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ADGM Grows Up: Issues First Fines

By Stuart Walker | 1 May 2019

The Abu Dhabi Global Market (ADGM), the financial free zone which began operations in 2015, has now come of age.

On 14 April 2019 Mr Alexander Guy, Senior Executive Officer and Director at Eshara Capital Limited, had the uncommon honour of becoming the first named person to be fined by ADGM's Financial Services Regulatory Authority. Eshara Capital, in its corporate capacity, was also fined in connection with the same contraventions.

Commencement of regulatory enforcement actions, such as the imposition of financial penalties, demonstrates that the Financial Services Regulatory Authority has the capacity, and perhaps more importantly, the appetite to take actions against its member firms (and their senior management). Financial free zones who act too aggressively in the early days risk scaring away potential members. Being seen as too lenient is just as bad, and risks threatening the creditability of the institution itself.

In this instance Mr Guy has been fined a modest sum, USD 10,000. Eshara Capital has itself been fined a further USD 10,000. The size of the fines reflects the relatively low-key nature of the offenses. It appears that Eshara Capital failed to file a number of regulatory returns. These included the firm's annual prudential return for 2017, the regulatory return auditor's report for 2017, and the first three quarterly returns for 2018.

The regulator has drawn attention to the fact that Mr Guy, as SEO and a licensed director, had ultimate responsibility for the day-to-day management of Eshara Capital and held significant responsibilities for ensuring that Eshara Capital complied with all applicable legislation. The regulator also drew attention to the fact that although Mr Guy appeared to have been cooperating with the regulator in terms of remedying the defaults, the remedial action he took in respect of the contraventions was not timely or complete. Mr Guy's conduct allowed Eshara Capital to breach and remain in breach for a considerable period of time, and despite repeated reminders from the regulator. In conclusion, it was held that Mr Guy behaved in a reckless manner.

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Stuart's primary practice includes financial services regulation, corporate finance, mergers and acquisitions and employment matters. He advises parties during Dubai Financial Services Authority (DFSA) investigations and, where necessary, negotiates settlements on their behalf. Stuart was instructed by the first authorised firm to be fined by the DFSA and has since gone on to advise in connection with a significant number of DFSA investigations. He was admitted as a solicitor in England & Wales in 2001 and moved to Dubai in 2003.

The regulator did not order disgorgement in this matter as it appears that Mr Guy did not derive any personal financial benefit from the contravention or the reckless conduct.

In any regulated environment there will be a period of time between a contravention, the regulator becoming aware of it, investigating the same, and then taking public enforcement action. Under the circumstances, it might be reasonable to assume that there is now a pipeline of ADGM enforcement actions, and that Mr Guy's punishment is but the first.

Afridi & Angell has been advising on matters of UAE financial services regulation since 1975. In 2008 we advised the first firm to be sanctioned by the Dubai Financial Service Authority, and we have continued to advise on regulatory investigations and enforcement actions in both Dubai and Abu Dhabi. ■

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