
DECISION NOTICE

To: FFA Private Bank (Dubai) Limited (FFA)

DFSA Reference No: F000240

Address: Office 410, Level 4
Gate Precinct Building 5, DIFC
PO Box 506567, Dubai
United Arab Emirates

Date: 12 October 2023

1. ACTION

1.1 For the reasons given in this Notice, and pursuant to Article 90(2) of the Regulatory Law 2004 (the **Regulatory Law**), the DFSA has decided to impose on FFA a fine of USD 373,842 (the **Fine**).

1.2 The notice is addressed to FFA alone. Nothing in this notice constitutes a determination that any person other than FFA breached any legal or regulatory rule, and the opinions expressed in this notice are without prejudice to the position of any third party, or of the DFSA in relation to any third party.

2. DEFINED TERMS

2.1 Defined terms are identified in this Notice by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in Annex B or the DFSA Rulebook, Glossary Module. Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.

3. SUMMARY OF REASONS

3.1 The DFSA decided to take this action as it considers that between February 2018 and March 2021 (the **Relevant Period**), FFA failed to:

- a. notify the DFSA regarding transactions executed for Clients which it should have had reasonable grounds to suspect may have constituted Market Abuse, contrary to General Module of the DFSA Rulebook (**GEN**) Rule 11.10.12A;
- b. establish and maintain systems and controls that ensure, as far as reasonably practical, that it did not facilitate others to engage in conduct that may constitute market abuse, contrary to GEN Rule 5.3.20; and
- c. effectively supervise activities performed by an outsourced function, contrary to GEN Rule 5.3.21(3)(b).

3.2 Further, as an Authorised Firm, FFA was at all times required to comply with the DFSA's Principles for Authorised Firms in GEN Section 4.2. The conduct giving rise to the contraventions set out in paragraph 3.1 also demonstrates that FFA failed to ensure that its affairs were managed effectively and responsibly by its senior management, contrary to Authorised Firm Principle 3 (Management, systems and controls) in GEN Rule 4.2.3, by failing to maintain systems and controls to effectively identify and assess transactions that may constitute Market Abuse.

3.3 On 18 May 2021 the DFSA prohibited FFA from accepting orders from certain clients until it had remediated failures in its STOR identification process relating to those clients. As a consequence of FFA taking appropriate action in respect of those clients and making a number of enhancements to its systems and controls, the DFSA lifted this prohibition on 15 July 2021. See paragraph 4.23 below for further details.

3.4 The DFSA considers it appropriate in the circumstances to impose the Fine on FFA.

4. FACTS AND MATTERS RELIED ON

Background

4.1 FFA was incorporated in the DIFC and authorised by the DFSA on 4 October 2006. During the Relevant Period it was a wholly owned subsidiary of FFA Private Bank SAL (**FFA SAL**), which was founded in 1994 and is based in Beirut, Lebanon. In 2022 FFA SAL changed its name to Investment and Capital Bank (also known as I&C Bank).

4.2 FFA is authorised to carry out the following Financial Services:

- a. Advising on Financial Products;
- b. Arranging Deals in Investments;
- c. Arranging Custody;
- d. Dealing in Investments as Principal;
- e. Dealing in Investments as Agent;
- f. Providing Custody; and
- g. Managing Assets.

4.3 The services provided by FFA includes, private wealth management, capital markets, asset management, and corporate and investment banking.

FFA's STOR Process

4.4 Under GEN Rule 5.3.20, as an Authorised Firm, FFA was required to establish and maintain systems and controls to ensure that, as far as reasonably practicable, FFA and its employees did not engage in, or facilitate others engaging in, market abuse. FFA was also required under GEN Rule 11.10.12A to notify the DFSA immediately when it had reasonable grounds to suspect that an order or transaction may constitute Market Abuse. Such notifications would generally be in the form of a Suspicious Transaction and Order Report (**STOR**).

Identification of Red Flags

4.5 FFA's Risk Management Department (**RMD**), a department within FFA SAL to which FFA outsourced its risk management activities, was responsible for identifying and investigating suspicious trading activity.

4.6 According to FFA's procedures, RMD would raise a Red Flag for investigation if it identified:

- a. a variance to a client's net asset value between two consecutive days that exceeded 5% OR an appreciation/depreciation of a security held by a client over two consecutive days that exceeded 5%; AND
- b. a client's profit on the position exceeded 5%; AND
- c. the increase (or decrease) in the value of the security coincided with news published in the media or otherwise that was material, precise, accurate and not generally available.

- 4.7 Utilising a system that generated automated daily reports setting out "*the top daily changes*" between two consecutive dates of a client's net asset value and value of a securities position held, RMD would raise an alert where a client's activity met criteria a and b as set out above. For each of these alerts RMD would undertake media searches to determine whether it met all of the criteria to generate a Red Flag requiring further investigation (as set out above).
- 4.8 RMD maintained a log of all alerts, regardless of whether a Red Flag was raised for investigation.
- 4.9 In addition to the above, in 2020 FFA introduced enhanced monitoring whereby clients added to an enhanced monitoring watch list were subject to daily monitoring of trading activity and holdings and searches for news on all securities traded or held (see paragraphs 4.81 to 4.83 below).

Assessment of Flagged Trades

- 4.10 According to FFA's procedures, following a Red Flag being raised, the RMD would investigate the activity based on FFA's investigation guidelines. The investigation would include:
- a. an analysis of published news relevant to the security or securities the subject of the trade(s) under investigation;
 - b. an analysis of the client's trading pattern and profile to establish whether the trade(s) under investigation are in line with the client's usual pattern of behaviour; and
 - c. an assessment of market and trade background, analysing the following indicators:
 - i. the timing of the client's trades;
 - ii. a comparison to the trading patterns of other FFA clients;
 - iii. internet searches on background information, including market sentiment and rumours; and
 - iv. the opinion of FFA's Capital Markets Team, regarding market sentiment and rumours.
- 4.11 RMD's findings and assessment of Red Flags were recorded in a report (**RMD Report**).
- 4.12 If, following the investigation, the RMD determined that the activity was "reasonably suspicious", it would escalate the Red Flag to FFA's Compliance Department (**FFA**

Compliance), which may make enquires with the client or underlying client (where FFA SAL was the client) before making a final decision on whether to submit a STOR to the DFSA. Where the RMD concluded that the activity was not “reasonably suspicious” they would not notify FFA Compliance that a Red Flag had been raised or the reasons why it was not deemed suspicious.

Review of STOR Process

- 4.13 The RMD had responsibility for maintaining and reviewing the STOR identification and assessment process.
- 4.14 FFA indicated to the DFSA that such reviews were done on an ad-hoc basis, taking into consideration:
- a. the number of times and reason for triggers;
 - b. the results of investigations conducted;
 - c. identified instances that were missed;
 - d. industry experience;
 - e. global guidelines; and
 - f. regulatory feedback.
- 4.15 FFA also indicated that the Red Flag system's thresholds (as set out above at paragraph 4.6) were reviewed to ensure the process was “*objective, rules based and client agnostic.*” In addition, enhanced monitoring was conducted in particular cases where multiple Red Flags had been raised, i.e. the process might be reviewed on a client-by-client basis. However, when asked to provide details of the reviews of its processes for identifying and assessing STORs during the Relevant Period, FFA was only able to provide details of reviews undertaken by FFA SAL's internal audit function (see paragraph 4.75 below), which did not appear to include a substantive review of the effectiveness of the process, and reviews of the STOR identification system undertaken by the DFSA as part of its ongoing supervision of FFA (see paragraph 4.76 below).

Suspicious Trading Activity

- 4.16 Since 1 February 2017, FFA was required under GEN Rule 11.10.12A to notify the DFSA immediately of any transactions or orders from clients which it had reasonable grounds to suspect may constitute Market Abuse. Further, GEN Rule 5.3.20 requires FFA to establish and maintain adequate systems and controls to ensure that, as far as reasonably practicable, the firm and its employees do not engage in conduct, or facilitate others to engage in conduct, that may constitute market abuse. The appropriate and reasonable identification of clients' transaction and orders as suspicious trading activity is essential to compliance with both of these Rules.
- 4.17 During the Relevant Period, the DFSA requested and obtained information from FFA regarding trading undertaken in 25 securities around the time of 28 announcements which the DFSA had identified as being suspicious. The information provided by FFA in response highlighted that the vast majority of the trading considered by the DFSA as being suspicious constituted trades undertaken on behalf of two clients ("**Client A**" and "**Client B**") (21 out of 28 announcements). This trading resulted in total profits of more than USD 17.28m for Client A and Client B, with average profit margins of 21.4%.

Client A and Client B Trading Red Flags

- 4.18 As per paragraphs 4.4 to 4.12 above, FFA had in place a system that would raise Red Flags should the results of a Client's trading meet certain thresholds as set out at paragraph 4.6. However, the DFSA found that the process used to generate Red Flags was ineffective. As a result, FFA may have failed to identify a number of instances of suspicious trading activity undertaken by its clients.
- 4.19 Of the 34 instances of trading by Client A and Client B the DFSA identified as being suspicious, 16 instances (47%) were not subject to investigation by the RMD and as a consequence no RMD Report was produced. Of these instances, 13 met the criteria to generate a Red Flag for investigation (as set out in paragraph 4.6 above). These instances, which represent almost half the instances of suspicious trading undertaken by Client A and Client B identified by the DFSA, resulted in a combined profit of over EURO 5.5 million.
- 4.20 As per paragraph 4.8 above, RMD maintained a log of alerts raised by FFA's systems regardless of whether RMD decided to raise a Red Flag for investigation. Of the 13 instances of trading by Client A and Client B that met the criteria to generate a Red Flag

(and for an RMD Report to be produced as a result) but no Red Flag was raised, two were not picked up by FFA's alert systems and the other 11 were erroneously dismissed by RMD as not meeting the criteria.

- 4.21 The log maintained by RMD, provided to the DFSA, recorded that at least one alert was generated each day over a 228 day period. More than half of these days (116 days) included days where alerts were generated in relation to trading undertaken by Client A and/or Client B.
- 4.22 FFA's failure to ensure that its processes for identifying and investigating suspicious trading were adequate and operating in line with its policies and procedures, resulted in FFA's systems failing to generate alerts in relation to trading which met the criteria under its own procedures, and/or failing to investigate trading which met the criteria to raise a Red Flag for further investigation. These represent serious lapses and gave rise to an unacceptable risk that FFA may have indirectly facilitated others in engaging in conduct that may constitute market abuse.

Prohibition Notice

- 4.23 Due to the number of instances of suspicious trading activity undertaken by FFA on behalf of its clients, the DFSA had concerns that FFA's systems and controls to identify and assess potential suspicious trading activity were inadequate. Consequently, on 18 May 2021 the DFSA imposed a prohibition on FFA prohibiting it from accepting orders from certain clients until it had addressed those concerns.
- 4.24 As a consequence of FFA taking appropriate action in respect of those clients and making a number of enhancements to its systems and controls, the DFSA lifted this prohibition on 15 July 2021.
- 4.25 The DFSA notes that the prohibition had a significant impact on FFA's business, damaging relationships with its clients and making it difficult to maintain and establish correspondent relationships which are essential to its operations and ability to do business.

Investigation of Client A and Client B Red Flags

- 4.26 As per paragraphs 4.10 to 4.12 above, when raised, Red Flags were investigated by RMD to determine whether the activity was "reasonably suspicious". Based on these

investigations, RMD would produce an RMD Report setting out the investigations carried out and the rationale for escalating or not escalating a Red Flag to FFA Compliance. The decision on whether to submit a STOR would then be made by FFA Compliance.

- 4.27 During the Relevant Period, FFA's systems described in paragraphs 4.5 to 4.9 above, raised 58 Red Flags in relation to trading undertaken by Client A and Client B, equating to an average of a Red Flag being generated for each of these clients every month during the Relevant Period. RMD Reports covering 55 of these Red Flags were produced by RMD, with 21 Red Flags being escalated to FFA Compliance to determine whether a STOR should be submitted.
- 4.28 Each RMD Report outlined the enquiries that had been made and included a written rationale summarising the RMD analyst's reasons for their decision to escalate the RMD Report to FFA Compliance or not.
- 4.29 However, the DFSA found that where RMD had decided not to escalate an RMD Report related to trading undertaken by Client A and Client B to FFA Compliance a generic rationale was typically recorded for why the trading that generated a Red Flag was not suspicious, failing to give a credible explanation that sufficiently addressed the indicators of Market Abuse. In addition, the conclusions sometimes did not reflect the findings of the enquires that had been performed as set out in the report.
- 4.30 Generally, the rationales for not escalating Red Flags included one or more of the following reasons:
- a. the pattern of trading was in line with the client's historic pattern of trading;
 - b. changes in the average volume of trading in the security in the market;
 - c. analysts' recommendations regarding the security;
 - d. rumours in the market ahead of the announcement;
 - e. rumours or media reports not being verified; and
 - f. an earnings call scheduled around the time of the announcement.

4.31 However, the DFSA considers, based on the circumstances of each of the Red Flags and the information available, the rationales for not escalating to FFA Compliance were generally inadequate and FFA should have submitted a STOR for most of the Client A and Client B Red Flags because there were reasonable grounds to suspect that Market Abuse may have taken place.

Client's Historic Trading Pattern

4.32 Of the 34 Red Flags investigated by RMD for trading undertaken by Client A and Client B, that were not escalated to FFA Compliance, all but two included in the rationale for not escalating that the trading was in line with the client's historic pattern of trading. In addition, of the 34 Red Flags investigated by RMD, significance was placed on trading being in line with historic patterns as a determining factor for not escalating 20 of them to FFA Compliance.

4.33 FFA's procedures included the requirement that, as part of their assessment of Red Flags, RMD give consideration to the client's pattern of:

- a. trade size;
- b. portfolio concentration;
- c. instrument types and markets traded;
- d. previous trading in flagged security;
- e. holding periods;
- f. use of options; and
- g. size of trades compared to market volume.

4.34 Such considerations are important when considering whether a client's trading is unusual and outside of their standard pattern of trading. However, unless a client has very specific patterns of trading, it is unlikely these will be a determining factor that trading that gives rise to a Red Flag is assessed as not reasonably suspicious. It is more likely that trading deemed to be unusual or outside the client's usual trading pattern would support a decision to escalate a Red Flag.

4.35 In addition, the DFSA found four RMD Reports where trading being in line with the client's historic trading patterns was given as part of the reason not to escalate a Red Flag to FFA Compliance despite this not being supported by the information set out in the report. For example, in relation to one Red Flag, RMD concluded that "*The trades conducted on the*

security are closely aligned with the clients trading pattern and profile", despite the trades concerned (of USD 8.1m which represented a 92% portfolio concentration) being significantly higher than the client's average/usual trade size and concentration of USD 5.8m and 31%.

- 4.36 The DFSA considers that FFA placed unwarranted reliance on the rationale that the transactions were within a clients' profile, without any explanation as to why. This was of particular concern where FFA had failed to identify repeated suspicious trading activity in respect of Client A and Client B, such that trading in line with these client's profile could not be considered a reasonable contra-indication of suspicious trading activity.

Unverified Rumour or Media Report

- 4.37 As part of RMD's investigation of Red Flags, analysts were required to analyse published news. Where a Red Flag was generated as a result of rumours or third party information, FFA's investigation guidelines indicate that, "*analysis must determine whether or not the information is confirmed by the issuer or any identified party directly related to the facts.*"
- 4.38 FFA's investigation guidelines do not suggest that news or rumours must be confirmed in order to escalate a Red Flag to FFA Compliance, however it is noted that the criteria to escalate a Red Flag includes that "*the increase in value of the security coincides with a material, precise, accurate and not generally available news published in the press or otherwise*".
- 4.39 The DFSA considers that whether news is confirmed or 'just a rumour' is not relevant as an indicator of Market Abuse. What is of importance is the timing and impact of the news, specifically whether it caused or could cause movement in a security's price. It therefore was not appropriate for FFA to discount suspicious trading patterns due to rumours or news being unconfirmed, when the rumours or news impacted or potentially impacted movements in securities prices.
- 4.40 The DFSA found that the conclusions for not escalating nine Red Flags to FFA Compliance made reference to rumours not being confirmed or precise as part of RMD's rationale.

Scheduled Earnings Call

- 4.41 Of the 34 Red Flags investigated by RMD that were not escalated to FFA Compliance, 21 of them included in the rationale for not escalating that the news that led to the security's

price change coincided with a scheduled earnings call. 17 of these included as a significant factor in their conclusion that the timing of the trading in relation to an earnings call or similar other scheduled company announcement, could be the motive for the client's trading.

4.42 As part of assessing Red Flags, RMD was required to analyse published news. FFA's procedures note a number of types of news that could have a significant influence, including "*Quarterly or annual earnings or operational results or projections*". FFA's procedures did not suggest that scheduled earnings calls would form the basis for concluding that a pattern of trading was not suspicious. The DFSA also notes that entities whose shares are listed on certain exchanges are required to make regular earning calls, generally on a quarterly basis. Therefore, the presence of a scheduled earnings call in itself would not be unusual, occurring on average every 13 weeks.

4.43 However, RMD repeatedly included the presence of a scheduled earnings call as part of its rationales for not deeming a Red Flag to present reasonable suspicion. Where an earnings call was referred to as part of RMD's conclusion to not escalate a Red Flag to FFA Compliance, the earnings call was on average scheduled 2 weeks after the trading that resulted in the Red Flag. In one instance, the earnings call was scheduled more than 6 weeks after the trading that gave rise to the Red Flag commenced. In another instance, the rationale made reference to the scheduled earnings call as a key reason for not escalating the Red Flag to FFA Compliance, despite the trading that gave rise to the Red Flag being conducted before the announcement that an earnings call had been scheduled.

Market Rumours and Analysts' Recommendations

4.44 All but one of the 34 Red Flags generated for Client A and Client B not escalated to FFA Compliance included in their reasoning reference to market rumours, market trading volumes and/or analyst recommendations relating to the security subject to the Red Flag.

4.45 Market rumours, volumes and analysts' recommendations can provide important context to the circumstances at the time of the event leading to a Red Flag being generated. However, where these are used to explain the rationale for a client's trading it must also address the timing of the trades being investigated.

4.46 For example, where a client places trades shortly before an event that impacts a security's price, it would not be credible to suggest that the rationale for the client's trading was rumours circulating in the market over the past weeks or months, even where the event

confirms these rumours.

- 4.47 Of the 34 Red Flags not escalated to FFA Compliance, 32 referenced increases in trading volumes as part of the rationale for not escalating. However, 21 of these conclusions also noted, but failed to reflect, that the client's volume of trading was considered significant compared to the market, which should have increased the suspicion of the trading rather than formed part of the rationale not to escalate to FFA Compliance.
- 4.48 Of the 18 Red Flags which referenced rumours in the market as part of the rationale for not escalating to FFA Compliance, the DFSA noted many instances where the rumours referred to in RMD's rationales were historic and unlikely to have had any bearing on the client's decision to trade in that particular security at that time. For example, ten referred to rumours more than two months old, including one where the rumours referenced were almost 19 months old.
- 4.49 Three RMD Reports (assessing five instances of suspicious trading by Client A and Client B) contained contradictory or misleading factors in their conclusion not to escalate the Red Flags to FFA Compliance. For example, in one instance the conclusion included as a factor that "*since the 16th of October, the stock rallied till the 24th to achieve an increase of 29%*" ignoring that the trading that resulted in the Red Flag began on 9 October, a week before the stock rallied. The conclusion of another RMD Report, referenced rumours that the company was a takeover target for the last 18 months, without acknowledging that soon after these rumours emerged 18 months ago, two takeover bids were abandoned and no other rumours had been noted.
- 4.50 The DFSA also noted that the rationale not to escalate two Red Flags to FFA Compliance included that "*the usual clients affinity to trade ahead of company earnings scheduled on the same day of the material news*". The DFSA considers that RMD's acknowledgement that Client A and Client B repeatedly traded ahead of earnings calls, where material news was released on the same day, should have led FFA to take a holistic approach to Client A and Client B's trading and reflected that these were not one-off instances of well-timed trading. Instead RMD considered this as a reason not to escalate the Red Flags to FFA Compliance when it should have increased the level of suspicion of Client A and Client B's trading.

Enquiries with FFA's Capital Markets Team

- 4.51 As per paragraph 4.10 above, as part of RMD's investigation of Red Flags, RMD would routinely consult FFA's Capital Markets Team to get its opinion on why a client may have traded.
- 4.52 Of the 34 RMD Reports produced for Client A and/or Client B, 12 included an opinion from FFA's Capital Markets Team about what the 'real' motives behind the clients' trading may have been (two of which were escalated to FFA Compliance and resulted in a STOR submission). Of these reports, five included opinions from FFA's Capital Markets Team which were closely aligned to RMD's overall rationale for not escalating to FFA Compliance.
- 4.53 Although the views of FFA's Capital Markets Team could provide information relevant to the assessment of Red Flags, its views should have been treated with a greater degree of caution, recognising the potential for a conflict of interest.

Decision Not to Escalate Red Flags

- 4.54 As per paragraph 4.12 above, in accordance with FFA's procedures where RMD's investigation determined that the activity that led to a Red Flag was "reasonably suspicious", the Red Flag was escalated to FFA Compliance to determine whether to submit a STOR to the DFSA. During the Relevant Period, RMD escalated 21 Red Flags to FFA Compliance relating to trading undertaken by Client A and Client B, 15 of which resulted in a STOR being submitted.

Failure to Address Reason for Red Flag

- 4.55 The DFSA considers that RMD's explanations, contained in the RMD Reports, for not escalating Red Flags to FFA Compliance gave an unwarranted prevalence to the contra-indications of suspicious trading activity, when considered against clear Red Flags related to the nature, direction, size and timing of the trades so close to the release of price-sensitive information consistent with that trading. The DFSA found that RMD often used generic reasons for not escalating a Red Flag which sometimes had no relevance to the reason for the Red Flag being generated. The timing of Client A and Client B's trading was often a key indicator of Market Abuse, however the reasons given failed to address this. In some cases, the conclusions even acknowledge that indicators remained unaddressed, for example *"Although the timing of the trades and the client volume with respect to total security volume at the dates of Purchase could be considered red flags... The RMD cannot reasonably*

suspect that the trade was, without any doubt, based on privileged information and will not escalate the matter to Compliance."

- 4.56 The DFSA recognises that each of the factors highlighted at paragraphs 4.32 to 4.50 above, can represent important considerations when assessing Red Flags and in some situations in combination with other factors could accumulate to provide sufficient evidence to counter the indicators of suspicious trading. However, this is only possible when the factors, either in isolation or combination, are relevant to addressing the reasons for the Red Flag being generated in the first place.
- 4.57 19 of the 34 Red Flags not escalated to FFA Compliance concluded that *"it is not possible for us to have reasonable suspicion that the client had any accurate information or prior knowledge of the matter"* (or similar). However, none of these reports included any assessment of the fact that the timing of the trading relative to the news or event that triggered the Red Flag in itself raised a reasonable suspicion. In addition, two of the 34 Red Flags concluded that based on RMD's investigations, the Red Flags should be escalated to FFA Compliance but were not.
- 4.58 FFA's repeated and prolonged failure to adequately assess Red Flags meant that trades in relation to which FFA should have had reasonable grounds to consider suspicious, were not escalated to FFA Compliance, ultimately resulting in STORs not being submitted. These failures gave rise to an unacceptable risk that FFA was indirectly facilitating others to engage in conduct that may have constituted market abuse.

Inconsistent Decision Making

- 4.59 The DFSA found inconsistencies with the decision making by RMD on whether to escalate Red Flags. In particular, the DFSA noted that on a number of occasions the rationale for not escalating Red Flags to FFA Compliance was based on the same set of factors as other Red Flags which were escalated to FFA Compliance and ultimately resulted in a STOR submission.
- 4.60 With the exception of references to unverified rumours and scheduled earnings calls, which for the reasons set out in paragraphs 4.37 to 4.40 and 4.41 to 4.43 above are not directly relevant to determining whether trading is reasonably suspicious or not, the overall profile of the conclusions in RMD Reports escalated to FFA Compliance and those that were not were found to be very similar.

4.61 The DFSA also notes that the decision on whether a Red Flag was reasonably suspicious or should be escalated to FFA Compliance contained in RMD Reports was not always aligned with whether Red Flags were or were not escalated. Of the 34 Red Flags related to Client A and Client B not escalated to FFA Compliance, two concluded that they should be escalated but were not. Similarly, 13 (or almost two-thirds) of the Red Flags that were escalated to FFA Compliance included in their decision that *"the RMD was not able to determine that the transactions are reasonably suspicious"* or similar wording, half of which resulted in a STOR submission.

Reasonably Suspicious

4.62 Having reasonable grounds to suspect that an order or transaction may constitute Market Abuse is an objective standard, as opposed to a subjective test of whether a specific person or firm actually suspects Market Abuse. Suspicion itself is beyond mere speculation, but does not require specific proof or an understanding of how the offending activity took place. The DFSA would therefore expect to receive a STOR where there are sufficient indicators to indicate that Market Abuse **may** have taken place, even if there are other relevant factors that are either unknown or could be interpreted to reduce the likelihood that Market Abuse has actually occurred.

4.63 RMD explained to the DFSA its approach to determining whether a Red Flag should be escalated to FFA Compliance, including its interpretation of "reasonable suspicion" which formed the basis of whether a Red Flag was escalated or not. Specifically:

"...reasonable suspicion is when a regular suspicion transcends, like the alert raised and it becomes something that you reasonably suspect that is happening, in the sense that there is, for example ... but not limited to - a complete divergence from the client's stated background or profile or there is an absence of any public information that justifies the client's trading activity on that security..."

4.64 In addition, RMD stated that a Red Flag has to be proven to be reasonably suspicious to be escalated and that when *"...a suspicion or an alert is issued, a suspicion is triggered, and eventually it has to move to be a reasonable suspicion before it is escalated."*

4.65 This approach, which is consistent with that recorded in the RMD Reports seen by the DFSA imposed a reporting threshold that was much higher than should have been applied. By seeking to prove activity was reasonably suspicious, rather than considering whether there

were reasonable grounds to suspect that it may constitute market abuse (as per GEN Rule 11.10.12A), FFA was not applying the correct test to determine whether activity met the threshold to be escalated to FFA Compliance and as a result was not the subject of a STOR.

Failure to Recognise the Extent of Client A and Client B's Suspicious Activity

- 4.66 As set out in paragraphs 4.18 to 4.61 above, the DFSA considers FFA's numerous decisions not to escalate Red Flags to FFA Compliance were flawed and as a result a significant number of Red Flags that should have been escalated to FFA Compliance were not. Because FFA Compliance were only made aware of Red Flags escalated to it, it received no management information or other information about the frequency or nature of previous Red Flags and RMD Reports would not generally contain details of previous Red Flags generated for the subject of the report.
- 4.67 Because FFA Compliance was only made aware of Red Flags that were escalated to it, it was unaware of the volume of Red Flags being generated for trading undertaken by Client A and Client B. During the Relevant Period, Client A and Client B were each generating on average one Red Flag a month, however because FFA Compliance was only made aware of 21 out of 59 Red Flags generated as a result of Client A and Client B's trading, FFA Compliance was not aware of the extent of Red Flags being generated for these clients. In addition, FFA Compliance was not made aware that more than half of the RMD Reports produced during the Relevant Period related to trading undertaken on behalf of Client A or Client B.
- 4.68 This lack of information regarding the extent of suspicious trading undertaken by Client A and Client B prevented FFA Compliance from recognising the need to take steps to more closely monitor or restrict the trading activities of Client A and Client B. Under GEN Rule 5.3.20(a) FFA was required to put in place systems and controls to ensure, as reasonably practicable, that they were not facilitating others to engage in market abuse.
- 4.69 The DFSA would however highlight that, as per paragraph 4.17, during the Relevant Period the DFSA had requested information regarding a number of instances of trading undertaken by Client A and Client B. This put FFA Compliance on notice that the DFSA was concerned about the trading in the accounts of Clients A and B and should have caused FFA to scrutinise trading by those clients more closely. As per paragraph 4.82 below, Client A and Client B were subject to enhanced monitoring for some of the Relevant Period, however

this was not due to specific concerns regarding the activities of Client A and Client B.

- 4.70 FFA's failure to closely monitor the trading of Clients A and B and allowing them to continue to trade notwithstanding their history of suspicious trading, gave rise to an unacceptable risk that FFA indirectly facilitated market abuse.

Controls

- 4.71 Under GEN Rule 5.3.20, FFA was required to establish and maintain systems and controls to ensure that, as far as reasonably practicable, it did not engage in, or facilitate others engaging in, market abuse. The DFSA found that during the Relevant Period FFA failed to implement adequate systems and controls to enable it to ensure it had in place appropriate and effective systems and controls to identify, assess and report suspicious trading activity.

- 4.72 As per paragraphs 4.13 to 4.15, FFA indicated to the DFSA that RMD had responsibility for maintaining and reviewing the STOR identification and assessment process, which was reviewed on an ad-hoc basis. However, when asked to provide details of the reviews of the STOR process during the Relevant Period, FFA were only able to provide details of reviews undertaken by FFA SAL's internal audit function, which did not appear to include a substantive review of the effectiveness of the process, and reviews undertaken by the DFSA as part of their ongoing supervision of FFA.

- 4.73 In particular, the DFSA found that during the Relevant Period FFA failed to:

- a. periodically review and calibrate its criteria for triggering Red Flags to ensure the appropriateness of the factors and their sensitivity to detect potentially suspicious trading activity;
- b. perform assurance testing to ensure that Red Flags were generated for all patterns of trading that met the set criteria;
- c. perform assurance testing or reviews of investigations and assessments of Red Flags undertaken by RMD to ensure that:
 - i. an assessment was undertaken and RMD Report produced for all Red Flags;
 - ii. RMD investigations were carried out in line with FFA's procedures and elicited sufficient information to make a decision on whether a Red Flag should be escalated to FFA Compliance; and
 - iii. the decisions on whether to escalate or not escalate Red Flags to FFA

Compliance were appropriate, based on the information available and reasonable grounds.

- d. perform assurance testing on the decisions made by FFA Compliance on whether or not to submit a STOR.
- 4.74 As per paragraph 4.78 below, FFA outsourced its internal audit function to FFA SAL. Under this arrangement internal audit would visit FFA three times a year. The findings of internal audit's reviews would be reported to FFA and internal audit would follow up on the recommendations made as a result of its findings.
- 4.75 During the Relevant Period internal audit conducted one review of the procedures used by RMD referred to in paragraphs 4.4 to 4.12 above. The internal audit report produced as a result of this review noted that there was a well-defined procedure in place followed by RMD and FFA Compliance covering the identification, assessment, investigation and reporting of suspected market abuse. The report concluded that, based on the size of FFA's business and the complexity of its information systems and the procedures observed during the review, internal audit provided reasonable assurance on the adequacy of FFA's systems and controls established to prevent and detect suspicious trading. The report did not include any details of substantive testing being conducted as part of this review to assess whether the procedures were effective in practice.
- 4.76 The DFSA notes that (as per paragraph 4.15 above) FFA discussed its RMD processes for the identification and analysis of suspicious trading with the DFSA. As a result of these discussions, the DFSA raised some minor concerns, which FFA addressed. The DFSA was not aware at the time of these discussions of the specific weaknesses in FFA's decision making for identifying STORs set out in this Notice.
- 4.77 These weaknesses meant that FFA's control framework to ensure that its processes to identify, assess and report suspicious trading activity was insufficient to ensure it did not facilitate market abuse and fell significantly below the standard required under GEN 5.3.20. As a result, there was an unacceptable risk that FFA may have indirectly facilitated market abuse and that such market abuse would go undetected.

Outsourcing Arrangements

4.78 During the Relevant Period, FFA outsourced certain functions to FFA SAL under an outsourcing agreement. These included its Legal, Risk Management, Internal Audit and Operations functions. The outsourcing agreement stipulated that FFA SAL must perform the functions on behalf of FFA in accordance with DFSA requirements. Under this arrangement, as outlined in FFA's procedures (see paragraphs 4.5 to 4.15 above), FFA outsourced responsibility for the identification and assessment of suspicious trading to RMD, a division within FFA SAL. Where RMD identified trading which it assessed as being reasonably suspicious, it would escalate these to FFA Compliance to determine whether a STOR should be submitted.

4.79 In accordance with GEN 5.3.21, although it was permissible for FFA to outsource its functions or activities directly related to Financial Services to FFA SAL, this did not relieve FFA of its regulatory obligations and it remained responsible for compliance with legislation applicable in the DIFC, including rules and laws administered by the DFSA. Under these rules, the functions outsourced to RMD were deemed to have been carried out by FFA itself and FFA was required to:

- a. undertake due diligence on suitable outsource service providers;
- b. effectively supervise the outsourced functions or activities; and
- c. deal effectively with any failures by the service provider, that leads, or might lead to a breach of applicable DIFC legislation.

4.80 However, as outlined in paragraphs 4.71 to 4.77, FFA failed to implement adequate controls to ensure that the processes undertaken by RMD on its behalf were adequate and operating effectively. Consequently, as outlined in paragraphs 4.18 to 4.61 above, RMD's systems and processes to identify and assess suspicious trading were inadequate and gave rise to an unacceptable risk that FFA may have indirectly facilitated market abuse.

Enhanced Monitoring

4.81 In 2020 FFA implemented an enhanced monitoring system, whereby clients added to an enhanced monitoring watch list were subject to daily monitoring of trading activity and holdings and searches for news were carried out on all securities traded or held. RMD was responsible for conducting this monitoring and would raise a Red Flag should the criteria set out in paragraph 4.6 above be met.

- 4.82 These measures were introduced in 2020 when it was identified that RMD had inadvertently missed alerts generated by the automated system where a significant number of alerts were generated in a single day. To address this, all high-volume swing traders were added to an enhanced monitoring watch list. Client A and Client B were added to an enhanced monitoring watch list and subject to this enhanced monitoring by RMD, as they were deemed high-volume swing traders.
- 4.83 However, because the criteria by which RMD would raise a Red Flag was the same as that for standard monitoring, enhanced monitoring was unlikely to result in any additional investigations or STOR submissions. In fact, none of the Red Flags raised for trading undertaken by Client A or Client B were the result of enhanced monitoring and would have been raised regardless of their inclusion on the enhanced monitoring watch list. Enhanced monitoring was therefore implemented as a means to limit the impact of an identified flaw in FFA's systems, rather than a risk-based decision to subject higher risk clients to enhanced scrutiny and did not result in any substantive improvement to FFA's systems and controls to detect potential market abuse.

5. CONTRAVENTIONS

- 5.1 Having regard to the facts and matters set out above, the DFSA considers that, during the Relevant Period, FFA contravened the following DFSA administered laws and Rules:
- a. GEN Rule 11.10.12A – in that FFA failed to notify the DFSA regarding transactions executed for clients which it had reasonable grounds to suspect may have constituted Market Abuse;
 - b. GEN Rule 5.3.20 – in that FFA failed to establish and maintain systems and controls that ensure, as far as reasonably practical, that it did not facilitate others to engage in conduct that may constitute market abuse;
 - c. GEN Rule 5.3.21(3)(b) – in that FFA failed to effectively supervise activities performed by an outsourced function; and
 - d. GEN Rule 4.2.3 (Authorised Firms - Management, systems and controls) – in that FFA failed to ensure that its affairs were managed effectively and responsibly by its senior management by failing to maintain systems and controls to effectively identify and assess transactions that may constitute Market Abuse.

6. SANCTION

- 6.1 In deciding whether to take the action set out in this 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).
- 6.2 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 nature and seriousness of the contraventions, as set out in paragraph 6.6 Step 2 below; and
 - c. the deterrent effect of the action and the importance of deterring FFA and others from committing further or similar contraventions.
- 6.3 The DFSA has considered the sanctions and other options available to it and has concluded that a fine is the most appropriate action given the circumstances of this matter.

Determination of the Fine

- 6.4 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 6-5 of the RPP as follows.

Step 1 – Disgorgement

- 6.5 There was no evidence to suggest that FFA made a profit or avoided a loss, as a direct result of the contraventions. Accordingly, this step was not considered relevant.

Step 2 – The seriousness of the contraventions

- 6.6 The DFSA considers FFA's contraventions to be serious because:
- a. by failing to establish and maintain adequate systems and controls, FFA failed to identify and properly assess a significant number of instances of suspicious trading which, based on the information available, should have resulted in a STOR submission;
 - b. the weaknesses in FFA's systems and controls resulted in an unacceptable risk that

- FFA may have indirectly facilitated market abuse, not only by Client A and Client B but also by other clients whose trading was subjected to systems and controls;
- c. they could have resulted in FFA indirectly facilitating market abuse damaging the confidence of investors in international markets and the reputation of the DIFC;
 - d. The repeated requests from the DFSA for information regarding suspicious trading, which ultimately was found to have been predominantly undertaken by Client A and Client B, should have led FFA to review the adequacy of its systems and controls and the basis on which they continued to facilitate trading on behalf of Client A and Client B. However, despite these indicators no such reviews or additional measures were undertaken; and
 - e. occurred over a significant period, more than three years.
- 6.7 Taking the above factors into account, the DFSA considers that a financial penalty of USD 667,575 appropriately reflects the seriousness of the contravention. This figure is equivalent to 10% of USD 6,675,750 which is representative of FFA's relevant revenue during the Relevant Period.

Step 3 – Mitigating and aggravating factors

- 6.8 In considering the appropriate level of financial penalty, the DFSA had regard to the factors set out in RPP 6-5-8.
- 6.9 The DFSA has taken into consideration that:
- a. FFA cooperated fully with the DFSA's investigation, including responding to requests for information promptly and making arrangements for employees of FFA SAL, based overseas, to be available to assist the DFSA's enquiries by attending interviews in person in the DIFC; and
 - b. The weaknesses in FFA's systems and controls were promptly addressed by FFA once they were notified of the deficiencies.
- 6.10 As a result of these factors, the DFSA considers that, overall, these factors mitigate the seriousness of the contraventions by FFA. The DFSA has therefore decided to decrease the figure after Step 2 by 20%.
- 6.11 Accordingly, the figure after Step 3 is USD 534,060.

Step 4 – Adjustment for deterrence

- 6.12 Pursuant to RPP 6-5-9, if the DFSA considers that the level of the financial penalty which it has arrived at after Step 3 is insufficient to deter the firm who committed the contravention, or others, from committing further or similar contraventions, then the DFSA may increase it. RPP 6-5-9 sets out the circumstances where the DFSA may do this.
- 6.13 In considering whether the level of fine is sufficient to deter FFA or others from committing similar breaches, the DFSA has taken into account the impact of the Prohibition Notice issued to FFA in May 2021 and the impact it had on FFA's business and operations (see paragraphs 4.23 to 4.25 above).
- 6.14 Therefore, the DFSA considers that the figure after Step 3 is sufficient for the purposes of deterring FFA and others from committing further or similar contraventions. Accordingly, the DFSA does not consider it appropriate to adjust the amount of the fine arrived at after Step 3 for the purposes of deterrence.

Step 5 - Settlement discount

- 6.15 Where the DFSA and the firm on whom the financial penalty is to be imposed agree on the amount and other terms, RPP 6-5-10 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.
- 6.16 The DFSA and FFA have reached agreement on the relevant facts and matters relied on and the amount of fine that would be imposed. Having regard to its usual practice and in recognition of the benefit of this agreement to the DFSA, the DFSA has applied a 30% discount to the level of fine which the DFSA would have otherwise imposed.
- 6.17 Accordingly, the figure after Step 5 is USD 373,842.

The level of the Fine imposed

- 6.18 Given the factors and considerations set out in paragraphs 6.4 to 6.17 above and the circumstances of this matter, the DFSA has determined that it is proportionate and appropriate to impose on FFA the Fine of USD 373,842.

7. PROCEDURAL MATTERS

Decision Making Committee

7.1 The decision which gave rise to the obligation to give this Notice was made by a Settlement Decision Maker on behalf of the DFSA.

7.2 This Notice is given to FFA under paragraph 3(2) of Schedule 3 to the Regulatory Law.

Manner and time for payment

7.3 The Fine must be paid no later than 28 days from the date on which this Notice is given to FFA.

7.4 If all or any part of the Fine remains outstanding on the date by which it must be paid, the DFSA may recover the outstanding amount as a debt owed by FFA and due to the DFSA.

Evidence and other material considered

7.5 Annex A sets out extracts from some statutory and regulatory provisions and guidance relevant to this Notice.

7.6 The DFSA made available to FFA a copy of the relevant materials that were considered in making the decision which gave rise to the obligation to give this Notice.

Referral to the Financial Markets Tribunal (FMT)

7.7 Pursuant to Article 90(5) of the Regulatory Law, FFA has the right to refer this matter to the FMT for review. However, in deciding to settle this matter and in agreeing not to contest the action set out in this Decision Notice, FFA has agreed that it will not refer this matter to the FMT.

Publicity

7.8 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.

7.9 In accordance with Article 116(2), the DFSA will publicise the action taken in this Notice and the reasons for that action. This may include publishing the Notice itself, in whole or in part.

7.10 FFA will be notified of the date on which the DFSA intends to publish information about this decision.

DFSA contacts

7.11 For more information concerning this matter generally, please contact the Administrator to the Decision Making Committee on +971 4362 1500, or by email at DMC@dfsa.ae.

Signed:

A large black rectangular redaction box covers the signature area. Below the redaction, a dotted line indicates the end of the signature block.

Brad Douglas

Director, Head of Markets

As a Settlement Decision Maker for and on behalf of the DFSA

ANNEX A – RELEVANT STATUTORY AND REGULATORY PROVISIONS

RELEVANT LEGISLATION

DIFC Law No. 1 of 2004 – The Regulatory Law

Article 8(3) of the Regulatory Law 2004 sets out the DFSA's objectives.

8. The Powers, Functions and Objectives of the DFSA

(...)

(3) In performing its functions and exercising its powers, the DFSA shall pursue the following objectives:

- (a) to foster and maintain fairness, transparency and efficiency in the financial services industry (namely, the financial services and related activities carried on) in the DIFC;
- (b) to foster and maintain confidence in the financial services industry in the DIFC;
- (c) to foster and maintain the financial stability of the financial services industry in the DIFC, including the reduction of systemic risk;
- (d) 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;
- (e) to protect direct and indirect users and prospective users of the financial services industry in the DIFC;

(...)

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.

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, the FMT and the Court, sanctions, and any other matters which the DFSA considers relevant to the conduct of affairs in the DIFC.

RELEVANT DFSA RULEBOOK PROVISIONS

DFSA Rulebook, General Module (GEN)

GEN 4 CORE PRINCIPLES

4.2 The Principles for Authorised Firms

(...)

Principle 3 - Management, systems and controls

4.2.3 An Authorised Firm must ensure that its affairs are managed effectively and responsibly by its senior management. An Authorised Firm must have adequate systems and controls to ensure, as far as is reasonably practical, that it complies with legislation applicable in the DIFC.

(...)

GEN 5 MANAGEMENT, SYSTEMS AND CONTROLS

5.3 Systems and controls

(...)

Conduct

5.3.20 An Authorised Person must establish and maintain systems and controls that ensure, as far as reasonably practical, that the Authorised Person and its Employees do not engage in conduct, or facilitate others to engage in conduct, which may constitute:

- (a) market abuse, whether in the DIFC or elsewhere; or
- (b) a financial crime under any applicable U.A.E. laws.

Outsourcing

5.3.21 (1) An Authorised Person which outsources any of its functions or activities directly related to Financial Services to service providers (including within its Group) is not relieved of its regulatory obligations and remains responsible for compliance with legislation applicable in the DIFC.

- (2) The outsourced function under this Rule shall be deemed as being carried out by the Authorised Person itself.
- (3) An Authorised Person which uses such service providers must ensure that it:
 - (a) has undertaken due diligence in choosing suitable service providers;

- (b) effectively supervises the outsourced functions or activities; and
- (c) deals effectively with any act or failure to act by the service provider that leads, or might lead, to a breach of any legislation applicable in the DIFC.

GEN 11 SUPERVISION

Suspected Market Abuse

11.10.12A (1) An Authorised Firm must notify the DFSA immediately if it:

- (a) receives an order from a Client, or arranges or executes a transaction with or for a Client; and
 - (b) has reasonable grounds to suspect that the order or transaction may constitute Market Abuse.
- (2) The notification under (1) must specify:
- (a) sufficient details of the order or transaction; and
 - (b) the reasons for the Authorised Firm suspecting that the order or transaction may constitute Market Abuse.
- (3) An Authorised Firm must not inform the Client, or any other Person involved in the order or transaction, of a notification under this Rule.

ANNEX B – DEFINITIONS

Defined Term	As Defined in the Draft Decision Notice
Authorised Firm	Has the same meaning provided in GLO, namely, a Person, other than an Authorised Market Institution, who holds a Licence.
Client A or Client B	A client of FFA SAL, on behalf of which transactions were undertaken through FFA SAL's trading account with FFA.
DFSA	the Dubai Financial Services Authority
DIFC	the Dubai International Financial Centre
EURO	Euro
FFA	FFA Private Bank (Dubai) Limited
FFA Compliance	FFA's Compliance Department
FFA SAL	FFA Private Bank SAL
Financial Services	Has the same meaning provided in GLO and GEN Rule 2.2.1, namely, an activity constitutes a Financial Service under the Regulatory Law and these Rules where: (a) it is an activity specified in Rule 2.2.2; and (b) such activity is carried on by way of business in the manner described in section 2.3.
the Fine	A fine of USD 373,842 imposed on FFA by the DFSA.
FMT	The Financial Markets Tribunal.
GEN	The General Module of DFSA's Rulebook
Market Abuse	Conduct which contravenes a provision contained in chapter 1 of Part 6 of the Markets Law 2012.
Red Flag	Trading activity identified meeting the criteria set out in FFA's Prevention of Insider Dealing Procedures
the Regulatory Law	DIFC Law No.1 of 2004 (The Regulatory Law 2004).
the Relevant Period	February 2018 to March 2021
RMD	FFA SAL's Risk Management Department
RMD Report	A report produced by RMD summarising the assessment of Red Flags
RPP	DFSA's Regulatory Policy and Process Sourcebook
STOR	Suspicious Transaction and Order Report, a notification to the DFSA of suspected Market Abuse pursuant to GEN Rule 11.10.12A.
USD	US Dollar