors or other market users in general;
- (c) the loss or risk of loss caused to individual consumers, investors or other market users;
- (d) whether the contravention had an effect on particularly vulnerable people, whether intentionally or otherwise;
- (e) the inconvenience or distress caused to consumers; and
- (f) whether the contravention had an adverse effect on markets and, if so, how serious that effect was. This may include having regard to whether the orderliness of, or confidence in, the markets in question has been damaged or put at risk.

6-6-4

Factors relating to the nature of a contravention by an individual include:

- (a) the nature of the Laws or Rules contravened;
- (b) the frequency of the contravention;
- (c) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the contravention;
- (d) the scope for any potential financial crime to be facilitated, occasioned or otherwise occur as a result of the contravention;
- (e) whether the individual failed to act with integrity;
- (f) whether the individual abused a position of trust;
- (g) whether the individual committed a contravention of any professional code of conduct;
- (h) whether the individual caused or encouraged other individuals to commit contraventions;
- (i) whether the individual held a prominent position within the industry;
- (j) whether the individual is an experienced industry professional;
- (k) whether the individual held a senior position with the firm;
- (l) the extent of the responsibility of the individual for the product or business areas affected by the contravention, and for the particular matter that was the subject of the contravention;
- (m) whether the individual acted under duress; and
- (n) whether the individual took any steps to comply with DFSA rules, and the adequacy of those steps.

6-6-5

Factors tending to show the contravention was deliberate include:

- (a) the contravention was intentional, in that the individual intended, could reasonably have foreseen or foresaw that the likely or actual consequences of his actions or inaction would result in a contravention;
- (b) the individual intended to benefit financially from the contravention, either directly or indirectly;

- (c) the individual knew that his actions were not in accordance with his firm's internal procedures;
- (d) the individual sought to conceal his misconduct;
- (e) the individual committed the contravention in such a way as to avoid or reduce the risk that the contravention would be discovered;
- (f) the individual was influenced to commit the contravention by the belief that it would be difficult to detect;
- (g) the individual knowingly took decisions relating to the contravention beyond his field of competence; and
- (h) the individual's actions were repeated.

6-6-6

Factors tending to show the contravention was reckless include:

- (a) the individual appreciated there was a risk that his actions or inaction could result in a contravention and failed adequately to mitigate that risk; and
- (b) the individual was aware there was a risk that his actions or inaction could result in a contravention but failed to check if he was acting in accordance with internal procedures.

Step 3: Mitigating and aggravating factors

6-6-7

The DFSA may increase or decrease the amount of the financial penalty arrived at after Step 2 (excluding any amount to be disgorged as set out in Step 1), to take into account factors which aggravate or mitigate the contravention. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.

6-6-8

The following list of factors may have the effect of aggravating or mitigating the contravention:

- (a) the conduct of the individual in bringing (or failing to bring) quickly, effectively and completely the contravention to the DFSA's attention (or the attention of other regulatory authorities, where relevant);
- (b) the degree of cooperation the individual showed during the investigation of the contravention by the DFSA, or any other regulatory authority allowed to share information with the DFSA;

- (c) whether the individual took any steps to stop the contravention, and when these steps were taken;
- (d) any remedial steps taken since the contravention was identified, including whether these were taken on the individual's own initiative or that of the DFSA or another regulatory authority;
- (e) whether the individual has arranged his resources in such a way as to allow or avoid disgorgement and/or payment of a financial penalty;
- (f) whether the individual had previously been told about the DFSA's concerns in relation to the issue, either by means of a private warning or in supervisory correspondence;
- (g) whether the individual had previously undertaken not to perform a particular act or engage in particular behaviour;
- (h) whether the individual has complied with any requirements or rulings of another regulatory authority relating to the contravention;
- (i) the previous disciplinary record and general compliance history of the individual;
- (j) action taken against the individual by other domestic or international regulatory authorities that is relevant to the contravention in question;
- (k) whether DFSA guidance or other published materials had already raised relevant concerns, and the nature and accessibility of such materials;
- (l) whether the DFSA publicly called for an improvement in standards in relation to the behaviour constituting the contravention or similar behaviour before or during the occurrence of the contravention; and
- (m) whether the individual agreed to undertake training subsequent to the contravention.

Step 4: Adjustment for deterrence

6-6-9

If the DFSA considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the contravention, or others, from committing further or similar contraventions then the DFSA may increase the financial penalty. Circumstances where the DFSA may do this include:

- (a) where the DFSA considers the absolute value of the penalty too small in relation to the contravention to meet its objective of credible deterrence;

- (b) where previous DFSA action in respect of similar contraventions has failed to improve industry standards. This may include similar contraventions relating to different products;
- (c) where the DFSA considers it is likely that similar contraventions will be committed by the individual or by other individuals in the future; and
- (d) where the DFSA considers that the likelihood of the detection of such a contravention is low.

Step 5: Settlement discount

6-6-10

The DFSA and the individual on whom a penalty is to be imposed may seek to agree on the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, section 6-8 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the DFSA and the individual concerned reached an agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

ANNEX B

DEFINITIONS

21 Contracts of Insurance	The 21 Contracts of Insurance CDL intermediated for customers with risks situated in the U.A.E. (and outside the DIFC) which were not contracts of re-insurance.
AML	Anti-Money Laundering and, interchangeably depending on the context, The DFSA Rulebook, Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module in force at the time of the relevant conduct, namely Version 9 in force from July 2013 to June 2014, and Version 10 in force from June 2014 onwards.
CDD	Customer Due Diligence pursuant to AML Rule 7.1.1(1)(a).
CDL	Clements (Dubai) Limited.
COB	The DFSA Rulebook, Conduct of Business Module, in force at the time of the relevant conduct, namely Version 22 in force from July 2013 to August 2014, and Version 23 in force from August 2014 to 31 January 2017.
DECISION NOTICE	This Decision Notice.
DIFC	The Dubai International Financial Centre, the financial free-zone in the Dubai Emirate.
DFSA	The Dubai Financial Services Authority, the financial regulator in the DIFC.
DMC	The DFSA's Decision Making Committee.
Federal FFZ Law	U.A.E. Federal Law No.8 of 2004 Regarding The Financial Free Zones.
Fine	The fine referred to in paragraph 1.1 of this Decision Notice.
FMT	The Financial Markets Tribunal.
GEN	The DFSA Rulebook, General Module, in force at the time of the relevant conduct, namely Version 33 in force from July 2013 to June 2014, and Version 34 in force from June 2014 onwards.

Investigation	The DFSA investigation commenced pursuant to Article 78 of the Regulatory Law on 2 February 2015 into suspected contraventions of DFSA-administered legislation.
Regulatory Law	Regulatory Law 2004, DIFC Law No. 1 of 2004.
Report	The report submitted by CDL to the DFSA dated 13 November 2014, containing CDL's findings of the Review.
Restriction	The restriction referred to in paragraph 1.1 of this Decision Notice.
Review	A review of CDL's business operations carried out by an external law firm.
RPP	The DFSA's Regulatory Policy and Process Sourcebook Module.
SEO	Senior Executive Officer, the Licensed Function described in GEN Rule 7.4.2.
U.A.E.	The United Arab Emirates.
U.A.E. Licensed Insurer	An insurance company licensed by the U.A.E. Insurance Authority.