This Decision Notice has been referred to the Financial Markets Tribunal (FMT) where the parties will present their respective cases. Any findings in this Decision Notice are therefore provisional and reflect the DFSA's belief as to what occurred and how it considers the conduct should be characterised. The FMT will determine what (if any) is the appropriate action for the DFSA to take, and remit the matter to the DFSA with such directions as the FMT considers appropriate to give effect to its determination. The DFSA expects that the FMT's decision will be made public in due course on the FMT section of the DFSA website.

DECISION NOTICE

To: Al Masah Capital Management Limited

Address: Level 6, North Tower,
Emirates Financial Towers,
DIFC
Dubai, UAE

Date: 25 September 2019

DECISION

1. For the reasons given in this Notice the DFSA has decided under Article 90(2) of the Regulatory Law 2004 (the **Regulatory Law**) to impose on Al Masah Capital Management Limited (**Al Masah DIFC**, a DFSA Authorised Firm) a fine of US$1,500,000 (the **Fine**).

SUMMARY OF REASONS

2. Al Masah DIFC is a subsidiary of Al Masah Capital Limited (**Al Masah Cayman**), a Cayman Islands exempted company which was not authorised by the DFSA to carry on any Financial Services in or from the DIFC.

3. Al Masah Cayman established and managed four exempted companies incorporated in the Cayman Islands, through which investors were able to invest in private equity in a number of sectors. Those companies (the **Investment Companies**) were Foreign Funds as defined in Article 13 of the Collective Investment Law 2010 (**CIL**). The marketing of shares in the Investment Companies, the arrangement of transactions in such shares and the management of the Investment Companies was carried out by Al Masah DIFC and Al Masah Cayman in and from the DIFC.

4. Under the agreements with the Investment Companies, Al Masah Cayman was entitled to annual management fees of 2% of equity employed, and placement fees of up to

10% of all funds raised from investors. In Marketing Materials and Subscription Forms communicated by Al Masah DIFC, it disclosed to investors the management fees of 2%, but the placement fees of up to 10% on all funds raised from investors were not disclosed. That omission was deliberate. During the period from 14 June 2011 to 23 March 2016 placement fees of approximately US$29.8 million were paid by the Investment Companies to Al Masah Cayman in respect of capital raised of approximately US$357 million.

5. Al Masah DIFC also took steps to conceal from investors in an Investment Company, Al Najah Education Limited (**ANEL**), financial information in ANEL's audited annual reports for 2013 and 2014 which would have disclosed the payment of substantial placement fees by ANEL.

6. The DFSA has decided that during the Relevant Period Al Masah DIFC committed the following contraventions of DFSA administered laws or Rules:

   (1) making misleading or deceptive statements as to fees in documents relating to Offers of Units in Funds managed by Al Masah Cayman, contrary to Article 56(2) of CIL and (after 21 August 2014) Article 41B(1) of the Regulatory Law; and

   (2) when communicating Marketing Materials and Subscription Forms to investors, failing to take reasonable steps to ensure that the information contained in those documents as to fees was clear, fair and not misleading, contrary to COB Rule 3.2.1 and GEN Rule 4.2.6.

DEFINITIONS

7. 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 either in this Notice or in the DFSA Rulebook, Glossary Module (**GLO**). Some of these defined terms are set out in Annex C. The Relevant Period for all the matters referred to in this Notice is from August 2010 to June 2016.

FACTS AND MATTERS RELIED UPON

Structure

8. Al Masah DIFC was incorporated in the DIFC on 9 August 2010 and licensed by the DFSA on 19 August 2010. During the Relevant Period Al Masah DIFC was authorised by the DFSA to carry on Financial Services in or from the DIFC, including Arranging Deals in Investments and Managing a Collective Investment Fund.

9. Al Masah DIFC is a subsidiary of Al Masah Cayman, a Cayman Islands exempted company, which was not authorised by the DFSA to carry on any Financial Services in or from the DIFC.

10. Al Masah Cayman established four Investment Companies, which were exempted companies incorporated in the Cayman Islands, each holding shares in a subsidiary (the **Operational Company**) incorporated in the UAE. The Investment Companies, which were described by Al Masah Cayman as private equity platforms, and the Operational Companies are listed in Table 1.

Table 1

PLATFORM	**OPERATIONAL COMPANY**	**INVESTMENT COMPANY**
Healthcare Fund	Alchemist Healthcare LLC	Avivo Group
Education Fund	Al Najah Education LLC	Al Najah Education Limited (**ANEL**)
Logistics Fund	Gulf Pinnacle Investments LLC	Gulf Pinnacle Logistics Limited
Lifestyle Fund	DLL Emirates Restaurants LLC	Diamond Lifestyle Limited

11. Each Operational Company invested in businesses and assets within a particular sector of the economy, primarily through the acquisition of unlisted companies.

12. Al Masah DIFC operated from premises it leased, and shared with Al Masah Cayman at Level 6, North Tower, Emirates Financial Towers, DIFC and Level 9, Suite 906 & 907, ETA Star – Liberty House, DIFC.

13. During the Relevant Period substantially the same persons served as the boards of directors of Al Masah DIFC and Al Masah Cayman respectively. The senior management of Al Masah DIFC and Al Masah Cayman included:

(1) Mr. Shailesh Dash who from 19 August 2010 was authorised by the DFSA to perform the Licensed Functions of Senior Executive Officer and Licensed Director at Al Masah DIFC. Mr. Dash was also on the board of directors of Al Masah Cayman and chairman of the board of directors of each of the Investment Companies;

(2) Mr. Nrupaditya Singhdeo who was the chief financial officer of Al Masah Cayman and authorised by the DFSA to perform the Licensed Functions of Finance Officer and Senior Manager at Al Masah DIFC in the period from 27 September 2010 to 27 April 2016. Mr Singhdeo was also secretary to the boards of directors of both Al Masah Cayman and Al Masah DIFC and a member of the board of directors of each of the Investment Companies; and

(3) Mr. Don Lim Jung Chiat who was not authorised by the DFSA to carry on any Licensed Functions, but was an executive director of Al Masah Cayman and on the board of directors of each of the Investment Companies.

14. Under a service fee agreement dated 15 January 2011 Al Masah DIFC was to receive, in a client bank account, money from clients of Al Masah Cayman, on which a service fee of 2% of money received would be payable to Al Masah DIFC. Under an investment advisory agreement dated 1 April 2012 Al Masah Cayman was to pay a fee, limited to 75% of the total expenses of Al Masah DIFC, towards common expenses shared for managing their businesses. Under an advisory agreement, as amended on 28 June 2012, Al Masah Cayman was to pay to Al Masah DIFC an advisory fee equivalent to 90% of the total revenues earned by Al Masah Cayman as management fees or other direct fees. Under an agreement dated 31 December 2012 it was recorded that all employment contracts were entered into with Al Masah Cayman. The costs of all employees in the DIFC were to be shared as to 75% for Al Masah Cayman, and 25% for Al Masah DIFC. Salaries were to be paid by Al Masah DIFC and employment visas issued in the name of Al Masah DIFC.

15. As evidenced by the investor relations team manual:

(1) Al Masah DIFC was the main operation office of the Al Masah Group, of which Al Masah Cayman was the holding company;

(2) employees in the Dubai office should present themselves as working for Al Masah DIFC; and

(3) introduction of referral agents, client on-boarding and the compliance function was to be carried out by the investor relations team in the office of Al Masah DIFC.

16. The effect of these arrangements was that the businesses and activities of both Al Masah Cayman and Al Masah DIFC were carried on together in the DIFC. In dealing with investors and communicating Marketing Material, directors and employees were acting both for Al Masah DIFC and Al Masah Cayman, and their acts and omissions may be attributed to either company depending on the circumstances.

17. During the Relevant Period the activities of Al Masah Cayman in relation to marketing, making arrangements for the sale of shares in the Investment Companies, and in managing the Investment Companies were mainly carried on in and from the DIFC, where all its directors and senior employees were based. Al Masah Cayman did not carry on any significant business from its registered office in the Cayman Islands.

Management and placement agreements

18. Each Investment Company entered into a separate management agreement with Al Masah Cayman in substantially the same terms (the **Management Agreements**). The Management Agreements recited that Al Masah Cayman provided asset and portfolio management services to investors in the MENA region, and appointed Al Masah Cayman to act as manager of the Investment Company. The agreement provided that the manager should have overall direction, supervision and ultimate control of all matters pertaining to the operations of the business and do all things necessary to provide a profitable exit for all investors in the company. The Investment Company agreed to pay to Al Masah Cayman an annual management fee of 2% of total equity employed.

19. Al Masah Cayman also entered into a placement fee agreement with each of the Investment Companies, in substantially the same terms (the **Placement Fee Agreements**). Under the Placement Fee Agreements the Investment Company engaged Al Masah Cayman to help it raise equity capital at a premium to its par value and agreed to pay to Al Masah Cayman a Placement Fee of up to 10% of the capital raised from new investors, to be payable to Al Masah Cayman when the Investment Company received the subscription payment from a new investor.

Marketing to prospective investors

20. Between 2012 and 2016 Al Masah DIFC and Al Masah Cayman communicated Marketing Material to prospective investors in the Investment Companies by various means including by email, personal delivery or through the website of Al Masah Cayman (www.almasahcapital.com).

21. The Marketing Material communicated or made available to prospective investors included the following classes of documents:

    (1) investor presentations which included an overview of the businesses and assets under management, financial projections, terms of subscription for the shares on offer, anticipated returns for the investor, the management fees charged and the fee payable by the investor to Al Masah Cayman on exit;

    (2) short summaries of investor presentations which included financial projections, terms of subscription for the shares on offer, anticipated returns for the investor, the management fees charged and the fee payable by the investor to Al Masah Cayman on exit; and

    (3) annual reports for Al Masah Cayman and the Investment Companies.

    The Marketing Material also included financial projections which did not include any disclosure of fees.

22. Prior to 2015, the Marketing Material was sent by the investor relations team to prospective investors by email. From early 2015, the Marketing Material was also uploaded onto a portal on the website of Al Masah Cayman and prospective investors were provided with a username and password with which to access the material on the portal.

23. In addition to this and throughout the Relevant Period, Marketing Materials were also delivered in person by Al Masah DIFC employees to potential investors.

24. In addition to direct marketing Al Masah Cayman entered into agreements with referral agents (or distribution partners) to distribute securities issued by the Al Masah Cayman Group. The referral agent agreed to use only the Marketing Material provided by the Al Masah Cayman Group. The fees payable by Al Masah Cayman were stated to be up to 5% of the amounts raised towards the share capital of the Investment Companies

and, in respect of subsequent investments by introduced clients, a percentage of the management fees to be earned by Al Masah Cayman.

25. The relevant Marketing Material on which the DFSA relies is listed in Annex D. In many cases the Marketing Material purports to have been distributed by Al Masah DIFC on behalf of Al Masah Cayman. In a few cases the Marketing Material purports to have been distributed by Al Masah Cayman and approved by Al Masah DIFC.

26. The terms in which fees were disclosed in the Marketing Material were by reference to the Subscription Form stating that Al Masah Cayman as manager would be charging a 2% management fee per annum from the capital of the Investment Company, and charging the investor 20% on any returns exceeding an internal rate of return of 10%.

27. The Subscription Forms which contained the contract between the investor and the Investment Company and Al Masah Cayman contained the following terms:

(1) an acknowledgement that the investor had received and read an offering presentation of the company;

(2) an application for shares at a stated issue price;

(3) an acknowledgment that Al Masah Cayman as manager would receive an annual management fee of 2% of the equity of the company;

(4) an agreement to pay on exit to Al Masah Cayman an incentive fee equal to 20% of the returns received by the investor, provided that the return net of the incentive fee yielded an internal rate of return of at least 10% per annum from the period of investment;

(5) an agreement by the investor to be bound by the memorandum and articles of association of the company; and

(6) a term granting Al Masah Cayman a voting rights proxy in respect of the shares.

The Subscription Forms were counter-signed on behalf of Al Masah Cayman.

ANEL annual reports and financial statements for 2013 & 2014

28. After 31 March 2014 the board of directors of Al Najah Education LLC (**ANEL**) approved its audited financial statements for the year ended 31 August 2013. Those audited financial statements correctly disclosed in the notes related party transactions

with Al Masah Cayman, including management fees of US$460,157 and advisory fees and other costs of US$6,507,182, which consisted mainly of the Placement Fees paid. The report of the directors was signed by Mr. Singhdeo and Mr. Lim and dated 31 March 2014. The auditors had required that the audited financial statements disclose the payment by ANEL of Placement Fees, as transaction costs, in order to comply with IFRS.

29. The 2013 annual report of ANEL, produced for communication to shareholders and prospective investors, purported to include the audited financial statements for the year ended 31 August 2013, including the auditors' report to shareholders and the signature of two directors, Mr. Bukhamseen and Mr. Singhdeo, certifying that those statements had been approved by the board on 31 March 2014. However notes 7 and 10 to those financial statements, although disclosing management fees of US$460,157, had been altered so as not to disclose advisory fees and the other costs of US$6,507,182. The purpose and effect of the purportedly audited financial statements as so altered was to conceal from shareholders and prospective investors the Placement Fees paid by ANEL to Al Masah Cayman.

30. On about 5 May 2015 the board of directors of ANEL approved its audited financial statements for the year ended 31 August 2014. The report of the directors was signed by Mr. Singhdeo and Mr. Lim and dated 5 May 2015. Those audited financial statements correctly disclosed in the notes related party transactions with Al Masah Cayman for 2013 and 2014, including advisory fees. In the 2014 annual report those financial statements had again been altered so as to conceal from shareholders and prospective investors the Placement Fees paid by ANEL to Al Masah Cayman. The altered financial statements appearing in the 2014 annual report were also signed by Mr. Singhdeo and Mr. Lim.

31. The falsification of the financial statements for inclusion in the 2013 and 2014 annual reports of ANEL was known to and approved by Mr. Singhdeo the Finance Officer and a Senior Manager of Al Masah DIFC.

32. Production of the 2013 and 2014 annual reports of ANEL was co-ordinated in the offices of Al Masah DIFC by its employees for communication to the shareholders of, and prospective investors in, ANEL. Physical copies of annual reports were delivered to and stored at Al Masah DIFC's offices. Al Masah DIFC has not disputed that such reports were communicated to shareholders of ANEL, and emails show that such

reports were also communicated by Al Masah DIFC to distributors or prospective investors, including the following:

(1) on 8 July 2014 Mr. Lim, an executive director of Al Masah Cayman, sent to a prospective investor (**Investor A**) an email (copied to Mr. Dash) attaching a copy of the 2013 annual report for ANEL, falsely representing that the report contained the audited financial statements of ANEL; and

(2) on 24 November 2014 an employee of Al Masah DIFC, on the instructions of Mr. Lim, emailed the 2013 annual report of ANEL to a distributor (**Distributor B**) interested in distributing the Healthcare and Education Funds. That email was sent in response to a request for copies of audited financial statements for carrying out due diligence for the funds and Al Masah Cayman.

33. The ANEL financial statements for 2013, falsified as set out at paragraph 29 above, were also communicated by Al Masah DIFC as follows:

(1) on 17 December 2014 Mr. Lim sent an email to a firm of financial advisers, in response to a request for the audited financial statements of ANEL, attaching a copy of the falsified financial statements, describing those statements as the audited financials for ANEL for the 2013 financial year; and

(2) on 17 March 2015 Mr. Lim sent an email to an intermediary bank attaching a copy of the falsified financial statements for provision to a prospective investor (**Investor C**), describing the document as the audited financial statements for ANEL for the 2013 financial year.

Misleading Investor A as to Placement Fee income received by Al Masah Cayman

34. On 10 September 2014 a member of the placement team employed by Al Masah DIFC emailed to Investor A information about the fee income of Al Masah Cayman, in response to a query which had been raised in relation to the figure of US$14.3 million disclosed as fee income from assets under management in the audited financial statements of Al Masah Cayman for the year ended 31 March 2014. That email falsely represented that the fees that pertained to the private equity platform were only management fees of US$4.7 million, and concealed that there were also Placement Fees in excess of US$5 million which were not included in the information disclosed.

This concealment of Placement Fee income received had been approved by Mr. Dash, and Mr. Singhdeo.

Collective Investment Funds

35. Each of the Investment Companies was a Collective Investment Fund (a **Fund**) as defined in Article 11 of CIL.

36. The relevant arrangements, as contained in and evidenced by the Subscription Forms and the investor presentation or offering document referred to in the Subscription Forms, were made with respect to property including shares in unlisted companies acquired by an Operational Company and Real Property. The investor presentation or offering document described the assets to be held by the Operational Company, the projected returns for investors and the exit strategy.

37. The purpose or effect of such arrangements was to enable investors, by acquiring shares in an Investment Company, to participate in or receive profits or income from the acquisition, holding, management or disposal of the property referred to above, or sums paid out of such profits or income to the Investment Company.

38. The investors did not have day-to-day control over the management of the property referred to above. Under Article 11(1) of CIL the investors who are to participate in the arrangements are Unitholders.

39. The contributions of the investors and the profits or income out of which payments were to be made to them were pooled in the accounts of the Investment Company, and the property referred to above was managed as a whole by or on behalf of Al Masah Cayman.

40. Under the terms of the subscription agreement, Al Masah Cayman was legally accountable to investors for the management of the Investment Company, including shares in companies held by the Operational Company, and established, managed or otherwise operated the Investment Company, so that under Article 20(2) of CIL, Al Masah Cayman was the person managing each Investment Company. Under Article 11(1)(c) of CIL, Al Masah Cayman was a Fund Manager.

41. The Investment Companies did not fall within the exclusion from Article 11 of CIL set out at CIR Rule 2.1.10 which provides:

"An arrangement does not constitute a Collective Investment Fund if the arrangement comprises a closed-ended Partnership or Body Corporate, unless on reasonable grounds the purpose or effect of such an arrangement appears to be the investment management, in the exercise of discretion for a collective purpose, of Investments or Real Property assets for the benefit of the shareholders or partners."

42. The purpose or effect of the arrangements referred to at paragraphs 36 to 40 above appears to the DFSA on reasonable grounds to have been the investment management, in the exercise of discretion for a collective purpose, of Investments, that is Shares in the Operational Company or in companies acquired by the Operational Company and Real Property owned by the Investment Company, the Operational Company or its subsidiaries, for the benefit of shareholders in an Investment Company. In reaching that finding the DFSA has taken into account:

(1) the Marketing Material referred to at paragraph 21 above;

(2) the terms of the Subscription Forms in providing for an incentive fee based on the returns generated on an investment in the Investment Company;

(3) the assets overview, exit strategy and financial returns described in the Marketing Material;

(4) the private equity overview dated February 2015 which describes the role of Al Masah Cayman in managing, through four platforms, 65 private equity investments through controlling stakes in small to mid-cap companies, to create value on exit; and

(5) that the business model of Al Masah Cayman falls within the definition of a Private Equity Fund at CIR Rule 3.1.6 through its investment in unlisted companies by means of Shares or otherwise.

43. Each of the funds was a Foreign Fund as defined in Article 13 of CIL as the Investment Companies were not established or domiciled in the DIFC and were not External Funds as defined in Article 14 of CIL, as they were not managed by a Fund Manager that was an Authorised Firm.

44. As defined in Schedule 1 of CIL the rights or interests of the investors participating in the arrangements set out at paragraphs 36 to 40 above were Units. The Subscription Forms, which formed part of the Marketing Material, set out the contractual basis for

the prospective investor's investment and constituted an Offer of a Unit of a Fund to a prospective or existing Unitholder under Article 13 of CIL.

45. Under Article 19 of CIL the Offer of Units in the Funds contained in the Subscription Forms was made by the Investment Company offering shares and by Al Masah Cayman, which had made arrangements for the issue of shares, on whose behalf the Subscription Form was signed, which managed the placement for the Investment Company, and whose fees were agreed under the Subscription Form.

Misleading and deceptive statements in relation to fees

46. The Marketing Material referred to in Annex D, and the Subscription Forms, were communicated to prospective investors by Al Masah DIFC acting on behalf of Al Masah Cayman.

47. The statements made in the Marketing Material, and the Subscription Forms, as to the fees to be paid out of the share capital of the Investment Company or to be received by Al Masah Cayman were misleading, deceptive and not fair to investors in that:

(1) the disclosure of annual management fees, payable out of the assets of the Investment Company to Al Masah Cayman, impliedly represented that there were no other fees arising from the capital subscription made by the investor to be paid by the Investment Company to Al Masah Cayman; and

(2) the Placement Fees of up to 10% of the capital subscription to be made by the investor and payable to Al Masah Cayman were more material to an investor's decision to invest than the annual management fees.

48. Further, the following points are relevant to assessing knowledge and intention in relation to the statements described in paragraph 47 above:

(1) the disclosure of annual management fees demonstrates that Al Masah DIFC and Al Masah Cayman appreciated that the payment of substantial fees from the Investment Company to Al Masah Cayman in respect of the investment to be made by the investor would be material to the investment decision;

(2) the fact that the Placement Fees were not disclosed in any of the Marketing Material or Subscription Forms demonstrates that the omission of the reference to Placement Fees was not inadvertent but a deliberate policy; and

(3) the facts referred to at paragraphs 29 to 34 above corroborate the finding that the omission of Placement Fees from the fees disclosed in the Marketing Material was a deliberate policy.

49. Al Masah DIFC acting on behalf of Al Masah Cayman also communicated to shareholders of ANEL and to prospective investors:

(1) the 2013 and 2014 annual reports of ANEL containing the falsified financial statements of ANEL for 2013 and 2014;

(2) the falsified 2013 financial statements of ANEL; and

(3) the false information sent to Investor A as to Placement Fee income received by Al Masah Cayman,

as set out at paragraphs 29 to 34 above.

50. Those annual reports and financial statements were misleading, deceptive and not fair to investors in deliberately concealing the Placement Fees paid to Al Masah Cayman, in the circumstances set out at (1) and (2) at paragraph 47 above, and in falsely representing that the financial statements included in the annual reports complied with applicable accounting standards and were those which had been approved by the board of directors, audited by the auditors and were subject to the auditors' report.

51. The false information sent to Investor A was communicated to a prospective investor in the context of discussions about the valuation of investments in the Investment Companies. The email was misleading, deceptive and not fair to investors for the reasons given at paragraph 34 above.

52. The annual reports for ANEL had been produced and distributed without the knowledge or approval of the auditors. At a meeting with Mr. Singhdeo and Mr. Lim held on about 22 November 2015 the auditors required ANEL to withdraw the annual reports, and write to shareholders notifying them of the material omissions and discrepancies in the financial statements contained in the annual reports and the audited financial statements.

53. Instead, investors received an email drafted by Mr. Singhdeo and Mr. Lim describing the reason for the retraction of the financial statements as "*printing errors*". Mr. Singhdeo had been directly involved in the discussion with the auditors about the

retraction, and was aware that the changes to the financial statements were deliberate and could not reasonably be described as printing errors.

CONTRAVENTIONS

54. Having regard to the facts and matters set out in this Notice, the DFSA has decided that Al Masah DIFC committed the contraventions set out below.

Misleading or deceptive statements in relation to Funds

55. Article 56(2) of CIL prohibits a person, in or from the DIFC, from making a misleading or deceptive statement in relation to a Fund or in connection with an Offer of Units, whether in the DIFC or elsewhere.

56. As set out in paragraphs 46 to 51 above, during the Relevant Period, Al Masah DIFC contravened Article 56(2) of CIL by making misleading or deceptive statements in relation to the Funds.

57. Article 57 of CIL contains defences to the misconduct prohibited in Article 56 of CIL, including, in summary:

(1) a reasonable belief that the statement or omission was not misleading or deceptive following the making of reasonable enquiries (Article 57(1)); and

(2) reasonable reliance placed on information given by a non-related party (Article 57(2)).

In the circumstances set out at paragraphs 29 to 34 above these defences do not apply.

Contravention of the general prohibition against misleading or deceptive conduct

58. Article 41B of the Regulatory Law (in force from 21 August 2014 onwards) prohibits a person from, in or from the DIFC, engaging in conduct in connection with a Financial Product or a Financial Service that is misleading or deceptive or likely to mislead or deceive.

59. GEN Rule 2A.1.1 specifies that a Financial Product includes an Investment (which includes a Security such as a Share or a Unit). Under GEN Rule 2.2.1, an activity constitutes a Financial Service if it is an activity specified in GEN Rule 2.2.2 and the activity is carried on by way of business in the manner described in GEN section 2.3.

Under GEN Rule 2.2.2, the activities specified include “Arranging Deals in Investments” and “Managing a Collective Investment Fund”. The conduct was in connection with the rights or interests of investors in Shares or Units, and in connection with Arranging Deals in Investments and Managing a Collective Investment Fund.

60. By reason of the conduct set out in paragraphs 29 to 34 above, Al Masah DIFC engaged after 21 August 2014 in conduct in connection with a Financial Product and a Financial Service that was misleading or deceptive or likely to mislead or deceive, in contravention of Article 41B of the Regulatory Law.

Contraventions of COB Rule 3.2.1 and GEN Rule 4.2.6

61. COB Rule 3.2.1 provides that when communicating information to a person in relation to a Financial Product or Financial Service, an Authorised Firm must take reasonable steps to ensure that the communication is clear, fair and not misleading.

62. By reason of the facts set out in paragraphs 46 to 51 above, Al Masah DIFC contravened COB Rule 3.2.1 by not taking reasonable steps to ensure that the Marketing Material it communicated to investors was clear, fair and not misleading.

63. GEN Rule 4.2.6 (Principle 6) requires an Authorised Firm to pay due regard to the interests of its customers and to communicate information to them in a way which is clear, fair and not misleading.

64. By reason of the facts set out above in paragraphs 46 to 51, Al Masah DIFC contravened GEN Rule 4.2.6 by not paying due regard to the interests of its customers and by communicating information to them that was not clear, not fair and misleading.

ACTION

65. In deciding whether to take the action specified in this Notice, the DFSA has taken into account the factors and considerations set out in paragraph 6-2-1 and section 6-3 of the DFSA’s Regulatory Policy and Process Sourcebook (**RPP**).

66. The DFSA considers the following factors to be of particular relevance in this matter:

(1) 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) of the Regulatory Law);

(2) the importance of ensuring that investors in Funds marketed in or from the DIFC are not misled by those marketing such Funds;

(3) the importance of deterring Authorised Firms from committing similar contraventions; and

(4) the nature, seriousness and impact on investors of the contraventions.

67. The failure to disclose the Placement Fees payable in respect of any investment in shares in the Investment Companies from 2012 to 2016 in any Marketing Material, or in the Subscription Forms, is only consistent with a deliberate policy that such information should not be disclosed to investors. Al Masah DIFC has not produced any evidence that Placement Fees were disclosed to any investor.

68. The senior management of Al Masah DIFC included:

(1) Mr. Dash, the Senior Executive Officer and a Licensed Director; and

(2) Mr. Singhdeo the Finance Officer and a Senior Manager.

69. The senior management of Al Masah DIFC was involved in steps taken to conceal information which might have disclosed the payment of Placement Fees from the Investment Companies to Al Masah Cayman as follows:

(1) the alteration of the financial statements to be included in the 2013 and 2014 ANEL annual reports was known to and approved by Mr. Dash and Mr. Singhdeo;

(2) the sending of the 2013 ANEL annual report to Distributor B, instead of the audited financial statements requested which would have disclosed Placement Fee income, was the subject of email discussion involving Mr. Dash; and

(3) the false and deceptive information to be sent to Investor A was the subject of email discussion involving Mr. Dash and Mr. Singhdeo.

70. The proper disclosure of information relating to Placement Fees was material to the decision of an investor as to whether to invest in the Investment Companies. The effect of the Placement Fee Agreements was that up to 10% of the amount of each

investment would be paid out of the share capital of the Investment Company thus reducing the value of the equity invested.

71. Shareholders in ANEL and other investors to whom the ANEL 2013 and 2014 annual reports or financial statements were communicated were misled by misrepresentations as to the status and content of the financial statements.

72. As set out in paragraphs 52 and 53 above, senior management of Al Masah DIFC were resistant to making proper disclosure to shareholders in ANEL of the fact that the 2013 and 2014 annual reports contained material omissions, as required by the auditors, and sought to minimise the seriousness of the misstatements which had taken place.

73. Although Al Masah DIFC did not directly benefit from the payment of Placement Fees to Al Masah Cayman it did benefit indirectly from the success in marketing the Funds on a misleading basis.

74. 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

75. 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

76. The deliberate concealment from investors of the Placement Fees enabled such fees to be paid to Al Masah Cayman. Accordingly, this step is not considered to be relevant in relation to Al Masah DIFC.

Step 2 – The seriousness of the contraventions

77. The DFSA considers Al Masah DIFC's contraventions to be serious for the following reasons:

(1) the detriment to investors in being deprived of information which was material to their investment decision;

(2) the non-disclosure of Placement Fees payable to Al Masah Cayman was a deliberate policy; and

(3) over the period from 29 June 2011 to 23 March 2016 Al Masah Cayman received undisclosed Placement Fees of at least US$29.8 million from the Investment Companies.

78. Taking the above factors into account, the DFSA considers that a financial penalty of US$1,000,000 appropriately reflects the seriousness of the contravention.

Step 3 – Mitigating and aggravating factors

79. In considering the appropriate level of the financial penalty, the DFSA had regard to the circumstances of this matter and the mitigating or aggravating factors set out in RPP 6-5-8.

80. The steps taken to conceal the payment of Placement Fees or their true amount in:

(1) the 2013 and 2014 annual reports and financial statements of ANEL;

(2) the emails referred to at paragraphs 32 to 34 above; and

(3) resisting the requirement of the auditors of ANEL that proper disclosure should be made of the material omissions in the 2013 and 2014 annual reports,

were an attempt to cover up the failure to have made proper disclosure in the Marketing Material, and this is an aggravating factor.

81. Accordingly, the DFSA considers it appropriate to increase by 50% the figure after Step 2.

82. Therefore, the figure after Step 3 is US$1,500,000.

Step 4 – Adjustment for deterrence

83. 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.

84. The DFSA considers it important to demonstrate to authorised firms that conduct, involving deliberate non-disclosure of material information to investors, and steps subsequently taken to conceal from investors the fact that undisclosed fees had been received, will be treated seriously. However the DFSA considers that the figure arrived at after Step 3 is sufficient to meet its objective of credible deterrence, and should not be increased at Step 4.

Step 5 – Settlement discount

85. Where the DFSA and the person 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. There has been no settlement agreement and no discount is to be applied under Step 5.

The level of the Fine imposed

86. Given the factors and considerations set out in paragraphs 75 to 85 above and the circumstances of this matter, the DFSA has determined that it is proportionate and appropriate to impose on Al Masah DIFC a fine of US$1,500,000.

EFFECTIVE DATE OF THE DECISION

87. This decision takes effect on the date of this Notice and the Fine must be paid to the DFSA no later than 60 days from the date of the Notice.

PROCEDURAL MATTERS

Decision Making Committee

88. The decision to which this Notice relates was made by Charles Flint QC, a non-executive director of the DFSA, acting as the Decision Making Committee of the DFSA.

89. This Notice is given to Al Masah DIFC under Paragraph 5 of Schedule 3 to the Regulatory Law.

Evidence and other material considered

90. In accordance with Paragraphs 5(2) and 5(3) of Schedule 3 to the Regulatory Law, the DFSA has considered the following materials in making its decision:

(1) the relevant materials provided with the Preliminary Notice;

(2) the written representations made on behalf of Al Masah DIFC on 20 June 2019 and the materials provided with those representations;

(3) the Enforcement response dated 1 August 2019 to the representations referred to in (2) and the materials provided with that response; and

(4) the representations made on behalf of Al Masah DIFC and Enforcement at the hearing on 16 and 17 September 2019 and the materials provided at the hearing.

91. Annex B sets out extracts from relevant statutory and regulatory provisions and guidance relevant to this Notice.

Representations

92. In accordance with Paragraph 4(1) of Schedule 3 to the Regulatory Law, Al Masah DIFC was given the opportunity to make representations to the DFSA in person and in writing concerning the DFSA's decision.

93. Written representations on behalf of Al Masah DIFC were submitted to the DFSA on 20 June 2019.

94. Enforcement was given an opportunity to comment on the written representations made by Al Masah DIFC and provided a written response on 1 August 2019.

95. Representations were then made in person to the DFSA on behalf of Al Masah DIFC and on Enforcement's behalf on 16 and 17 September 2019.

96. Annex A contains a summary of the main points made on behalf of Al Masah DIFC in its representations and the DFSA's responses on those points. In making the decision the DFSA has taken into account all of the representations made on behalf of Al Masah DIFC, whether or not set out in Annex A.

Referral to the Financial Markets Tribunal ("FMT")

97. Under Articles 29 and 90(5) of the Regulatory Law, you have the right to refer the matter to the FMT for review. The FMT is operationally independent of the DFSA and has the power to conduct a full merits review of the matter.

98. Should you wish to have this matter reviewed by the FMT, you must exercise that right within 30 days of the date of this decision.

99. Proceedings before the FMT are commenced by submitting a Notice of Appeal (Form

FMT 1) to the registrar of the FMT. The fee specified in section 4.2 of the Fees Module of the DFSA Rulebook must also be paid to the DFSA at the same time as the Notice of Appeal is filed with the registrar of the FMT.

100. The FMT Rules of Procedure, as well as the template of Form FMT 1 and the Registrar's contact details can be found on the DFSA's website at https://www.dfsa.ae/en/About-Us/Our-Structure#Financial-Market-Tribunal

101. Please note that under Paragraph 26 of the FMT Rules of Procedure, you must send a copy of Form FMT 1 to the DFSA on the same date it is filed with the Registrar of the FMT.

Publicity

102. 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.

103. RPP 5-17-2 is relevant to the publication of information about the matter to which this Notice relates. It provides that the DFSA will generally publish, in such form and manner as it regards appropriate, information and statements relating to enforcement actions.

104. RPP 5.17.9 to 5.17.11 are also relevant to when information will be published about a matter that may be referred to the FMT.

105. As the DFSA has decided to give you a Decision Notice, your representations may ultimately be made public in the event that this Decision Notice is published.

DFSA contacts

106. 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:

……..

Charles Flint QC

On behalf of the Decision Making Committee of the DFSA

ANNEX A

REPRESENTATIONS

A summary of the main points made by the Respondents are in italics. The Decision Maker's responses on those points are set out under the italicised text.

Except as specified all references to a paragraph in a Preliminary Notice are to the Notice[1] addressed to Al Masah Cayman.

Issue 1 – Did the arrangements constitute a Collective Investment Fund?

1.1 - Were the "Investment Companies" Funds?

1. *The Respondents contend that the Investment Companies were not Collective Investment Funds ("Funds") as defined in CIL for the reasons explained below.*

2. *First, the exclusion in CIR Rule 2.1.10 (Bodies corporate not undertaking investment management) applied to the Investment Companies. The purpose and effect of each of the Investment Companies was not investment management; it was to manage businesses for profit and capital gain. Further, there was no management of "Investments" or "Real Property" (as defined in the DFSA Rulebook) that would take them outside the scope of the exclusion. The property which was being managed was, for example, the underlying healthcare and educational facilities rather than Investments (such as a portfolio of shares). The fact that the businesses were conducted through underlying companies does not affect that analysis. Therefore, the arrangements fell within the scope of the exclusion.*

3. *Second, the arrangements do not meet the definition of a Fund in CIL as there is no property which can properly be regarded as being the subject of arrangements comprising a Fund. Investors subscribed for shares in the Investment Companies. Any arrangements related only to the Investors subscribing for shares in the Investment Companies and not to any other property. It makes no sense to say that those shares were pooled or managed as a whole and investors had no legal interest in the underlying assets of the Investment Companies.*

4. *Third, the condition in Article 11(1)(c)(i) of CIL is not satisfied. Even if investor contributions were pooled (which the Respondents do not admit), the profits from which payments were made to investors were not. Pooling refers to a commingling of previously separate interests, such as where profits generated by each investor's separately owned property are paid into a general fund. When a company pays dividends to different investors from one company account, no pooling of separate interests has taken place: rather the company is simply using its funds to pay debts owed to each investor.*

1. Under Article 11 of CIL the relevant arrangements comprise not only legally binding arrangements but also any understanding shared between the parties to the transaction about how the scheme would operate (see *FCA v Asset Land* at para 91). In this case, the arrangements are contained in and clearly evidenced by the subscription form and the offer document referred to in the form. The parties to those arrangements are the investor, the Investment Company and Al Masah Cayman as manager of the Investment Company. The business plan of the Investment Company,

[1] A reference to a paragraph in the Preliminary Notice may have changed in the Decision Notice.

as set out in the offer document, is that of a private equity fund acquiring assets with an exit strategy and has an investment purpose.

2. The relevant property comprised the Investment Company, its shareholding in the Operational Company and assets to be acquired by the Operational Company. The assets to be acquired consisted mainly of shares in unlisted companies which held the underlying businesses and assets. However in the case of ANEL the Investment Company also held substantial investment properties, as evidenced by the 2014 accounts (Ex 401) which disclose investment properties valued at US$30 million, and investments in subsidiaries at US$7.5 million. The incentive fee referred to in the subscription form was to be based on the returns generated on the investment in the Investment Company.

3. Article 11(1)(c) of CIL requires either pooling of contributions and profits, or management as a whole. Subject to the Fund Manager point (see below) it is not disputed that there was management as a whole. Under these arrangements income and profits were pooled in the accounts of the Investment Company so as to enable payments to be made to investors. The reference to "loss of control" in *FCA v Asset Land* at para 98 applies to the contributions made by Unitholders, not to the profits generated in the scheme by assets which are not under the control of any individual Unitholder. Article 11(1)(c)(i) does not require that the investor contributes both his contribution and the assets from which profits are to be paid. The profits are pooled in the accounts of the Investment Company and the Operational Company.

4. It is correct that under the arrangements, the profits or income were to be derived mainly from the underlying businesses and assets held by the subsidiaries, the shares in which were held by the Operational Company. The argument is that this was not investment management of Investments, that is Shares, but management of the underlying businesses and assets. This argument is rejected for the following reasons:

   (i) The focus of CIR Rule 2.1.10 is on the purpose and effect of the relevant arrangements. As between the parties to those arrangements, that is the investor, the Investment Company and the manager, the purpose of the arrangements was to enable an investor to participate in a private equity fund holding shares in a portfolio of operational subsidiaries, with a number of potential exit routes including a strategic sale of the Operational Company, an IPO or a trade sale of shares to financial investors. The arrangements thus did comprise the investment management of Shares in the subsidiaries of the Operational Company. The active management and development of the underlying operational businesses to create value on exit is not inconsistent with a finding that the purpose of the manager and the investor is the investment management of Shares, with a view to a sale.

   (ii) The investments held by the Operational Company, which was wholly owned by the Investment Company, were Shares in the operating subsidiaries, not the businesses and assets of those subsidiaries. It is not necessary for CIR Rule 2.1.10 to apply to show that that the Shares were held for the short term with a view to trading, or that investors took profits by the redemption of Units. In this case the purpose of the arrangements was to achieve a profitable exit for investors when the subsidiary companies could be sold at the best price.

   (iii) The definition of a Private Equity Fund at CIR Rule 3.1.6 covers the relevant arrangements in this case, as the fund was to invest by means of Shares in unlisted companies. If the Respondents' argument were correct it is difficult to see how any private equity fund in the form of a Body Corporate or Partnership

could meet the definition of a Fund, as all such funds would seek to manage an underlying operational business to add value with a view to a sale. Read together the clear intention of the relevant rules is that a private equity business is to be regarded as a Fund.

5. The DFSA has reasonable grounds for determining that the purpose and effect of these arrangements was the investment management of Investments comprising Shares in the subsidiaries of the Operational Company, and as noted at paragraph 2 above Real Property. The exclusion set out in CIR Rule 2.1.10 does not apply.

1.2 – Was Al Masah Cayman a "Fund Manager"?

1. The Respondents do not admit that a Foreign Fund can have a Fund Manager as defined in Art 20(2) of CIL, but submit that in any event Al Masah Cayman could not have been a Fund Manager in respect of the Investment Companies or any relevant property. This is because one element of the Fund Manager definition under Article 20 of CIL requires the person to be legally accountable to the Unitholders in the Fund for the management of the Fund, including the property held for or within the Fund. Al Masah Cayman was not legally accountable to the investors for the management of those companies or any relevant property. The test of legal accountability in this Article requires a clear legal duty rather than a speculative or hypothetical duty.

2. Al Masah Cayman's appointment as proxy under the terms of the Subscription Forms gave it no right to manage either the Investment Companies or the underlying property which is alleged to be the subject of arrangements comprising a Fund. The contractual duties Al Masah Cayman owed to the Investment Companies under the Management Agreements were not owed to investors and the Subscription Forms did not impose on it any managerial functions, or any accountability to investors. Al Masah Cayman therefore cannot be said to have been legally responsible to investors for the management of relevant property.

1. It is clear that Al Masah Cayman did manage the Investment Companies, but the point taken is whether Al Masah Cayman was legally accountable to Unitholders so as to fall within the definition of Fund Manager at Article 20(4) of CIL.

2. The definition of "Fund Manager" is dealt with in more detail under Issue 2. The purpose of the provision for legal accountability in Article 20(2) of CIL and GEN Rule 2.12.1 is to identify the person who is to be regarded as the Fund Manager. The words "legally accountable" are wide in scope, and do not require that the function of management be contained in a contract between each Unitholder and the putative manager. A person who establishes or winds up a fund is unlikely to have a contract with Unitholders, yet he may be treated as the Fund Manager as contemplated by GEN Rule 2.12.1.

3. Under the relevant arrangements the investor did enter into a contract with Al Masah Cayman under which it accepted the responsibility of acting as manager of the Investment Company and in consideration of so acting was entitled to an annual management fee from the Investment Company and an incentive fee from the investor. In order to ensure that it had control and management of the Investment Company, Al Masah Cayman was granted a proxy by the investor for company meetings; a power which gave rise to a duty to exercise it for proper purposes. Al Masah Cayman was thus legally accountable to investors for management of the Investment Company. However, for the reasons given above this point is not material as the arrangements fell within Article 11(1)(c) in any event on the basis that

contributions and profits or income were pooled.

Issue 2 - If the Investment Companies were Funds, did Al Masah Cayman Offer Fund Units contrary to Article 50 of CIL?

The Respondents submit that it is inconsistent for the DFSA to argue that Al Masah Cayman contravened Article 50(1)(b) of CIL by offering Units to prospective investors in circumstances where it was not a Fund Manager, when the DFSA alleges elsewhere in the Notice that Al Masah Cayman was the Fund Manager of the Investment Companies. If the DFSA is to contend that CIL should be interpreted as using the term Fund Manager in different senses in different provisions, it should both justify that interpretation and recognise that the regime is unclear.

1. Paragraph 15 of the representations raises the point whether the words "Fund Manager" in Articles 11 and 50 (1) of CIL can have the same meaning when the first provision is alleged to apply to Al Masah Cayman and the second is not.

2. The issue arises from the general definition of Fund Manager given at Schedule 1 and Article 20(4) of CIL. Schedule 1 expressly provides that definitions apply unless the context indicates otherwise.

3. Article 20 of CIL restricts the management of Domestic Funds; it does not deal with Foreign Funds which are the subject of this case. Article 20(4) does not purport to provide an exhaustive definition of the term; the Article provides that Fund Manager includes an Authorised Firm which manages a Domestic Fund and an External Fund Manager. Nor does Article 20(4) cross refer to Article 20(2) to provide that legal accountability to unitholders is necessary for the definition to apply.

4. On a proper construction of Article 11(1)(c) of CIL, the reference to the Fund Manager must include an unauthorised person acting in that role, whether or not that person has legal accountability to Unitholders. Otherwise, in the case of funds where contributions and profits are not pooled, the provision for management as a whole could be circumvented in every case by an unauthorised Fund Manager, so that the arrangements would not fall within the scope of Article 11.

5. On the other hand the marketing prohibition at Article 50 of CIL is to be read differently. The exclusion at (b) applies to the Fund Manager or an Authorised Firm whose Licence authorises the activity. In that different context, the intention is clear that the Fund Manager will be authorised; otherwise the provision would be internally inconsistent. The purpose of the provision is that there should be compliance with the prospectus requirements, the offer should be made in accordance with the law and Rules, and be made by an Authorised Firm. That interpretation would also be consistent with Article 54 which proceeds on the basis that only an Authorised Firm may market Foreign Funds.

6. For those reasons Al Masah Cayman, as an unauthorised Fund Manager, did contravene the prohibition on marketing of Funds in Article 50 of CIL.

Issue 3 - Was Al Masah Cayman Arranging Deals in Investments?

The Respondents contend that Al Masah Cayman was not Arranging Deals in Investments, as it was a party to the relevant transactions and hence fell within the exclusion in GEN Rule 2.9.2. The relevant transactions in this context are the investors' subscriptions for shares in the Investment Companies. Al Masah Cayman was a party to these transactions as it signed the Subscription Forms, was appointed to act as proxy by each investor and each investor undertook certain obligations to Al Masah Cayman e.g. to pay an incentive fee and keep it indemnified.

1. There is no dispute that Al Masah Cayman made arrangements with a view to the investor buying or subscribing for Shares in the Investment Company, and thus, subject to any exclusion, made arrangements falling within GEN Rule 2.9.1. The deal in Investments which was arranged was the purchase by the investor of Shares in the Investment Company.

2. The exclusion at GEN Rule 2.9.2 applies if Al Masah Cayman is to be regarded as a party to the transaction. Read together with GEN Rule 2.9.1, the transaction referred to must mean the investment deal between the investor and the Investment Company, not any collateral agreement between the investor and the arranger relating to the terms on which the arranger offered its services to the investor.

3. Al Masah was a party to the subscription agreement but that agreement comprised both the transaction under which the Investment Company agreed to issue shares to the investor, and the terms on which Al Masah Cayman, as arranger, had agreed to introduce the investor to the transaction. Al Masah was not the party liable to perform the obligation to allot shares, and thus was not a party to that transaction, so that the exclusion at GEN Rule 2.9.2 does not apply.

Issue 4 - Did Al Masah Cayman make Financial Promotions?

1. The Respondents submit that Al Masah Cayman did not make financial promotions in or from the DIFC in breach of the Financial Promotions Prohibition in Article 41A of the Regulatory Law as:

   i. all marketing activities in the DIFC were carried out by Al Masah DIFC pursuant to its Licence, or by Kotak Mahindra Financial Services Ltd ("Kotak"); and

   ii. those marketing activities in the DIFC are not attributable to Al Masah Cayman because neither Al Masah DIFC nor Kotak were acting as Al Masah Cayman's agent.

2. The Respondents say there is no basis under the law for concluding that an agency relationship existed between Al Masah Cayman and either Al Masah DIFC or Kotak, as:

   (a) the basis on which Al Masah DIFC and Kotak marketed shares in the Investment Companies for Al Masah Cayman was governed and evidenced by the contractual arrangements between them. Those arrangements did not exhibit characteristics essential to an agency relationship, such as: (i) the agent representing or being identified with the principal; (ii) the agent having the ability to affect legal relations between the principal and third parties; and (iii) the agent owing fiduciary duties to the principal;

   (b) neither Al Masah DIFC nor Kotak were authorised to enter into contracts on

behalf of Al Masah Cayman without its approval. That is a significant factor indicating that no relationship of agency existed; and

(c) Al Masah DIFC was a subsidiary of Al Masah Cayman. It will not lightly be inferred that a subsidiary company is the agent of its parent, as to do so defeats the purpose of a corporate structure which creates separate legal entities.

3. The Respondents also argue that it is not sufficient for the DFSA to state in the Preliminary Notices that, when dealing with Investors and communicating Marketing Material, directors and employees' acts and omissions can be attributed to both Al Masah Cayman and Al Masah DIFC. There needs to be some logical basis for attributing the acts or omissions to one entity or the other.

1. The issue concerns the rules of attribution, which is a question of construction of the relevant laws and Rules, against the factual background. It is not necessary to establish that in making financial promotions Al Masah DIFC was acting as agent for Al Masah Cayman. The issue as to which company or companies made the Financial Promotions in or from the DIFC depends on the substance, not the form, of the activity (see *Khorafi v Sarasin* CA 2016 at para 331).

2. Many of the promotions expressly stated that "This document is being distributed by (Al Masah DIFC) on behalf of (Al Masah Cayman)", which is described as the investment manager and placement agent. The investment being promoted was an investment in a private equity fund managed by Al Masah Cayman, on the terms set out in the Subscription Form and term sheet in the offer document. The investors entered into a contract with Al Masah Cayman and were generally treated as clients of that company, not Al Masah DIFC. It is accepted that marketing material was made available on the Al Masah Cayman website. The employees engaged in promotional activities from the offices of the Al Masah Group in the DIFC, were employees of Al Masah Cayman. Under the Management Agreements with the Investment Companies, Al Masah Cayman was responsible for capital raising, and that function had not been sub-contracted to Al Masah DIFC.

3. On the evidence Al Masah Cayman did make Financial Promotions in or from the DIFC in contravention of Article 41A of the Regulatory Law.

Issue 5 - If Al Masah Cayman did make Financial Promotions, were they Exempt Financial Promotions?

1. The Respondents submit that even if Al Masah Cayman made Financial Promotions, it did not contravene Article 41A(1) of the Regulatory Law as any Financial Promotions were exempt Financial Promotions by virtue of GEN Rule 3.4.1. This is because there is clear evidence, which the DFSA has disregarded, that all Financial Promotions were in fact approved by Al Masah DIFC. The fact that Financial Promotions did not contain an express statement that they had been approved, is neither evidence nor proof that such approval was not given.

2. The Respondents further submit that the Subscription Forms are not Financial Promotions as defined in Article 41A of the Regulatory Law, as they do not invite or induce a Person to do either of the things referred to in sub-sections (3)(a) or (b) of that Article. They are the very agreements at which any Financial Promotions were directed and a contractual document cannot be said to be promoting itself. The Subscription Forms did not, therefore, require Al Masah DIFC's approval. In addition,

the sending of annual reports to existing investors does not of itself constitute a Financial Promotion and so no approval of the annual reports was necessary.

1. Under GEN Rule 3.6.1 Al Masah DIFC was required not to approve a Financial Promotion unless it included a clear and prominent statement that it had been so approved. The absence of such a statement from much of the Marketing Material raises an inference that such material was not so approved.

2. The very general evidence that financial promotions were checked by compliance does not establish that they were approved by Al Masah DIFC. Annex D provides evidence as to which promotions were approved, based on internal evidence provided by Al Masah DIFC, but that extends only to a minority of the promotions.

3. A subscription form sent to a prospective investor invites or induces the recipient to enter into the agreement proposed by signing the form, and thus constitutes a financial promotion falling within the definition at Article 41A Regulatory Law. The annual reports of ANEL were financial promotions if sent to prospective investors to induce the investor to enter into an agreement to acquire units in the funds promoted by Al Masah Cayman.

Issue 6 - Were misrepresentations made in communications to investors?

6.1 Fees representation

1. The Respondents do not accept that a false implied representation was made to the effect that, other than annual management fees, no fees arising from the capital subscription made by the investor would be paid to Al Masah Cayman by the relevant Investment Company. They contend that, based on the following analysis, no such representation was implied.

2. Whether a representation is to be implied from words or conduct is a question of law. The test is objective: what a reasonable person, having the characteristics and knowledge the investors appeared to the Respondents to have, would have understood from the words used in the context in which they were used. In this case the investors were of three kinds: (i) institutions such as banks and government entities; (ii) companies and trusts and investment vehicles; and (iii) high net worth individuals. Such prospective investors can be taken to be sophisticated and to be able to evaluate, or to have access to expert advice which enables them to understand, three things which prevent an implied representation arising:

   i. the Investment Companies could lawfully pay brokerage under Cayman Islands law;

   ii. the Investment Companies were expressly permitted to pay brokerage under their Articles of Association; and

   iii. it was common market practice to pay brokerage, and in particular for brokerage to be paid to the placement agent.

3. The Subscription Forms are contractual documents and must be interpreted as such. The language they contain regarding the annual management fee is not a representation at all, but an acknowledgement by the investor that such a fee is payable to Al Masah Cayman; intended to contractually estop the investor from

claiming otherwise. There is no representation made by anyone in these documents regarding the management fees, let alone an implied representation that no other fees would be paid.

4. All of the investor presentations and teasers listed in Annex C to the Notice refer to the appointment of Al Masah Cayman as "Placement Agent". This is a standard role in private equity that carries with it an entitlement to compensation. A reasonable investor would know this. Further, these documents contain a disclaimer in the "Notifications" section about reliance on the information presented. That disclaimer prevents an investor from reasonably inferring he was being presented with unqualified or complete information. Finally, the pages in the investor presentations which refer to management or incentive fees are clearly intended to be a summary and do not purport to contain all potentially relevant or material information.

1. The contraventions alleged to arise under Articles 56(1) & (2) of CIL and Article 41B of the Regulatory Law focus on the statements made in communications to prospective investors. The issue is whether in fact and in their context the communications disclosing some fees payable to the manager, but omitting disclosure of the Placement Fees, was likely to mislead or deceive investors generally or some classes of investor.

2. It is accepted in the Respondents' representations at paragraphs 123 and 147.2.6 that it was a deliberate policy adopted by Al Masah Cayman not to disclose the amount of the Placement Fees in order to retain a competitive edge in the market. As the non-disclosure was intentional it is difficult to see how, as is suggested in the representations, investors should be taken to know that there were in fact undisclosed Placement Fees.

3. Conduct which is misleading or deceptive, or likely to mislead or deceive, or which omits from a document information necessary to make a statement not misleading or deceptive, may arise in cases where there is a misrepresentation which would not be actionable in law. The caselaw cited at paragraphs 77 to 81 and 83 to 88 of the Respondents' submissions would be relevant as to whether there was an actionable misrepresentation, but is not relevant to the misconduct alleged.

4. A person cannot by disclaimer or contract avoid or limit these regulatory provisions (see COB Rule 3.2.2). The disclaimers or notifications referred to at paragraphs 75, 78, 81 and 91 do not affect the import of the statements made in the Marketing Material. None of those notifications give any indication to investors of undisclosed fees, still less of their amount.

5. That certain classes of investor might, as a matter of contract, be taken to know that under Cayman Islands law or the Articles, the Investment Company was permitted to pay brokerage does not meet the case. On the evidence referred to in the Enforcement response at paragraphs 143 to 149 there were a number of investors who could not properly be treated as sophisticated investors, but in any event the relevant provisions apply to retail and professional clients.

6. In the offer documents a clear statement was made as to the fees to be paid to Al Masah Cayman as manager from the investment Company's capital. It was misleading or deceptive by omission not to disclose that the manager would also receive a fee of up to 10% of the investor's subscription.

6.2 Accounts representation

The Respondents admit that a representation was made in the 2013 and 2014 ANEL Annual Reports that the financial statements they contained were the audited and approved financial statements (the "Accounts Representation"), and that such representation was untrue. However, they contend that this representation was not made to prospective investors, other than possibly to Investor C via an intermediary. Rather, the Annual Reports were shared with: (i) referral agents as a corporate presentation so that they could understand the business; (ii) strategic partners such as Investor A; and (iii) members of the placement team in Singapore for investors in that market, which operated in a completely different regulatory regime. There is no evidence that these Annual Reports were given to prospective investors.

1. It is admitted that an untrue representation was made that the financial statements complied with applicable accounting standards, had been approved by the directors and were subject to an auditor's report. The representations do not address the more serious allegation at paragraph 53 of the Preliminary Notice that the annual reports and financial statements were misleading, deceptive and not fair to investors in deliberately concealing the Placement Fees paid to Al Masah Cayman. Nor do the representations seek to offer any explanation as to why falsified financial statements should have been prepared or shared with referral agents and others.

2. The denial that falsified annual statements were sent to prospective investors, save for Investor C, is contrary to the evidence referred to at paragraph 122 of the Enforcement response.

6.3 Investor A representation

The Respondents deny that a misrepresentation was made to Investor A that Al Masah Cayman's fees pertaining to the private equity platform consisted only of a specified sum in management fees. Rather, fees which could have been described in one way, for example, as placement fees were described in another equally legitimate way. This was in the context of a negotiation between sophisticated parties, who are well aware that fees could be described in different ways and could seek further particulars if they wish. In any case, Investor A was not a prospective investor, but a government entity in discussions with Al Masah Cayman about setting up a fund.

The misrepresentation alleged at paragraph 37 of the Preliminary Notice is very clear, and relates to the quantum of fee income on the private equity platform, not just as to the description of that fee income. The table of income totalling US14.34 million had been altered so as to reduce placement fee income from the true figure US9.98 million to US2.2 million, which lower figure was falsely represented not to relate to the private equity platform. This was a deliberate misrepresentation calculated to conceal the fact that Al Masah Cayman received substantial placement fees from private equity investors. The misrepresentation was made in the context of discussions with investor A about investment in the Investment Companies.

Issue 7 - Were communications to investors unclear, unfair or misleading?

The Respondents argue that, contrary to the DFSA's allegations, the existence of the Placement Fees was disclosed to prospective investors through a combination of the Investment Companies' Articles of Association and the Marketing Material. The Respondents argue that the non-disclosure of the level of the Placement Fees cannot make the

communications unclear, unfair or misleading as:

i. the obligations arising under COB and GEN cannot impose a duty of disclosure more onerous than that applicable to a fiduciary. Under relevant case law, even a fiduciary would not have been obliged to disclose the level of commission. It is not realistic in this situation to impose such a duty when it is obvious that the parties have contrary interests: the placement agent is trying to extract money from investors;

ii. the level of the Placement Fee was not material to the decision-making of prospective investors, based on the evidence of investors;

iii. the relevant investors were sophisticated and therefore could be assumed to know that, for this type of investment, a Placement Fee is normally deducted up front from the amount invested; and

iv. assessing fairness requires the interests of both parties to be considered. The level of Placement Fees was highly sensitive and confidential. As such, there were legitimate business reasons not to disclose the level of Placement Fees and so it was not unfair to withhold that information.

1. The issue is whether Al Masah DIFC contravened COB Rule 3.2.1 and GEN Rule 4.2.6, as alleged at paragraphs 61 – 64 of the Preliminary Notice issued to Al Masah DIFC.

2. Under Issue 6 it has been determined that the relevant misrepresentations constituted conduct which was misleading or deceptive or likely to mislead or deceive. It follows from that finding that there were also breaches of COB Rule 3.2.1 and GEN Rule 4.2.6.

3. The words “clear, fair and not misleading” are to be applied in their normal sense to the relevant information communicated. Principle 6 is a fundamental aspect of the regulatory system, reflecting the duty to customers. The duty of a fiduciary at common law or in equity is not an exact analogy, and the case law cited by the Respondents at paragraphs 107 – 113 cannot be deployed to limit the duty imposed by the Rules.

4. The statement at paragraph 47 of the Preliminary Notice issued to Al Masah DIFC that placement fees of 10% of capital subscribed were more material than the annual management fees disclosed is not essential to the case under COB Rule 3.2.1 and GEN Rule 4.2.6, but if correct would reinforce that case. It is a reasonable inference that most or at least some investors would have regarded an up front charge of 10% on the investor’s capital subscribed as being more significant than an annual management fee of 2% to be paid by the Investment Company. The evidence cited by the Respondents (at paragraphs 115 to 121) when considered in its full context (at paragraphs 143 – 149 of the Enforcement response) does not invalidate that inference from the evidence. The evidence cited at paras 150 – 151 of the Enforcement response strongly supports the inference.

5. Paras 122 – 123 of the Respondents’ representations asserts that there were legitimate reasons for not disclosing the level of Placement Fees, thus reaffirming that the non disclosure was deliberate and motivated by a commercial desire to preserve the competitive edge of Al Masah Cayman. That consideration cannot properly excuse communications which were misleading and not fair.

Issue 8 - Were Al Masah DIFC or Al Masah Cayman negligent in relation to any misrepresentations or communications which were unclear, unfair or misleading?

The Respondents admit that the Accounts Representation was negligent. Otherwise, if the Respondents are wrong in their submission that no other misrepresentations or unclear, unfair or misleading communications were made, they deny that any such misrepresentations or communications were made negligently by the corporate Respondents. The Respondents argue that all reasonable steps were taken to ensure that Marketing Material complied with the regulatory regime. Specifically:

(a) reliance was placed on a Compliance Officer, who was responsible for ensuring that marketing was undertaken in compliance with relevant legal requirements;

(b) all Marketing Material was sent to the Compliance Officer for checking to ensure it was not misleading or deceptive or likely to mislead or deceive; and

(c) *reliance was also placed on external legal advice from the law firm Walkers, who were responsible for drafting and checking various documents. It was on the advice of Walkers that the Placement Fees were not explicitly set out in the Marketing Material.*

1. Negligence is not the issue in relation to the contraventions alleged against Al Masah Cayman under Article 56 of CIL and Article 41B of the Regulatory Law, or against Al Masah DIFC under those provisions and GEN Rule 4.2.6. In each case the allegation is clear that the communications to prospective investors were objectively misleading.

2. COB Rule 3.2.1 requires proof that the firm did not take reasonable steps to ensure that the communications were clear, fair and not misleading. The allegation is that the communications reflected a deliberate policy to conceal Placement Fees. That this was a deliberate policy appears to be accepted in the representations made under Issue 7, referred to above.

3. In any event, Al Masah DIFC did not take any reasonable steps to meet the requirements of COB Rule 3.2.1. The assertion that the Compliance Officer was aware of the Placement Fees and reviewed the Marketing Material with that knowledge is inconsistent with her evidence that she did not know about the Placement Fees. The assertion that Al Masah's solicitors in Cayman advised that Placement Fees did not need to be disclosed is a misstatement of the effect of the email relied upon.

Issue 9 - Were the individual respondents knowingly concerned in contraventions by the bodies corporate?

1. The Respondents submit that to be knowingly involved in a misrepresentation, a person must at least have the dishonest state of mind required to establish a deceit claim. The Respondents contend that, even if the misrepresentations alleged were made, the DFSA has not given particulars either of the required dishonest state of mind of the individual Respondents, or the evidence from which the DFSA infers that state of mind.

2. Similarly, in relation to the allegation that the individual Respondents were knowingly concerned in communications which were unclear or unfair, the Respondents contend that the DFSA must give proper particulars to establish that those individuals knew

that communications were unclear or unfair and has failed to do so.

3. *Aside from the Accounts Representation, the Respondents' position is that none of the individual Respondents were knowingly concerned in a misrepresentation or an unclear or unfair statement being made, for the following reasons:*

   (a) *each of Mr Dash, Mr Singhdeo and Mr Lim placed reasonable reliance on the internal and external professionals responsible for the Marketing Material to ensure that they complied with relevant laws; and*

   (b) *in relation to the email chain with Investor A on which the DFSA relies, there is nothing in that email chain which is inconsistent with an honest attempt, on the part of all three individual Respondents, to describe fee income in a legitimate way.*

4. *As regards the Accounts Representation, the Respondents contend that none of the Individual Respondents were aware at the relevant time that the 2013 and 2014 ANEL Annual Reports contained a misrepresentation, because:*

   (a) *Mr Dash and Mr Singhdeo were not aware of the Accounts Representation until November 2015;*

   (b) *Mr Dash was not involved in preparing the 2013 and 2014 ANEL Annual Reports, nor was he involved in implementing the Board of ANEL's decision not to refer to Placement Fees in those reports;*

   (c) *Mr Singhdeo did not check to ensure that the decision taken by the Board of ANEL not to disclose the Placement Fees in those reports was properly implemented; and*

   (d) *Mr Lim did not appreciate that the false Accounts Representation was being made in the 2013 and 2014 ANEL Annual Reports; he is not an accountant and relied on others to ensure that the financial statements were presented and characterised properly.*

5. *As regards the allegations that Al Masah Cayman was carrying on Financial Services and making Financial Promotions without the required authorisation, the Respondents submit that even if those allegations are true, there is no evidence that Mr Dash was knowingly concerned in it doing so.*

1. "Knowingly concerned" is defined at Article 86(7) of the Regulatory Law. The relevant aspects of the Article are aiding and abetting a contravention, or being knowingly involved in the contravention. As defined, the term has the same effect as used in section 382 FSMA. Applying *FCA v Capital Alternatives* [2018] 3 WLUK 623 at paragraphs 799 – 802, it is necessary to establish both actual knowledge of the facts which constitute a contravention and actual involvement in the contravention. It is not necessary to prove knowledge that the conduct did amount to a contravention, nor dishonesty.

2. It is indisputable that Mr Dash as CEO of Al Masah Cayman knew that the company was not authorised to carry on any regulated activities in or from the DIFC. Reliance on the assertion that the Compliance Officer had reviewed the Marketing Material does not provide any answer to the case that Mr Dash was knowingly concerned in misleading or deceptive statements made in the marketing material. Mr Dash does not

dispute that it was a deliberate policy not to disclose placement fees to prospective investors, and it is accepted that members of the Board made the decision that Placement Fees should not be disclosed in financial statements.

3. It is not necessary that each of the relevant dissemination of documents should be analysed in detail, but it is important to determine whether there is documentary evidence which establishes that Mr Dash had knowledge of the communication of false and deceptive information, and involvement in that communication. The evidence directly supports the allegation that Mr Dash was knowingly concerned in the following misleading or deceptive communications referred to in the Preliminary Notice addressed to him:

> Para 59 (1) – Investor A – in the email sent on 9 September 2014 Mr Dash gave an instruction that the table disclosing placement fee income of US9.9 million should not be sent, having made a suggestion that placement fee income could be reduced to 3% in the information disclosed; the emails at Ex 723a and 728 showing how the placement fee income had been reduced to US2.2 million were copied to Mr Dash, and are inconsistent with the assertion that this was an honest attempt to describe fees in a legitimate way.
>
> Para 59 (2) – ANEL financial statements and annual reports 2013 and 2014 – the facts asserted are supported by the documentary evidence. Paragraph 147.2.6 of the Respondents' representations states that the Board decided that placement fee income should not be disclosed in the annual reports. In that context the email exchange on 24 November 2014 evidences that Mr Dash understood the significance of sending annual reports, rather than signed audited statements, and contradicts his evidence that he was not aware of the falsity of the annual reports until November 2015. It is also relevant to note that on 9 September 2014 (see Ex 769) Mr Dash had given the instruction that a document showing the amount of placement fee income should not be disclosed to Investor A;
>
> Para 59 (3) – Distributor B – the email exchange on 24 November 2014 evidences this allegation.

4. The argument for Mr Singhdeo is that he was not aware until November 2015 that the financial statements in the ANEL Annual Returns contained financial statements which had been altered. However the evidence is that Mr Singhdeo had been involved from April 2014 in seeking to persuade the auditors not to require explicit disclosure of placement fees so he was well aware of the commercial need to avoid disclosure to investors. In about April 2014 he signed both the audited 2013 financial statements and the misleading version of those statements. It was the misleading version which Mr. Singhdeo sent to Investor C in March 2015. In September 2014 he was knowingly concerned in the misleading information sent to Investor A. In about May 2015 he signed both the audited 2014 financial statements and the misleading version of those statements.

5. Mr Lim attended the audit committee of ANEL and signed the audited financial statements for 2013 and 2014, and the misleading version of the 2014 statements. The email he sent on 24 November 2014 shows clear awareness that he was not sending the audited financial statements to investors. He was involved in the emails relating to the misleading table of income sent to Investor A and the annual reports of ANEL for 2013 and 2014 sent to Distributor B and others. The evidence establishes that he was aware of the falsity of the representations being made.

Issue 10 - Did Mr Singhdeo or Mr Lim breach Article 41 of the Regulatory Law in relation to the alteration of bank statements?

1. The Respondents argue that, as Al Masah Cayman was neither Managing a Collective Investment Fund nor Arranging Deals in Investments, there can be no contravention of Article 41B of the Regulatory Law as the alleged alteration was not in connection with a Financial Service as required under that Article. Even if that position is not accepted, Mr Singhdeo and Mr Lim deny that they were involved in the alteration of a bank statement and, for the following reasons, the Respondents submit that the DFSA has failed to establish such a serious allegation.

2. First, there is no cogent evidence that the individuals instructed Mr Agarwalla to alter a bank statement. Even Mr Agarwalla's evidence does not support the allegation made that he was instructed by Mr Singhdeo to alter a bank statement. In any case, Mr Agarwalla was a disgruntled employee and his evidence is not satisfactory.

3. Second, the DFSA has been unable to articulate any reason why Mr Singhdeo or Mr Lim would wish to alter a bank statement.

4. Third, the DFSA's suggestion that there was an intention to provide an altered bank statement to the auditors is speculation and not supported by any evidence; there is no explanation as to what it would have achieved and no evidence such a statement was in fact provided to the auditors.

1. Under issues 1 and 3 the contention that Al Masah Cayman was neither Managing Collective Investment funds nor Arranging Deals in Investments has been rejected. On that basis the general prohibition against misconduct in Article 41B of the Regulatory Law applies to the conduct of Mr Singhdeo and Mr Lim. However, if the relevant Investment were regarded not as a Unit but a Share, Article 41B would still apply as the conduct was in relation to the Financial Service of Arranging Deals in Investments. Conduct designed to cover up the fact that misrepresentations had been made to investors in the Subscription Form and offer document would relate to that Financial Service.

2. The documentary evidence clearly demonstrates that copy bank statements were falsified so as to delete and alter entries, and that each of Mr Singhdeo and Mr Lim participated in that conduct which was misleading or deceptive, or likely to mislead or deceive, or was dishonest. On the balance of probabilities, the motive for preparing a false version of the bank statement was as alleged, as the relevant documents were found in an audit file. Whatever the motive, the Respondents have been unable to put forward any legitimate explanation for the conduct.

Issue 11 - Did any of the individuals act without integrity?

<u>Mr Dash</u>

1. For the reasons already set out, the Respondents contend that Mr Dash was not knowingly involved in the alleged contraventions of the corporate Respondents. Accordingly there is no basis on which the DFSA could conclude that he failed to act with integrity.

2. *Also, it would be wrong to suggest that merely because he was a more senior individual in the organisation that any contraventions were more serious than those of other individuals.*

Mr Singhdeo and Mr Lim

3. *Again, for the reasons already set out, the Respondents contend that Mr Singhdeo and Mr Lim did not alter a bank statement and were not knowingly involved in any alleged contraventions by the corporate Respondents, so there is no basis on which the DFSA could conclude that they failed to act with integrity.*

As the representations accept, the issue of integrity follows from the findings on Issues 9 and 10 above.

Issue 12 - What if any action should be taken against Al Masah Cayman or Al Masah DIFC?

If contrary to the Respondents' case, the DFSA finds there has been any contravention by the corporate Respondents, it is argued that the DFSA should give adequate weight to the following factors in deciding what (if any) penalty to impose:

i. *neither of the corporate Respondents has previously been disciplined by the DFSA;*

ii. *the DFSA has been fully aware of the corporate Respondents' business model for many years, for example through the submission of regulatory business plans, and has not raised any concerns with it;*

iii. *the DFSA's case has changed significantly in the course of its investigation, which demonstrates that any violations were far from obvious and as such were excusable;*

iv. *the Corporate Respondents have reasonably relied on in-house and external expertise in order to ensure compliance; and*

v. *the Corporate Respondents have fully co-operated with the DFSA's investigation.*

1. The basis of the 2010 and 2013 Regulatory Plans was that Al Masah DIFC was to act "as investment manager for the investment funds to be launched by (Al Masah Cayman)". There was no disclosure that Al Masah Cayman proposed to carry out any regulated activities in or from the DIFC or itself act as the Fund Manager of the Funds. The charging structure did not disclose placement fees. Al Masah DIFC had been granted a licence to Manage Collective Investment Funds. Those statements gave a misleading picture of the business model of Al Masah Cayman and its Funds. There is no evidence that the various contractual arrangements between Al Masah DIFC and Al Masah Cayman were disclosed to the DFSA.

2. The risk assessments carried out by the DFSA were based on the description of the activities set out in the Regulatory Plans.

3. It is not accepted that the factors summarised at paragraph 179 of the representations give rise to any substantial mitigation. It is accepted that that the DFSA has not previously disciplined Al Masah DIFC or Al Masah Cayman, but it is not accepted, for

the reasons above, that the DFSA was fully aware of the business model of Al Masah Cayman and Al Masah DIFC.

4. As set out above it is not accepted that the contraventions proved, as set out in the Decision Notice, were either excusable or not clear, nor was reliance on in-house and external expertise the cause of any of those violations, which arose from decisions made by senior management. It is accepted that the Respondents have cooperated with the DFSA investigation and have responded to concerns raised by the DFSA since the commencement of the investigation.

Issue 13 - What if any action should be taken against individual respondents?

1. Again, the Respondents do not accept that there have been contraventions by the individual Respondents. However if the DFSA finds there have been contraventions by those individuals, it argues many of the points to be given adequate weight in determining what (if any) penalty to impose upon the corporate Respondents are also relevant to the individuals. For example, the DFSA being aware of and not raising concerns about the business model, the DFSA's case changing significantly and reliance being reasonably placed on both in-house and external expertise in order to ensure compliance.

2. In addition, the DFSA should recognise that it has received full cooperation from the individual Respondents and that none of them has a poor disciplinary record. On the contrary, they have worked with diligence and integrity to achieve professional success.

The points set out under Issue 13 have been considered above. The fact that the individuals have no disciplinary record and have cooperated with the investigation is acknowledged, but those factors do not mitigate the seriousness of the contraventions. The DFSA considers that the action taken is justified.

ANNEX B – RELEVANT LEGISLATION AND REGULATORY PROVISIONS

This annex sets out the text of relevant legislation and regulatory provisions in force during the Relevant Period.

1. RELEVANT LEGISLATION

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

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:

(…)

(b) to foster and maintain confidence in the financial services industry in the DIFC;

(…)

(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;

(…)

Other relevant extracts from the Regulatory Law 2004 are set out below.

41A. Financial Promotions Prohibition

(1) A person shall not make a Financial Promotion in or from the DIFC except as prescribed by the Rules made pursuant to this Article.

(2) The prohibition in Article 41A(1) is referred to as the "Financial Promotions Prohibition".

(3) For the purposes of the Financial Promotions Prohibition, a Financial Promotion is any communication, however made, which invites or induces a Person to:

(a) enter into, or offer to enter into, an agreement in relation to the provision of a financial service; or

(b) exercise any rights conferred by a financial product or acquire, dispose of, underwrite or convert a financial product.

(4) For the purposes of the Financial Promotions Prohibition, the DFSA may make Rules as to:

(a) a person or class of persons who may make a Financial Promotion in or from the DIFC and any requirements which apply to such persons when doing so; and

(b) any other definition, requirement or matter which the DFSA considers necessary to give effect to the requirements or intent of the Financial Promotions Prohibition.

41B. General prohibition against misconduct

(1) A person must not, in or from the DIFC, engage in conduct in connection with a Financial Product or a Financial Service that is:

(a) misleading or deceptive or likely to mislead or deceive;

(b) fraudulent; or

(c) dishonest.

(2) The DFSA shall make Rules prescribing what constitutes a Financial Product for the purposes of Article 41B(1).

(3) Nothing in this Article limits the scope or application of any other provision in legislation administered by the DFSA.

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.

Collective Investment Law - DIFC Law No. 2 of 2010 (Collective Investment Law 2010))

PART 2: DEFINITIONS

Chapter 1: Collective Investment Funds

11. Arrangements constituting a Collective Investment Fund

(1) A Collective Investment Fund ("Fund") is, subject to Article 12, any arrangements with respect to property of any description, including money, where:

(a) the purpose or effect of the arrangements is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income;

(b) the arrangements must be such that the persons who are to participate ("Unitholders") in the arrangements do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions; and

(c) the arrangements have either or both of the following characteristics:

(i) the contributions of the Unitholders and the profits or income out of which payments are to be made to them are pooled; or

(ii) the property is managed as a whole by or on behalf of the Fund Manager.

(2) If the arrangements provide for such pooling as is mentioned in Article 11(1)(c)(i) in relation to separate parts of the property, the arrangement is not to be regarded as constituting a single Fund unless the Unitholders are entitled to exchange rights in one part for rights in another.

12. Arrangements not constituting a Collective Investment Fund

The DFSA may, by Rules, specify when arrangements or types of arrangements that meet the definition of a Fund in Article 11(1) do not constitute a Fund.

Chapter 2: Types of Funds and relevant criteria

13. Domestic and Foreign Funds

(1) A Fund is either a Domestic Fund or a Foreign Fund.

(2) A Fund is a Domestic Fund if it is either:

(a) established or domiciled in the DIFC; or

(b) an External Fund as defined in Article 14(1).

(3) A Fund that does not meet the Domestic Fund criteria in Article 13(2) is a Foreign Fund.

14. An External Fund

(1) An External Fund is a Fund which is:

(a) established or domiciled in a jurisdiction other than the DIFC; and

(b) managed by a Fund Manager which is an Authorised Firm.

(2) The requirements relating to Domestic Funds do not apply to an External Fund except to the extent otherwise provided in this Law or the Rules.

19. Definition of an Offer of Units

(1) An "Offer" of a Unit of a Fund constitutes any one or more of the activities specified in Article 19(2) and such activities may also be referred to as "marketing" of Units of Funds.

(2) A person is to be regarded as making an Offer of a Unit if he:

(a) makes an offer to another person which, if accepted, would give rise to a contract for the issue or sale of Units by him or by another person with whom he has made arrangements for the issue or sale of the Units; or

(b) invites another person to make an offer which, if accepted by him, would give rise to a contract for the issue or sale of Units by him or by another person with whom he has made arrangements for the issue or sale of the Units,

whether or not the offer or invitation referred to in Article 19(2)(a) or (b) is made by way of a financial promotion of the Units.

(3) For the purposes of Article 19(2), a "financial promotion" includes an advertisement or any other form of promotion, marketing or inducement inviting a person to:

(a) enter into an agreement;

(b) offer to enter into an agreement; or

(c) exercise any rights conferred by a Unit

to acquire, dispose of, underwrite or convert a Unit.

(4) In Article 19(3), the financial promotion may be communicated in any manner including, but not limited to, the following:

(a) orally;

(b) electronically; or

(c) in writing.

(5) For the purposes of Article 19(2) and (3), where a Fund Manager of a Listed Fund discloses information in accordance with the requirements of the Markets Law 2012 or the Rules made for the purposes of that law, disclosure of such information is not a financial promotion provided the disclosure of the information does not:

(a) include an express invitation or offer; or

(b) expressly encourage a person;

to engage in any of the activities specified in Article 19(2) (a) or (b).

PART 3: ROLES AND FUNCTIONS OF THE FUND MANAGER AND TRUSTEE

Chapter 1: General prohibitions

20. Fund Manager

(1) A person shall not manage a Domestic Fund unless:

(a) that person:

(i) is a body corporate;

(ii) is an Authorised Firm whose Licence authorises it to act as the Fund Manager of the particular type or specialist class of the Fund; and

(iii) meets any additional criteria, requirements or conditions that may be prescribed in the Rules;

or

(b) the person is an External Fund Manager.

(2) For the purposes of this Law, any other DFSA administered law and any rules made for the purposes of those laws, the person who "manages" a Fund, subject to Article 20(3), is the person who:

(a) is legally accountable to the Unitholders in the Fund for the management of the Fund, including the property held for or within the Fund ("Fund Property"); and

(b) establishes, manages or otherwise operates or winds up the Fund.

(3) The DFSA may, by Rules, prescribe when a person who engages in any of the activities specified in Article 20(2) is not managing a Fund.

(4) A person referred to in Article 20(1)(a) or (b) is a "Fund Manager" and a reference to a "Fund Manager" in this Law or in any other DIFC Law or any legislation made for the purposes of such laws includes both persons, unless otherwise provided.

(5) A person is an External Fund Manager if that person:

(a) is a body corporate;

(b) manages a Domestic Fund:

(i) which is not an External Fund; and

(ii) which is excluded from the Financial Services Prohibition under Article 41(9) of the Regulatory Law 2004; and

(c) manages the Fund in (b):

(i) from a place of business in a Recognised Jurisdiction or a jurisdiction otherwise acceptable to the DFSA; and

(ii) in accordance with any additional requirements prescribed by the DFSA for the purposes of this Article.

…..

PART 7: MARKETING OF DOMESTIC AND FOREIGN FUNDS

Chapter 1: General

50. Marketing prohibition

(1) Subject to Article 50(2), a person shall not, in or from the DIFC, Offer a Unit of a Fund to a prospective or existing Unitholder unless:

(a) a Prospectus that complies with the requirements in this Law and the Rules made for the purposes of this Law is made available to such a Unitholder;

(b) the person making the Offer is either the Fund Manager of the Fund or an Authorised Firm whose Licence authorises it do so; and

(c) the Offer is made in accordance with the requirements in this Law and the Rules made for the purposes of this Law.

(2) The DFSA may, by Rules, exempt any person or class of persons from the prohibition in Article 50(1) and in doing so, may subject such person or class of persons to any conditions it considers appropriate.

(3) A Prospectus includes, except where expressly stated otherwise:

(a) an Information Memorandum in respect of an Offer of a Unit of an Exempt Fund or a Qualified Investor Fund;

(b) a Supplementary or Replacement Prospectus; and

(c) in the case of an External Fund or Foreign Fund, the Units of which are marketed in or from the DIFC, any prospectus or other disclosure document prepared in accordance with the laws applicable to that External Fund or Foreign Fund.

…..

Chapter 4: Misconduct in relation to Domestic and Foreign Funds

56. Misleading and deceptive statements

(1) A person shall not make an Offer of Units if there is:

(a) a misleading or deceptive statement in:

(i) the relevant Prospectus;

(ii) any application form that accompanies the relevant Prospectus; or

(iii) any other document that relates to the Offer, or the application form;

(b) an omission from any document specified in Article 56(1)(a) of information that is required to be stated or that is necessary to make the statement not misleading or deceptive; or

(c) a new circumstance that under the Law or the Rules requires a Supplementary or Replacement Prospectus to be published or issued and this has not been published or issued.

(2) A person shall not, in or from the DIFC, make a misleading or deceptive statement in relation to a Fund or in connection with an Offer of Units, whether in the DIFC or elsewhere.

(3) This Article does not apply to conduct which occurs outside the DIFC unless the conduct affects the DIFC markets or users of the DIFC markets.

57. Defences to misconduct

(1) A person does not commit a contravention of Article 56, if that person proves that he:

(a) made all inquiries that were reasonable in the circumstances; and

(b) after doing so, believed on reasonable grounds that the statement or omission was not misleading or deceptive.

(2) A person does not commit a contravention of Article 56, if that person proves that reasonable reliance was placed on information given to that person by:

(a) if the person is a body corporate, someone other than a director, employee or agent of that body corporate; or

(b) if the person is a natural person, someone other than an employee or agent of that individual.

(3) For the purposes of Article 57(2), a person does not become an agent of another person simply because he performs a particular professional or advisory function for the person.

…..

SCHEDULE 1: INTERPRETATION

…..

3. Defined Terms

Terms	***Definitions***
(…)	
Unit	*a Unit or share representing the rights or interests of Unitholders in a Fund and includes a right or interest in such a Unit.*

…..

2. RELEVANT DFSA RULEBOOK PROVISIONS

Collective Investment Rules (CIR)

2 ARRANGEMENTS NOT CONSTITUING A COLLECTIVE INVESTMENT FUND

2.1 Exclusions

(…)

Bodies corporate not undertaking investment management

2.1.10 *An arrangement does not constitute a Collective Investment Fund if the arrangement comprises a closed-ended Partnership or Body Corporate, unless on reasonable grounds the purpose or effect of such an arrangement appears to be the investment management, in the exercise of discretion for a collective purpose, of Investments or Real Property for the benefit of the shareholders or partners.*

…..

Private Equity Fund

3.1.6 *A Fund is a Private Equity Fund if it;*

(a) invests in unlisted companies, by means of Shares, convertible debt or other instruments carrying equity participation rights or reward; or

(b) participates in management buy-outs or buy-ins.

…..

15 MARKETING OF FOREIGN FUNDS

15.1 Access to Foreign Funds and availability of Prospectus

Guidance

1. *Rules 4.1.3 and 4.1.4 exclude from being treated as Offers any Transactions undertaken by an Authorised Firm where such Transactions are Execution-only Transactions, or Transactions for the purposes of managing a Discretionary Portfolio for a Client, or for the purposes of redeeming a Unit of a Fund for a Client. Similarly, an offer made by an Authorised Firm to a Market Counterparty is also excluded from being an Offer. As a result, such excluded Transactions and offers do not attract the marketing prohibition in Article 50 of the Law and the requirements in both the Law and this module relating to the marketing of Units.*

2. *Article 54(1) of the Law prohibits the Offer of Units of a Foreign Fund unless one of three specified criteria in that Article are met, i.e.*

    a. *the Foreign Fund meets either:*

        i. *the criteria for a Designated Fund in a Recognised Jurisdiction; or*

        ii. *other criteria prescribed in the Rules;*

    b. *the Authorised Firm has a reasonable basis for recommending the Unit of the Foreign Fund as suitable for the particular Client to whom the Offer is made; or*

    c. *the Foreign Fund, had it been a Domestic Fund, would meet the Exempt Fund criteria in Article 16(4) of this Law and the Offer is made in a manner that does not breach the requirements in that Article.*

3. *Under Article 54(2) of the Law, the DFSA has the power to prescribe any additional criteria, requirements or conditions that apply to the Offer of Units of a Foreign Fund, including disclosure that must be included in a Prospectus and the legal form and structure of the Fund such as being open-ended or closed ended or listed or not. This section contains additional criteria and requirements prescribed pursuant to Article 54(2) of the Law.*

(…)

Prospectus disclosure relating to Foreign Funds

15.1.2 Where an Authorised Firm Offers a Unit of a Foreign Fund to a Person, it must make available to that Person a copy of a current Prospectus relating to the Fund which complies with the additional requirements in Rule 15.1.3 at the time of the Offer.

Guidance

Under Article 50(3)(c) of the Law, a Prospectus includes, in the case of a Foreign Fund the Units of which are marketed in or from the DIFC, any prospectus or other disclosure document prepared in accordance with the laws applicable to that Foreign Fund.

15.1.3 (1) The Prospectus of a Foreign Fund made available by an Authorised Firm must be in the English language.

(2) The Prospectus must contain in a prominent position, or have attached to it, a statement that clearly:

(a) *describes the foreign jurisdiction and the legislation in that jurisdiction that applies to the Fund;*

(b) *states the name of the relevant Financial Services Regulator in that jurisdiction;*

(c) *describes the regulatory status accorded to the Fund by that Regulator;*

(d) *includes the following warning:*

"This Prospectus relates to a Fund which is not subject to any form of regulation or approval by the Dubai Financial Services Authority ("DFSA").

The DFSA has no responsibility for reviewing or verifying any Prospectus or other documents in connection with this Fund. Accordingly, the DFSA has not approved this Prospectus or any other associated documents nor taken any steps to verify the information set out in this Prospectus, and has no responsibility for it.

The Units to which this Prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers should conduct their own due diligence on the Units.

If you do not understand the contents of this document you should consult an authorised financial adviser.";

(e) *if the Offer is not directed to Retail Clients, includes a prominent statement to that effect to be incorporated within the warning in (d); and*

(f) *in the case of an Offer of a Unit in a Money Market Fund, contains the risk warning referred to in Rule 14.4.7.*

15.1.4 An Authorised Firm which makes an Offer of a Unit of a Foreign Fund must maintain at its place of business or other designated location in the DIFC copies of the relevant Prospectus for inspection by Clients and by the DFSA during normal business hours.

Guidance

In relation to Rule 15.1.4, copies of the Prospectus may be stored electronically so long as Clients and the DFSA have ready and immediate access.

General Module (GEN)

CHAPTER 3 - FINANCIAL PROMOTIONS

3.3 Definition of a Financial Product

3.3.1 *Pursuant to Article 41A(4) of the Regulatory Law, "financial product" in Article 41A(3)(b) of the Regulatory Law is hereby prescribed to mean an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account, or a Contract of Insurance or a Crowdfunding Loan Agreement.*

CHAPTER 4 – CORE PRINCIPLES

4.2 The Principles for Authorised Firms

(…)

Principle 6 - Information and interests

4.2.6 *An Authorised Firm must pay due regard to the interests of its customers and communicate information to them in a way which is clear, fair and not misleading.*

APP2 INVESTMENTS

A2.1 General definition of investments

Investments

A2.1.1 *(1) An Investment is, subject to (3), either:*

(a) a Security; or

(b) a Derivative,

as defined in Rule A2.1.2 or Rule A2.1.3.

(2) Such a Security or Derivative includes:

(a) a right or interest in the relevant Security or Derivative; and

(b) any instrument declared as a Security or Derivative pursuant to Rule A2.4.1(1).

(3) Where a Rule provides that a Security or Derivative has a different classification for a specified purpose, it shall have that effect for that specified purpose and no other purpose.

Guidance

An example of the application of Rule A2.1.1 (3) is Rule A2.1.2(2), where a Derivative is treated as a Security for the purposes of the requirements in PIB.

Security

A2.1.2 *(1) For the purposes of Rule A2.1.1(1)(a), a Security is:*

(a) a Share;

(…)

(e) a Unit; …

(…)

A2.2 Definitions of specific securities

A2.2.1 *For the purposes of Rule A2.1.2:*

Shares

(a) a Share is a share or stock in the share capital of any Body Corporate or any unincorporated body but excluding a Unit;

(…)

Units

(e) a Unit is a unit in or a share representing the rights or interests of a Unitholder in a Fund; …

Conduct of Business Module (COB)

CHAPTER 3 - CORE RULES – INVESTMENT BUSINESS, ACCEPTING DEPOSITS, PROVIDING CREDIT, PROVIDING TRUST SERVICES AND OPERATING A CROWDFUNDING PLATFORM

3.2 Communication of information and marketing material

General

3.2.1 *When communicating information to a Person in relation to a financial product or financial service, an Authorised Firm must take reasonable steps to ensure that the communication is clear, fair and not misleading.*

3. OTHER RELEVANT REGULATORY PROVISIONS

The DFSA's policy in relation to its approach to enforcement is set out in Chapter 5 of the DFSA's Regulatory Policy and Process Rulebook (RPP) (February 2017 Edition)

Chapter 6 of RPP sets out the DFSA's approach to imposing a penalty, which includes a financial penalty, and the matters the DFSA will take into account when determining a penalty.

ANNEX C – DEFINITIONS

Al Masah Cayman	Al Masah Capital Limited, a Cayman Islands company, first mentioned in paragraph 2 above.
Al Masah DIFC	Al Masah Capital Management Limited, a company which was incorporated in the DIFC on 9 August 2010 and licensed by the DFSA on 19 August 2010, first mentioned in paragraph 1 above.
Al Masah Model	The business arrangements in which Al Masah DIFC, Al Masah Cayman and others were concerned, as described in paragraphs 8 to 19 above.
ANEL	Al Najah Education Limited, the Investment Company in the Education Fund.
CIL	Collective Investment Law 2010 (DIFC Law No 2 of 2010), as amended from time to time.
CIR	DFSA Rulebook, Collective Investment Rules Module (versions 13 to 19 inclusive, as in force from time to time during the Relevant Period).
COB	DFSA Rulebook, Conduct of Business Module (versions 19 to 25 inclusive, as in force from time to time during the Relevant Period).
Distributor B	The relevant distributor referred to in paragraph 32(2) above.
Education Fund	The Platform, as described in Table 1 after paragraph 10 above, that included the Operational Company named Al Najah Education LLC and the Investment Company named Al Najah Education Limited.
Enforcement	The DFSA Enforcement Division.
Financial Projections	The estimated budget and profits for the Platform, which formed part of the Marketing Material, as described in paragraph 21 above.
Fine	The fine of US$1,500,000 imposed on Al Masah DIFC in this Notice, first mentioned in paragraph 1 above.

GEN	Unless otherwise indicated, this means the DFSA Rulebook, General Module (versions 27 to 36 inclusive, as in force from time to time during the Relevant Period).
GLO	DFSA Rulebook, Glossary Module (versions 23 to 34 inclusive, as in force from time to time during the Relevant Period).
Healthcare Fund	The Platform, as described in Table 1 after paragraph 10 above, that included the Operational Company named Alchemist Healthcare LLC and the Investment Company named Avivo Group.
Investment Company	The company which, along with an Operational Company, comprised a Platform, as described in paragraph 10 above. Investors in the Al Masah Model purchased Platform Shares of the Investment Company, which controlled, and held the beneficial interest in, the Operational Company.
Investors	The natural persons and legal persons to whom investments in the Platforms in the Al Masah Model were marketed.
Investor A, Investor C	The relevant investors as described in paragraphs 32(1) and 33(2) above.
Lifestyle Fund	The Platform, as described in Table 1 after paragraph 10 above, that included the Operational Company named DLL Emirates Restaurants LLC and the Investment Company named Diamond Lifestyle Limited.
Logistics Fund	The Platform, as described in Table 1 after paragraph 10 above, that included the Operational Company named Gulf Pinnacle Investments LLC and the Investment Company named Gulf Pinnacle Logistics Limited.
Management Agreements	The agreements entered into between each Investment Company and Al Masah Cayman, as described in paragraph 18 above.
Marketing Material	The marketing material distributed to prospective Investors in the Al Masah Model as described in paragraph 21 above.
Mr. Dash	Shailesh Kumar Dash.

Mr. Lim	Don Lim Jung Chiat.
Mr. Singhdeo	Nrupaditya Singhdeo.
Notice	This Decision Notice.
Operational Company	The company which, along with an Investment Company, comprised a Platform, as described in paragraph 10 above. Each Operational Company invested in various arrangements and businesses within a particular sector of the economy.
Placement Fee	The fee, payable to Al Masah Cayman by each Investment Company pursuant to a Placement Fee Agreement, of up to 10% of the capital raised from new Investors, as described in paragraph 19 above.
Placement Fee Agreement	The agreement by which each Investment Company engaged Al Masah Cayman to help it raise equity capital at a premium to its par value and to pay Al Masah Cayman a Placement Fee, as described in paragraph 19 above.
Platforms	The investment platforms marketed to Investors in the Al Masah Model, comprising of an Investment Company and an Operational Company, as described in paragraph 10 above.
Platform Shares	The Shares and/or rights in the Shares of one or more of the Investment Companies, as described in paragraph 10 above.
Regulatory Law	Regulatory Law 2004 (DIFC Law No 1 of 2004), as amended from time to time.
Relevant Period	August 2010 to June 2016.
Subscription Form	The form, which was part of the Marketing Material, whereby the prospective investor could invest in the Platform, as described in paragraph 27 above.

ANNEX D – TABLE OF RELEVANT MARKETING MATERIAL

Document Name	Dated	Investment Co.	Promotional Material	Evidence of approval by Al Masah DIFC	Promoter	Placement Fees Disclosed?	Exhibit Number	"approved for distribution"
Subscription Form -2012.docx.pdf	2012	HML	Yes	None	AMCL/AMCML	No	-	No
Subscription Form -2012 institutional.docx.pdf	2012	HML	Yes	None	AMCL/AMCML	No	-	No
HML Offering Document.pdf	Jan-12	HML	Yes	None	AMCL/AMCML	No	-	No
HML V6.pdf	Jan-12	HML	Yes	None	AMCL/AMCML	No	-	No
HML Offering Document Mar 2012.pdf	Mar-12	HML	Yes	None	AMCL/AMCML	No	-	No
HML Offering Document Apr 2012.pdf	Apr-12	HML	Yes	None	AMCL/AMCML	No	-	No
Al Najah Education Subscription Form - June 2013(2).pdf	Jun-12	ANEL	Yes	None	AMCL/AMCML	No	-	No
HML Offering Document June 2012.pdf	Jun-12	HML	Yes	None	AMCL/AMCML	No	EXH-620	No
HML Offering Document 25th Sept 2012.pdf	Sep-12	HML	Yes	None	AMCL/AMCML	No	-	No
HML Offering Document Sept 2012.pdf	Sep-12	HML	Yes	None	AMCL/AMCML	No	-	No
HML Offering Document Oct 2012 v4.pdf	Oct-12	HML	Yes	None	AMCL/AMCML	No	-	No
HML Offering Document Oct 2012.pdf	Oct-12	HML	Yes	None	AMCL/AMCML	No	-	No
Al Najah Education Offering Jan 2013.pdf	Jan-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
HML Offering Document Jan 2013.pdf	Jan-13	HML	Yes	None	AMCL/AMCML	No	-	No
Subscription Form 28-2-2013.pdf	Feb-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
Al Najah Education Offering Doc Mar 2013.pdf	Mar-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
Al Najah Education Offering Doc Mar 2013.pdf	Mar-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
Al Najah Teaser March 2013.docx	Mar-13	ANEL	Yes	Yes - Listed	AMCL/AMCML	No	EXH-636 (pg 3-5)	No

Document Name	Dated	Investment Co.	Promotional Material	Evidence of approval by Al Masah DIFC	Promoter	Placement Fees Disclosed?	Exhibit Number	"approved for distribution"
Al Najah Teaser March 2013.pdf	Mar-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
AN Offering Doc Mar 2013(2).pdf	Mar-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
AN Offering Doc Mar 2013.pdf	Mar-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
AN Offering Doc Mar 2013.pptx	Mar-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
HML Investor Presentation Mar13.pdf	Mar-13	HML	Yes	None	AMCL/AMCML	No	-	No
HML Investor Presentation April 2013.pdf	Apr-13	HML	Yes	None	AMCL/AMCML	No	-	No
HML's offering document Apr13.pdf	Apr-13	HML	Yes	None	AMCL/AMCML	No	-	No
ANEL Subscription Form 2-4-2013(2).pdf	Apr-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
ANEL Subscription form 2-4-2013.pdf	Apr-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
Subscription Form 2-4-2013.pdf	Apr-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
Al Najah Subscription Form May 2013.pdf	May-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
Al Najah Education Subscription Form - June 2013.docx	Jun-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
Al Najah Education Subscription Form - June 2013.pdf	Jun-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
Al Najah Teaser June 2013.pdf	Jun-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
AN Offering Doc June 2013 - Final(2).pdf	Jun-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
AN Offering Doc June 2013 - Final.pdf	Jun-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
HML Financial model Jun13.pdf	Jun-13	HML	Yes	None	AMCL/AMCML	No	-	No
AN Offering Doc July 2013.pdf	Jul-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
Diamond Lifestyle Limited_Offering Memorandum_Revised.pdf	Jul-13	DLL	Yes	Yes - Listed	AMCL/AMCML	No	-	No
Al Najah Education Subscription Form - Aug 2013(2).pdf	Aug-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
Al Najah Education Subscription Form - Aug 2013.pdf	Aug-13	ANEL	Yes	None	AMCL/AMCML	No	-	No

Document Name	Dated	Investment Co.	Promotional Material	Evidence of approval by Al Masah DIFC	Promoter	Placement Fees Disclosed?	Exhibit Number	"approved for distribution"
Al Najah Teaser Aug 2013.pdf	Aug-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
AN Offering Doc Aug 2013(2).pdf	Aug-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
AN Offering Doc Aug 2013.pdf	Aug-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
Education consolidated model - Aug 2013 Final.pdf	Aug-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
HML Financial model Aug13.pdf	Aug-13	HML	Yes	None	AMCL/AMCML	No	-	No
HML Offering Document Aug13(2).pdf	Aug-13	HML	Yes	None	AMCL/AMCML	No	EXH-621	No
HML Offering Document Aug13.pdf	Aug-13	HML	Yes	None	AMCL/AMCML	No	-	No
HML Teaser Aug13.pdf	Aug-13	HML	Yes	None	AMCL/AMCML	No	EXH-636 (pg 1-2)	No
Al Najah Education Subscription Form - Dec 2013.pdf	Dec-13	ANEL	Yes	None	AMCL/AMCML	No	-	No
AN Offering Doc Dec 2013 Final(2).pdf	Dec-13	ANEL	Yes	Yes - Listed	AMCL/AMCML	No	EXH-632	No
AN Offering Doc Dec 2013 Final.pdf	Dec-13	ANEL	Yes	Yes - Listed	AMCL/AMCML	No	-	No
HML Investor Presentation Dec 2013 v2.pdf	Dec-13	HML	Yes	Yes - Listed	AMCL/AMCML	No	-	No
HML Subscription Form - 14 01 14.pdf	Jan-14	HML	Yes	Yes - Listed	AMCL/AMCML	No	-	No
HML Investor Presentation - Feb 2014.pdf	Feb-14	HML	Yes	None	AMCL/AMCML	No	-	No
Al Najah Education Subscription Form - Mar 2014 (6).pdf	Mar-14	ANEL	Yes	None	AMCL/AMCML	No	-	No
Al Najah Education Subscription Form - Mar 2014.pdf	Mar-14	ANEL	Yes	None	AMCL/AMCML	No	-	No
AN Investor Presentation March 2014 Final.pdf	Mar-14	ANEL	Yes	Yes - Listed	AMCL/AMCML	No	-	No
AN Offering Doc Mar 2014 Draft Al Masar Holding.pdf	Mar-14	ANEL	Yes	None	AMCL/AMCML	No	-	No
AN Investor Presentation May 2014.pdf	May-14	ANEL	Yes	None	AMCL/AMCML	No	-	No
HML Presentation - May 2014.pdf	May-14	HML	Yes	Yes - Listed	AMCL/AMCML	No	-	No
Al Najah Education Subscription Form - Aug 2014.pdf	Aug-14	ANEL	Yes	None	AMCL/AMCML	No	-	No

Document Name	Dated	Investment Co.	Promotional Material	Evidence of approval by Al Masah DIFC	Promoter	Placement Fees Disclosed?	Exhibit Number	"approved for distribution"
HML Offering Document Sept 2014.pdf	Sep-14	HML	Yes	None	AMCL/AMCML	No	-	No
HML Presentation - Sep 2014.pdf	Sep-14	HML	Yes	None	AMCL/AMCML	No	-	No
Corporate Profile_Diamond Lifestyle Limited (Brief).pdf	Sep-14	DLL	Yes	Yes - Listed	AMCL/AMCML	No	-	No
AN Investor Presentation October 2014 General.pdf	Oct-14	ANEL	Yes	None	AMCL/AMCML	No	EXH 633 (page 1 -35)	No
AN Investor Presentation October 2014 with Projections.pdf	Oct-14	ANEL	Yes	None	AMCL/AMCML	No	-	No
HML Presentation - Financial Section - Oct 2014.pdf	Oct-14	HML	Yes	Yes - Listed	AMCL/AMCML	No	-	No
HML Presentation - General Section - Oct 2014.pdf	Oct-14	HML	Yes	Yes - Listed	AMCL/AMCML	No	-	No
HML Presentation - Oct. 2014 - Old.pdf	Oct-14	HML	Yes	Yes - Listed	AMCL/AMCML	No	-	No
GPL - Financial Projections Final 9 10 14_pptx.pdf	Oct-14	GPL	Yes	Yes - Listed	AMCL/AMCML	No	-	No
GPL - Investor Presentation_Final 9 10 14.pdf	Oct-14	GPL	Yes	None	AMCL/AMCML	No	EXH-630 (pg 47 onwards)	No
GPL Financial Projections - Oct 2014.pdf	Oct-14	GPL	Yes	None	AMCL/AMCML	No	-	No
GPL Subscription Form Final 09 10 14_docx.pdf	Oct-14	GPL	Yes	None	AMCL/AMCML	No	-	No
AN Investor Presentation December 2014 with Projections.pdf	Dec-14	ANEL	Yes	None	AMCL/AMCML	No	-	No
AN Investor Presentation December 2014.pdf	Dec-14	ANEL	Yes	None	AMCL/AMCML	No	-	No
GPL Investor Presentation_Jan 2015.pdf	Jan-15	GPL	Yes	Yes - Listed	AMCL/AMCML	No	-	No
GPL Subscription Form - Jan 15.pdf	Jan-15	GPL	Yes	Yes - Listed	AMCL/AMCML	No	-	No
GPL Subscription Form Final 28 01 15.pdf	Jan-15	GPL	Yes	Yes - Listed	AMCL/AMCML	No	EXH-631 (pg 27 onward)	No
HML Presentation - General Section - Feb 2015.pdf	Feb-15	HML	Yes	None	AMCL/AMCML	No	-	No
AN Investor Presentation March 2015 - with Projections.pdf	Mar-15	ANEL	Yes	None	AMCL/AMCML	No	-	Yes
AN Investor Presentation March 2015 Draft V3 - with Projections.pdf	Mar-15	ANEL	Yes	None	AMCL/AMCML	No	-	No

Document Name	Dated	Investment Co.	Promotional Material	Evidence of approval by Al Masah DIFC	Promoter	Placement Fees Disclosed?	Exhibit Number	"approved for distribution"
AN Investor Presentation March 2015 Draft V4.pdf	Mar-15	ANEL	Yes	None	AMCL/AMCML	No	-	No
AN Investor Presentation March 2015.pdf	Mar-15	ANEL	Yes	None	AMCL/AMCML	No	EXH-635	Yes
HML Presentation - Financial Section - Mar 2015.pdf	Mar-15	HML	Yes	Yes - Listed	AMCL/AMCML	No	-	Yes
HML Presentation - General Section - Mar 2015.pdf	Mar-15	HML	Yes	Yes - Listed	AMCL/AMCML	No	-	Yes
GPL - Financial Projections Final March 15.pdf	Mar-15	GPL	Yes	None	AMCL/AMCML	No	-	Yes
DLL Presentation - Class A Shares - Final (updated 5Apr2015).pdf	Apr-15	DLL	Yes	Yes - Listed	AMCL/AMCML	No	-	Yes
AN Investor Presentation May 2015 - with Projections.pdf	May-15	ANEL	Yes	None	AMCL/AMCML	No	-	Yes
AN Investor Presentation May 2015 - with Projections.pdf	May-15	ANEL	Yes	None	AMCL/AMCML	No	EXH-630 (pg 1-15)	Yes
Draft HML Presentation - Financial Section - May 2015.pdf	May-15	HML	Yes	Yes - Listed	AMCL/AMCML	No	-	Yes
Draft HML Presentation - General Section - May 2015.pdf	May-15	HML	Yes	None	AMCL/AMCML	No	-	Yes
HML Subscription - May 2015.pdf	May-15	HML	Yes	None	AMCL/AMCML	No	-	No
HML Presentation - Financial Section - Jul 2015.pdf	Jun-15	HML	Yes	None	AMCL/AMCML	No	-	Yes
HML Presentation - General Section - Jul 2015.pdf	Jul-15	HML	Yes	None	AMCL/AMCML	No	-	Yes
HML Subscription - July 2015.pdf	Jul-15	HML	Yes	None	AMCL/AMCML	No	-	No
HML Presentation - Financial Section - Sep 2015.pdf	Sep-15	HML	Yes	None	AMCL/AMCML	No	-	Yes
HML Presentation - General Section - Sep 2015.pdf	Sep-15	HML	Yes	None	AMCL/AMCML	No	-	Yes
HML Subscription Form - Septmber 2015.pdf	Sep-15	HML	Yes	None	AMCL/AMCML	No	-	No
DLL Financial Projections - Class A Shares.pdf	Sep-15	DLL	Yes	None	AMCL/AMCML	No	EXH-630 (pg 33 - 46)	Yes
AVIVO Presentation - General Section - Sep 2015.pdf	Sep-15	HML	Yes	None	AMCL/AMCML	No	-	Yes
Microsoft PowerPoint - DLL Presentation - Class A Shares - 16Oct2015 v2.pdf	Oct-15	DLL	Yes	Yes - Listed	AMCL/AMCML	No	-	Yes
DLL Presentation - Class A Shares - 16Oct2015(191115).pptx	Oct-15	DLL	Yes	Yes - Listed	AMCL/AMCML	No	-	Yes

Document Name	Dated	Investment Co.	Promotional Material	Evidence of approval by Al Masah DIFC	Promoter	Placement Fees Disclosed?	Exhibit Number	"approved for distribution"
AVIVO Presentation - Financial Section - Nov 2015.pdf	Nov-15	HML	Yes	None	AMCL/AMCML	No	EXH-630 (pg 16 - 32)	Yes
AVIVO Presentation - General Section - Nov 2015.pdf	Nov-15	HML	Yes	None	AMCL/AMCML	No	-	Yes
AN Investor Presentation Dec 2015 - with Projections Final.pdf	Dec-15	ANEL	Yes	None	AMCL/AMCML	No	-	Yes
AN Investor Presentation Dec 2015 - with Projections Final.pdf	Dec-15	ANEL	Yes	None	AMCL/AMCML	No	-	Yes
AN Investor Presentation Dec 2015 Final.pdf	Dec-15	ANEL	Yes	None	AMCL/AMCML	No	-	Yes
AN Investor Presentation Dec 2015.pdf	Dec-15	ANEL	Yes	None	AMCL/AMCML	No	-	Yes
Current AVIVO Presentation - Financial Section - Jan 2016.pdf	Jan-16	HML	Yes	None	AMCL/AMCML	No	-	Yes
Current AVIVO Presentation - General Section - Jan 2016.pdf	Jan-16	HML	Yes	None	AMCL/AMCML	No	-	Yes
AVIVO Presentation - Financial Section - Jan 2016.pdf	Jan-16	HML	Yes	None	AMCL/AMCML	No	-	Yes
AVIVO Presentation - General Section - Jan 2016.pdf	Jan-16	HML	Yes	None	AMCL/AMCML	No	-	Yes
Al Najah Education Subscription Form.pdf	Undated	ANEL	Yes	None	AMCL/AMCML	No	-	No
AN Subscription Form Final (1).pdf	Undated	ANEL	Yes	None	AMCL/AMCML	No	-	No
AN Subscription Form Final (2).pdf	Undated	ANEL	Yes	None	AMCL/AMCML	No	-	No
AN Subscription Form Final (3).pdf	Undated	ANEL	Yes	None	AMCL/AMCML	No	-	No
AN Subscription Form Final (4).pdf	Undated	ANEL	Yes	None	AMCL/AMCML	No	-	No
AN Subscription Form Final (5).pdf	Undated	ANEL	Yes	None	AMCL/AMCML	No	-	No
AN Subscription Form Final.pdf	Undated	ANEL	Yes	None	AMCL/AMCML	No	-	No
HML Teaser 13.pdf	Undated	HML	Yes	None	AMCL/AMCML	No	-	Yes
AVIVO - Subscription Agreement - 3.00.pdf	Undated	HML	Yes	None	AMCL/AMCML	No	-	No
Subscription Form.pdf	Undated	HML	Yes	None	AMCL/AMCML	No	-	No
DLL Subscription Form_Class A Shares.pdf	Undated	DLL	Yes	Yes - Listed	AMCL/AMCML	No	EXH-631 (Pg 20 - 26)	No

Document Name	Dated	Investment Co.	Promotional Material	Evidence of approval by Al Masah DIFC	Promoter	Placement Fees Disclosed?	Exhibit Number	"approved for distribution"
DLL Subscription Form_Class B Shares.pdf	Undated	DLL	Yes	Yes - Listed	AMCL/AMCML	No	-	No
Class A.pdf	Undated	DLL	Yes	None	AMCL/AMCML	No	-	No
Class B.pdf	Undated	DLL	Yes	None	AMCL/AMCML	No	-	No
DLL Investor Presentation - Class A Shares.pdf	Undated	DLL	Yes	None	AMCL/AMCML	No	-	Yes
AN Investor Presentation Dec 2015 - with Projections Final.pdf	Dec-15	ANEL		None	AMCL/AMCML	No	-	Yes
AN Investor Presentation Dec 2015.pdf	Dec-15	ANEL		None	AMCL/AMCML	No	-	Yes
AN Subscription Form Dec 2015.pdf	Dec-15	ANEL		None	AMCL/AMCML	No	EXH-631 (Pg 1 - 8)	No
AVIVO - Subscription Agreement - Jan 2016.pdf	Jan-16	HML		None	AMCL/AMCML	No	EXH-631 (Pg 9 - 19)	No