Dubai Financial
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To the Senior Executive Officers
Of DFSA Authorised Firms and
Ancillary Service Providers

Dear SEO,

A Reminder of the Importance of United Nations Security Council Sanctions and Customer Due Diligence

As you have already seen in publications this year, the DFSA is changing its supervisory approach in response to current regulatory developments and global events. As many firms around the globe, of all types, are now in need of funding, the DFSA is concerned that a firm might be tempted to obtaining funding from inappropriate sources (persons or jurisdictions).

This letter should serve as a reminder of the DFSA's anti money laundering Rules, legislation governing anti-money laundering[1] and counter terrorist financing[2] for the United Arab Emirates as a whole, relevant United Nation's Security Council[3] (UNSC) sanctions, and the anti money laundering (AML) and combating financing of terrorism (CFT) recommendations of the Financial Action Task Force[4] (FATF). The National Anti Money Laundering Committee of the UAE also emphasised these cautionary points, as well as current trends, in its 14 May 2009 press release.

We are also taking this opportunity to communicate the results of our most recent Theme Review on the same topics, as communicated in a letter sent to all Authorised Firms (Firms) and Ancillary Service Providers (ASPs) on 12 February 2009 and 10 March 2009, respectively. The DFSA will remain in a proactive posture relative to this subject area for the foreseeable future. The DFSA is grateful for the assistance provided from Firms and ASPs in undertaking this Theme Review.

United Nations Security Council Resolutions

On 12 June 2009, the UNSC, through Resolution #1874, imposed tougher sanctions on the Democratic People's Republic of Korea (DPRK), which included tighter restrictions on the provision of financial services (grants, loans, or financial

[1] Please see "Federal Law No. 4 of 2002 Regarding Criminalisation of Money Laundering"
[2] Please see "Decree by Federal Law No. 1 of 2004 on Combating Terrorism Offenses"
[3] Please see http://www.un.org/Docs/sc/
[4] Please see http://www.fatf-gafi.org/

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assistance of any kind) that could contribute, in any way, to the DPRK's weapons of mass destruction-related programmes or activities. All Firms and ASPs should ensure that this Resolution is properly captured in their AML/CFT programmes.

Similar to the tighter sanctions on the DPRK, paragraph 10 of UNSC Resolution #1803, dated 3 March 2008, "Calls upon all States to exercise vigilance over the activities of financial institutions in their territories with all banks domiciled in Iran, in particular with Bank Melli and Bank Saderat, and their branches and subsidiaries abroad, in order to avoid such activities contributing to the proliferation [of] sensitive nuclear activities, or to the development of nuclear weapon delivery systems, as referred to in resolution 1737 (2006)."

The Financial Action Task Force (FATF), on 17 October 2008, issued "*Guidance in Implementation of Financial Provisions of UN Security Council Resolution 1803*[5]" to assist jurisdictions in implementing the financial provisions of paragraph 10 (above) and implementing certain counter-measures that the international community considers as a risk that is presented by financial institutions domiciled in Iran.

The DFSA reminds all Firms and ASPs of their ongoing obligation to obtain and make appropriate use of the UNSC's relevant resolutions and sanctions. Failure to implement systems and controls to comply with UNSC resolutions and sanctions is a serious offense that will result in swift and appropriate action by the DFSA. Firms are also reminded of their compliance and reporting obligations in relevant laws addressing AML/CFT issued by authorities in the UAE[6].

Theme Review Findings – Authorised Firms

We reviewed a representative cross-section of Firms during this Theme Review. This review had a particular focus on the systems and controls in place for conducting customer due diligence (Know Your Customer or "KYC"). KYC procedures are a critical element in protecting the reputation and integrity of the Dubai International Financial Centre (DIFC) against money laundering and terrorist financing activities, and should constitute an essential part of risk management processes for any Firm in the DIFC.

As part of this AML theme review, the DFSA also tested compliance with amendments to its AML regime which came into force on 1 September 2008. Amongst other requirements, these new Rules emphasised the following:

1. Firms are required to conduct ongoing due diligence in respect of their clients and transactions undertaken (AML Rule 3.4.4); and

2. Firms must ensure adherence to appropriate UNSC Council resolutions and sanctions (GEN Rule 5.3.30).

[5] Please see http://www.fatf-gafi.org/dataoecd/47/41/41529339.pdf
[6] Please see http://www.centralbank.ae/AMLSU.php

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General Findings

1. Customer Identification Policy

Generally, Firms kept records verifying the identity of Clients. We consider Firms can improve the documentary evidence obtained in relation to the origin of funds and source of wealth. We consider that a letter obtained from the customer self-certifying their origin of funds and source of wealth is not adequate documentary evidence to support the origin and source of funds. For example, a Firm should obtain for an individual, a certified copy of a salary certificate or bank statement.

For those firms which had pre-existing Clients prior to Authorisation with the DFSA, we consider firms are not relieved of their KYC obligations and must establish that proper KYC has been done according to DFSA's requirements including ongoing due diligence.

2. Customer Acceptance Policy

Generally, Firms have effective AML measures through adopting a risk-based approach to classifying particular customers, based upon the type of customer, their origins, and the type of transactions or services provided.

Effective money laundering risk assessments conducted by Firms on customers included implementing the following processes:

a. Tailored customer profiling with risk assessing customers in terms of High, Medium and Low risk; and

b. Risk assessments considered issues such as whether:
   i. customers are residents from higher risk jurisdictions (countries which are not a FATF Member);
   ii. transactions or services were provided to Clients not face to face;
   iii. the customer is a Politically Exposed Person (PEP); and
   iv. complex transactions or legal structures with various third parties and beneficial owners.

Firms also used electronic databases to screen for compliance with UN Security Council resolutions and sanctions and to identify PEPs.

3. Ongoing Due Diligence

Generally, Firms adopted a risk-based approach to conducting ongoing due diligence. Most Firms are conducting ongoing due diligence on all Clients on an annual basis.

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4. Enhanced Due Diligence for PEPs

Generally, firms conducted enhanced customer due diligence in relation to PEPs. Most firms rated a PEP as a higher risk Client and sought senior management approval before a PEP became a Client of the firm.

Theme Review Findings – Ancillary Service Providers

A representative cross-section of ASPs was reviewed. This review had a particular focus on the systems and controls in place for conducting customer due diligence or KYC. KYC procedures are a critical element in protecting the reputation and integrity of the DIFC against money laundering and terrorist financing activities, and should constitute an essential part of risk management processes for any ASP in the DIFC.

As part of this AML theme review, the DFSA also tested compliance with amendments to its AML regime which came into force on 1 September 2008. Amongst other requirements, these new Rules emphasised the following:

1. ASPs are required to conduct ongoing due diligence in respect of their Clients and transactions undertaken (ASP Rule 6.5.4(1)(b)); and

2. ASPs must ensure adherence to appropriate UN Security Council resolutions and sanctions (section 3 of the ASP Module).

General Findings

Generally, ASPs need to consider their KYC requirements, particularly in the areas of:

1. conducting KYC within the required time frames identified under the Rules;

2. obtaining information regarding the customers origin of funds and source of wealth/income;

3. obtaining proper certification of copies of documents evidencing the customer's identity;

4. adopting a risk-based approach to classifying customers, based upon the type of customer, their origins, and the type of transactions or services provided;

5. conducting ongoing due diligence;

6. providing AML training to all relevant staff within a 12 month period; and

7. screening for Persons which are subject to the UN Security Council resolutions and sanctions or are a PEP.

We remind ASPs of their obligations in the ASP Module of DFSA's Rulebook, in particular:

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1. Section 6.5: Customer identification requirements;
2. ASP Rule 6.9.1: Money Laundering risks and customer risk assessments;
3. ASP Rule 6.9.2: Risks regarding corruption and PEPs;
4. Appendix 2: Guidance relating to customer identification requirements;
5. Appendix 3: Guidance relating to Money Laundering risks; and
6. ASP Rule 3.6.1: UN Security Council resolutions and sanctions.

Given these findings, we consider ASPs should review their AML systems and controls. ASPs should actively monitor compliance with DFSA Laws and Rules and ensure the ongoing adequacy of their monitoring programmes at all times. We also intend to conduct an outreach session with ASPs in the near future focussing on compliance with DFSA's AML requirements.

Despite these generally positive findings, Firms should not become complacent with their current systems and controls. Firms should actively monitor compliance with DFSA Laws and Rules and ensure the ongoing adequacy of their monitoring programmes at all times.

Yours faithfully,

Paul M Koster
Chief Executive

cc: MLROs of Authorised Firms and Ancillary Service Providers