

**IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE
FINANCIAL MARKETS TRIBUNAL**

Case FMT 24022

Heard on 4 and 5 November 2025

with written closing submissions

filed on 19 November 2025

Decision date: 3 February 2026

BETWEEN:

AL RAMZ CAPITAL LLC

Applicant

and

THE DUBAI FINANCIAL SERVICES AUTHORITY

Respondent

DECISION

**Mr Timothy Herrington
(Tribunal President)
Mr Ali Al Aidarous
Mr Ian Abrams**

Representation:

For the Applicant: Farhaz Khan KC and Tom Rainsbury, Counsel, instructed by Norton Rose Fulbright (Middle East) LLP

For the Respondent: Thomas Robinson KC, instructed by the DFSA Legal Department

INTRODUCTION

1. On 15 July 2024, Al Ramz Capital LLC (“Al Ramz” or “the Applicant”) made a reference to the Financial Markets Tribunal (“the FMT”) of a decision notice issued by the Respondent (“DFSA”) on 13 June 2024 (“the Decision Notice”).
2. In the Decision Notice the DFSA decided to impose on the Applicant a financial penalty of US\$ 25,000 on the grounds that the Applicant had failed to comply with Rule 3.4.5 of the Recognition Module of the DFSA Rulebook (“REC 3.4.5”). The DFSA contended that the Applicant executed a number of trades for a client on NASDAQ Dubai when it had reasonable grounds to suspect that the transactions may constitute Market Abuse, and, in breach of REC 3.4.5, failed to report the matter to the DFSA immediately as it was required to do as a member of NASDAQ Dubai.
3. The Applicant disputes these findings. The Applicant denies that it breached REC 3.4.5. It also contends that in any event the imposition of a fine by the DFSA is not fair or proportionate in the circumstances.
4. We have decided that the DFSA has made out its case and accordingly that the reference will be dismissed. We now set out our reasons for this decision.

DFSA’S CASE AND THE APPLICANT’S POSITION

5. The DFSA’s case, as set out in its Statement of Case, can be summarised as follows:
 - (1) The Applicant failed to notify the DFSA of the following trades in a security called the Bitcoin Fund on 28 and 29 April 2022. On each of those dates a client of the Applicant (“C”) placed identical buy and sell orders for the Bitcoin Fund through the Applicant’s online trading system, so that when the buy orders were immediately executed, there was no change in beneficial interest in the security and, following the trading on 29 April 2022, there was a spike in the price of the security of 27%.
 - (2) C informed the Applicant in July 2022 that he placed these trades (“the Trades”) in order to create a market in this security.
 - (3) The Trades breached Article 54(a) in Chapter 1 of Part 6 of the Markets Law (DIFC Law No. 1 of 2012) (“the Markets Law”) as they amount to conduct that C knew or reasonably ought to know may result in or contribute to a false or misleading impression as to the supply of, demand for or price of the Bitcoin Fund and thus manipulate a market in investments. They therefore constitute “Market Abuse” for the purposes of the DFSA Rulebook.
 - (4) The Applicant was at all material times a Recognised Member for the purposes of REC by virtue of its membership of NASDAQ Dubai. As a result, the Applicant was obliged under REC 3.4.5 to notify the DFSA immediately of the Trades if it had reasonable grounds to suspect that the Trades amounted to Market Abuse.

- (5) The Applicant did not notify the DFSA of the Trades at any time.
- (6) The Applicant had reasonable grounds to suspect that the Trades, and C's orders for the Trades, may constitute Market Abuse by at least the following dates and times:
- (a) 28 and 29 April 2022, when the Trades were placed, as they involved no change in beneficial interest in the investment;
 - (b) 29 April 2022, when it was apparent that the Trades had caused a price spike that was inconsistent with the long-term trend in the market;
 - (c) 29 April 2022, when NASDAQ Dubai wrote to the Applicant asking it, among other questions, to explain "the motivation behind the trade – noting no change in beneficial ownership";
 - (d) 5 May 2022, when the Applicant responded to NASDAQ Dubai but did not provide any answer regarding the motivation behind the Trades;
 - (e) 17 June 2022, when NASDAQ Dubai wrote to the Applicant "It was noted that trades for 28th and 29th April resulted in Wash Sale – noting no change in beneficial ownership as client being on both sides of the trade. As you are aware that self-matching of trade can lead to an artificial appearance of activity". At that time the Applicant must have known that its surveillance systems were unable to flag self-matching trades and had been put on notice of the risk that this could cause a misleading impression;
 - (f) 20 June 2022, when the Applicant informed C that the Trades breached rules and regulations and that "it is prohibited to sell small amounts on the limit down this will make the price drop significantly";
 - (g) The date of the Applicant's call with C in July 2022, in which C said that "... I don't know if this is permitted or not. I saw there is no demand (orders) and I asked, I put a bid order and an ask order. I sold it to myself and places a buy order for myself.";
 - (h) 2 September 2022, when NASDAQ Dubai sent the Applicant a Warning Letter regarding its failures to operate in an open and cooperative manner regarding NASDAQ Dubai's investigations into the Trades, which it called "wash trades", and noting the Applicant had granted trading access to a client without ensuring he knew NASDAQ Dubai's rules. This should have caused the Applicant to conclude that the Trades may have breached those rules and constituted Market Abuse.

(7) Accordingly, the Applicant contravened REC 3.4.5. In the circumstances it is appropriate to exercise the DFSA's power under Article 90(2)(a) of the Regulatory Law 2004 ("the Regulatory Law") to fine the Applicant the sum of US\$ 25,000.

6. In its Reply to the Statement of Case, the Applicant stated that it did not consider the Trades constituted Market Abuse and such a belief was reasonable in all the circumstances. In particular, the Applicant contended:

- (1) The fact that the Trades were self-matching was not, by itself, a good or sufficient basis to determine Market Abuse.
- (2) The Bitcoin Fund was an illiquid stock with little or no trading most days which explained the price spike following the Trades. Units in the Bitcoin Fund also traded in relatively low volumes and amounts. This meant that spikes in the price of the units were

inevitable when trading took place. Accordingly, a spike in price was not, in the circumstances, a cause for suspicion or a reasonable basis for determining the Trades constituted Market Abuse.

(3) C's motivation for the Trades is not relevant to whether they constituted Market Abuse. Even if it was, C explained to the Applicant that he had no intention to do anything wrong.

(4) The Applicant did not treat the reference to "wash trades" in NASDAQ Dubai's email of 17 June 2022 as a reference to Market Abuse in Article 54 of the Markets Law which does not refer to wash trades and accordingly that email did not give rise to reasonable grounds for the Applicant to determine that the Trades constituted Market Abuse. This is especially so when the email is set against the context of the wider communications in which the clear gravamen of NASDAQ Dubai's concern was, from the start, a potential breach of its Business Rules in which there is no reference in the correspondence to Market Abuse.

(5) The call with C in July 2022 did not indicate any nefarious conduct or intention to commit Market Abuse on the part of C.

(6) NASDAQ Dubai's Warning Letter of 2 September 2022 made no reference to Market Abuse.

7. It should be noted that the Applicant's case changed significantly when it came to its skeleton argument and the hearing before the Tribunal. In its Reply, as mentioned at [6] above, the Applicant pleaded that it did not know that the Trades constituted market abuse and that such belief was reasonable in the circumstances. It is clear from that wording and, as Mr Robinson KC for the DFSA demonstrated to us was the position taken by the Applicant in the regulatory proceedings before the DFSA's decision-maker, that the test in REC 3.4.5 was a purely objective test. That meant that if a report of potential Market Abuse was not made because the person concerned did not believe that to be the case, that was not sufficient to escape liability where the belief was not reasonable in the circumstances.

8. However, Al Ramz now contends that REC 3.4.5 has a subjective element, that is the person concerned must actually suspect (and for reasonable cause) that there is potential Market Abuse for the Rule to apply. Al Ramz contends that it had no actual suspicion and accordingly DFSA's case must fail.

9. It is regrettable that such a fundamental point of construction was raised at a very late stage in the proceedings. We were given no explanation as to why the point was not raised earlier, either during the regulatory proceedings or in the reference notice.

10. DFSA would have been entitled to object to the point being raised late in the proceedings but, generously, Mr Robinson made no objection on the basis that it was important that the correct legal position be established, and he considered that he had had sufficient time to consider the point and respond to it.

11. Accordingly, we permitted the point to be argued.

APPLICABLE LEGAL AND REGULATORY PROVISIONS

General

Applicable law

12. Article 8 of the Law on the Application of Civil and Commercial Laws in the Dubai International Financial Centre (“DIFC”) 2004(as amended) provides that the rights and liabilities between persons in any civil or commercial matter are to be determined according to the laws for the time being in force in the Jurisdiction chosen in accordance with paragraph (2) of that Article as follows:

- (a) so far as there is a regulatory content, any applicable DIFC Statute; failing which,
- (b) the law of any Jurisdiction other than that of the DIFC expressly chosen by any DIFC Statute; failing which,
- (c) the laws of a Jurisdiction as agreed between all the relevant persons concerned in the matter; failing which,
- (d) the laws of any Jurisdiction which appears to the DIFC Court or Arbitrator to be the one most closely related to the facts of and the persons concerned in the matter; failing which,
- (e) DIFC Law.

13. There is clearly a regulatory content to these proceedings. Therefore, as detailed below, we shall apply the relevant provisions of the various laws administered by the DFSA which are applicable in this case.

14. In interpreting those provisions, which are similar to corresponding regulatory provisions in the United Kingdom, we have been assisted by the various judgments of the Courts and Tribunals of England and Wales and the United Kingdom which have been cited to us. We have treated those judgments as persuasive authority when determining the issues which arise on this reference, in accordance with the applicable principles of the laws of England and Wales. This approach is consistent with Article 8A(3) of the Law referred to at [12] above which provides that the common law supplements DIFC Statute and in determining the common law for the DIFC in any case regard may be had to the common law of England and Wales and other common law jurisdictions.

The DFSA: Objectives and Powers

15. The DFSA is the regulator of, among other matters, financial services activities conducted in or from the DIFC. It administers legislation including the Markets Law, the DFSA Rulebook and the Regulatory Law.

16. The DFSA has objectives under Article 8(3) of the Regulatory Law that include the following:

- “(a) to foster and maintain fairness, transparency and efficiency in the financial services industry (namely, the financial services and related activities carried on) in the DIFC;
- (b) to foster and maintain confidence in the financial services industry in the DIFC;
- (c) to foster and maintain the financial stability of the financial services industry in the DIFC, including the reduction of systemic risk;
- (d) to prevent, detect and restrain conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC, through appropriate means including the imposition of sanctions; and

(e) to protect direct and indirect users and prospective users of the financial services industry in the DIFC”

17. In exercising its powers and performing its functions, the DFSA is to take into consideration certain “guiding principles” under Article 8(4) of the Regulatory Law, including “fostering the development of the DIFC as an internationally respected financial centre”.

18. In pursuit of its statutory objectives the DFSA may exercise certain enforcement powers. Article 90 of the Regulatory Law provides that where the DFSA considers that a person has contravened a provision of any legislation administered by the DFSA then it may exercise one or more of the powers in Article 90(2) in respect of that person. One of those powers is the power to fine the person such amount as it considers appropriate in respect of the contravention: see Article 90(2)(a).

19. Article 90(6) requires the DFSA to prepare, publish and maintain a statement of its policy in relation to the factors to be considered by the DFSA in exercising the power to fine a under Article 90(2)(a).

20. The relevant statement of policy can be found in Chapters 6 and 7 of the DFSA’s Regulatory Policy and Process Sourcebook (“RPP Sourcebook”). We refer to this policy in more detail later.

Relevant provisions of Laws administered by the DFSA

21. Article 37 of the Markets Law permits the DFSA by Rules, to permit an Authorised Market Institution¹ to admit as a member a “Recognised Person”.

22. That part of the DFSA Rulebook known as REC makes provision for the DFSA to maintain a list of “Recognised Persons”, that is persons located in a jurisdiction other than the DIFC who have satisfied the DFSA that they meet the recognition criteria set out in REC. Those criteria include being regulated in respect of the trading of investments by a financial services regulator to a standard satisfactory to the DFSA and being licensed or otherwise authorised to trade on or use the facilities of an exchange, clearing house or alternative trading system in a jurisdiction acceptable to the DFSA: see REC 2.5.

23. Al Ramz is a Recognised Member and in that capacity is permitted to trade on NASDAQ Dubai.

24. REC 3.4.5 provides so far as relevant:

“(1) A Recognised Member must notify the DFSA immediately if it:

(a) receives an order from a Client, or arranges or executes a transaction with or for a Client; and

(b) has reasonable grounds to suspect that the order or transaction may constitute Market Abuse.

(2) The notification under (1) must specify:

¹ NASDAQ Dubai is an Authorised Market Institution

- (a) sufficient details of the order or transaction; and
- (b) the reasons for the Recognised Member suspecting that the order or transaction may constitute Market Abuse.”

25. The Guidance to this Rule, printed underneath it in the DFSA’s Rulebook, states:

“Further Guidance on the requirement to notify the DFSA of suspected Market Abuse can be found after GEN Rule 11.10.12A (the equivalent requirement for an Authorised Firm)”.

That further guidance after GEN Rule 11.10.12A (which is in the General Module of the DFSA’s Rulebook “GEN”) includes the

following:

“In some cases a suspicion of Market Abuse may arise when an order is received. In other cases, it may not be apparent until a transaction is executed or when viewed in the context of later information, behaviour or transactions. When a firm submits a notification, it should be able to explain to the DFSA its reasons for suspecting that the order or transaction may constitute Market Abuse.”

26. The term “Client” in REC 3.4.5 is defined in the Glossary to the DFSA’s Rulebook as “a Retail Client or Professional Client as defined in COB chapter 2”.

27. “Market Abuse” is defined in the Glossary to the DFSA’s Rulebook as “conduct which contravenes a provision contained in chapter 1 of Part 6 of the Markets Law 2012”.

28. Chapter 1 of Part 6 of the Markets Law includes Articles 54 and 57 of that Law, which provide so far as relevant:

“54. Fraud and Market Manipulation

A person shall not, in the DIFC or elsewhere, by any means, directly or indirectly, engage or participate in any act, practice or course of conduct relating to Investments or Crypto Tokens that the person knows or reasonably ought to know:

- (a) results in or contributes to, or may result in or contribute to, a false or misleading impression as to the supply of, demand for or price of one or more Investments or Crypto Tokens;
- (b) creates or is likely to create an artificial price for one or more Investments or Crypto Tokens;

...

57. False or misleading conduct and distortion

A person shall not, in the DIFC or elsewhere, engage in any activity or conduct in relation to Investments or Crypto Tokens which does not fall under Articles 54, 55 or 56 that:

- (a) gives a false or misleading impression as to the supply of, or demand for, or as to the price of one or more Investments or Crypto Tokens; or
- (b) would distort, or would be likely to distort, the market for one or more Investments or Crypto Tokens and

(c) is likely to be regarded by market participants as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the market.”

29. In these Articles, and in the Markets Law generally, the term “Investments” has the meaning prescribed in the Rules made under the Regulatory Law: see Schedule to the Markets Law, Part 3. Those Rules, namely the DFSA Rulebook, define Investments as including a Unit, which is defined as “a unit in or a share representing the rights or interests of a Unitholder in a Fund” (GEN Rules A2.1 and 2.2).

30. It was common ground that in this case the Trades concerned units in a fund called the Bitcoin Fund. C’s conduct in relation to the orders was conduct relating to “Units” and thus related to Investments and was therefore capable of constituting Market Abuse within the meaning of that term in the Markets Law.

31. The DFSA publishes a Code of Market Conduct on its website that includes a section headed “Market Manipulation and Fraud”. The version in force from April to the end of October 2022 (Version 3) gave the following examples of conduct that, in the DFSA’s view, may contravene Article 54 of the Markets Law:

“2. (a) wash trades — that is, a sale or purchase of an Investment where there is no change in beneficial interest or market risk, or where the transfer of beneficial interest or market risk is only between parties acting in collusion, resulting in a false appearance of trading activity;”

This was said to be conduct that “may result in or contribute to a false or misleading impression under Article 54(a)”; and

“3. (b) transactions where both buy and sell orders for an Investment are entered at, or nearly at, the same time, with the same price and quantity by the same party, or by parties acting in collusion, in order to position the price of the Investment at a particular level.”

This was said to be conduct that “may create or may be likely to create an artificial price for an Investment under Article 54(b)”.

32. The DFSA also publishes information on the obligation to notify the DFSA of suspected Market Abuse. On 17 October 2021, the DFSA published Markets Brief 24 on Suspicious Transaction and Order Reports (“STORs”). This confirmed the relevance of Market Abuse reporting to Recognised Members under REC 3.4.5 and stated:

“These obligations require firms to notify STORs as soon as it has a reasonable suspicion of market abuse. Firms should make a STOR notification as soon as practically possible, which in some cases may be as early as the point of having received the order. In other cases, suspicions may not be apparent until the transaction is executed or when viewed in the context of later information, behaviours or consequent transactions”

“If multiple firms are involved in the execution of the same or related suspicious orders and transactions, each firm will be under an obligation to make a STOR notification to the DFSA. The obligation does not fall away for one firm, simply because a report has been submitted to the DFSA by another firm.”

ISSUES TO BE DETERMINED AND THE ROLE OF THE TRIBUNAL

Role of the Tribunal

33. The role and jurisdiction of the FMT was described in its decision in *Cefaratti and Dalma Capital Management Limited v DFSA* (2023) [FMT 21019 and 21020] at [3]:

“The Financial Markets Tribunal (“FMT” or “Tribunal”) was created under the Regulatory Law (DIFC Law No 1 of 2004) (“the Regulatory Law”). It hears and determines References and Regulatory Proceedings. A Reference is a proceeding in front of the FMT to review a decision of the DFSA. The FMT conducts a full merits review of any DFSA decision referred to it. It can take into account any relevant new evidence that came to light after the DFSA's original decision. The FMT may, among other things, affirm, vary or set aside the DFSA's original decision. The FMT can also remit the matter to the DFSA with directions as to how the DFSA should make its decision.”

34. Later in that decision at [22] the FMT dealt with the question of burden of proof:

“The FMT conducts in effect a de novo hearing of the process which led to the Decision Notice. The burden of proof lies on the DFSA to prove the case...”

35. The standard of proof to be applied is the balance of probabilities: see Rule 54 of the Rules of Procedure of the FMT. The “balance of probabilities” means that the FMT will be satisfied that an event occurred if, on the evidence before it, the FMT considers the occurrence of the event was more likely than not.

Issues to be determined

36. In advance of the hearing, the parties had identified 13 issues for the FMT to determine on the reference. It was clear from the submissions at the hearing and the parties’ closing submissions that these issues had been narrowed down. Mr Farhaz Khan KC, Counsel for the Applicant, helpfully identified in his closing submissions that three issues had crystallised for determination:

(1) Correctly construed, does the notification obligation in REC 3.4.5 require that a Recognised Member must suspect Market Abuse? (**the “Construction Issue”**).

(2) Has the DFSA discharged the burden of demonstrating that there were “reasonable grounds” for suspicion? (**the “Reasonable Grounds Issue”**).

(3) Alternatively, has the DFSA demonstrated that it is appropriate in all the circumstances to impose a fine against Al Ramz under Article 90(2)(a) of the Regulatory Law? (**the Sanction Issue”**).

37. We shall turn to these issues after having reviewed the evidence and having made such findings of fact as are necessary.

EVIDENCE

The DFSA’s witnesses

38. The DFSA filed witness statements from the following individuals:

(1) **Mr Anjam Jalal** – Mr Jalal is an Associate Director in the Enforcement Division of the DFSA. Mr Jalal was responsible for the management of the investigation into Al Ramz which led to the Decision Notice and subsequently to this reference.

Mr Jalal recited the key evidence on which the DFSA relied in bringing proceedings against the Applicant following completion of the investigation.

Mr Jalal was cross-examined by Mr Khan. He gave clear and straightforward answers, doing his best to assist the Tribunal, and was clearly on top of the detail of the investigation.

(2) Ms Maryam Al Suwaidi – Ms Al Suwaidi is a Senior Manager, Markets, Strategy & Risk division of the DFSA. She has responsibility for secondary market activity, mainly around market surveillance, issuer monitoring and STORs.

Ms Al Suwaidi gave evidence regarding the compliance meeting held on 1 September 2022 between the DFSA and NASDAQ Dubai which Ms Al Suwaidi attended, and whether as a result of that meeting NASDAQ Dubai was prompted by the DFSA to make a STOR to the DFSA in respect of the Trades. Ms Al Suwaidi also gave evidence regarding the email sent by NASDAQ Dubai to her on 8 September 2022 which attached NASDAQ Dubai’s investigation report regarding the Trades and her subsequent correspondence with NASDAQ Dubai.

Ms Al Suwaidi was cross examined by Mr Rainsbury. We found her to be a straightforward witness, doing her best to assist the Tribunal.

The Applicant’s witness

39. Al Ramz filed a number of witness statements from Mr Haisam Odeimeh, the group CEO, Financial Services of Al Ramz Corporation Investment and Development PJSC, the parent company of the Applicant.

40. Mr Odeimeh’s evidence covered Al Ramz’s systems and controls as well as reciting the documentary evidence relating to the Trades, the Applicant’s interactions with C and NASDAQ Dubai, and his assessment of the results of NASDAQ Dubai’s investigation and the subsequent STOR submitted by NASDAQ Dubai to the DFSA.

41. Although Mr Odeimeh’s evidence has been helpful in identifying the areas of factual dispute between the DFSA and Al Ramz, we found it to be of limited assistance in resolving those matters as he was not personally a party to most of the relevant conversations and documents.

42. Mr Odeimeh was cross examined by Mr Robinson. We found him to be a straightforward witness, doing his best to assist the Tribunal.

Documentary evidence

43. In addition to the witness evidence, we had a large electronic bundle, the contents of which were derived from the DFSA’s investigation and on which we have based most of our findings of fact.

FINDINGS OF FACT

44. From the evidence we heard and the documents we saw, we make the following findings of fact.

Background

45. Al Ramz is a well-established and well-known financial institution which is incorporated and domiciled outside the DIFC in onshore UAE. It is regulated there by the UAE Capital Markets Authority (“CMA”) which until 1 January 2026 was known as the Securities and

Commodities Authority (“SCA”). Al Ramz was established in 1998. It provides a broad range of financial services to clients, including asset management, corporate finance, brokerage, security margins, market making, liquidity providing and public offering management.

46. Al Ramz’s activities include the operation of an online trading platform which enables the trading of securities on a number of exchanges in the UAE, including NASDAQ Dubai. We were told that most of this trading takes place in exchanges in Abu Dhabi which were at the time regulated by the SCA (now the CMA) and not the DFSA.

47. As Al Ramz is located outside the DIFC, it is not authorised to carry on business in the DIFC by the DFSA. However, as mentioned above, Al Ramz has been admitted to the list of Recognised Members which is maintained by the DFSA pursuant Article 37 of the Markets Law. It obtained the status of a Recognised Member on 27 November 2008. Al Ramz satisfied the Recognition Criteria in REC 2.5.1 by being licensed and authorised to trade on exchanges located in the UAE outside the financial free zones and being regulated in that jurisdiction by the SCA to a standard broadly equivalent to and satisfactory to the DFSA. Accordingly, Al Ramz has been admitted to membership of NASDAQ Dubai and is permitted to trade on that exchange as a Recognised Member.

48. As a Recognised Member, Al Ramz is subject to the requirements in REC including the notification requirement in REC 3.4.5. These requirements do not require Al Ramz to establish or maintain market surveillance programmes and it had not done so in relation to its trading on NASDAQ Dubai at the time the Trades took place.

49. As a member of NASDAQ Dubai, Al Ramz is also subject to the NASDAQ Dubai Business Rules, including those relating to disciplinary proceedings and appeals.

50. NASDAQ Dubai is incorporated in the DIFC and is an Authorised Market Institution within the meaning of Article 42 of the Regulatory Law. It is one of only two such institutions in the DIFC. It is licensed by the DFSA to carry on the business of operating an exchange and clearing house.

51. NASDAQ Dubai maintains a close relationship with the DFSA. As Ms Al Suwaidi told us, NASDAQ Dubai submits a Market Quality Report (“MQA”) to the DFSA each month and there is a routine compliance meeting which is held to the extent possible, on a bi-monthly basis between NASDAQ Dubai and the DFSA. The purpose of these meetings is generally to discuss various regulatory and compliance topics, including any referrals and notifications made by NASDAQ Dubai.

52. NASDAQ Dubai is subject to that part of the DFSA Rulebook known as AMI. Under AMI 5.11.1(b) it is required to have “an effective market surveillance program to... monitor conduct which may amount to Market Abuse”.

53. The exchanges on which Al Ramz traded in Abu Dhabi have in place safeguards on the respective exchanges to prevent self-matching trades occurring. As a result, it is not necessary for those operating brokerage systems in these markets to have internal measures in place to block such trades, nor implement detection controls for an event that is structurally precluded from occurring.

54. Al Ramz's trading system was not set up in April 2022 to identify and/or prevent self-matching trades being executed on its platform. Al Ramz had assumed, that NASDAQ Dubai,

like the exchanges in Abu Dhabi, would have the same controls in place in its clearing system. As mentioned above, Al Ramz was not required by the SCA nor the DFSA to have in place such systems and controls that would prevent self-matching trades occurring.

55. Whilst NASDAQ Dubai was able to identify self-matching trades in April 2022, it had not activated the validation controls to prevent trading with the same Investor Number taking place.

56. In September 2022, Al Ramz put in place measures to prevent the execution of self-matching trades.

57. The Bitcoin Fund is a security listed on NASDAQ Dubai. At the time of the Trades, trades in the security tended to be low in volume and value in a relatively illiquid market. Trades took place on only 62 out of 251 trading days in 2022 with an average daily trading of US\$ 265.

58. As the trading history of this security demonstrates, in 2021 and 2022 price fluctuations in the Bitcoin Fund were not unusual. We accept Mr Odeimeh's evidence that price fluctuations occur more easily than in a liquid market and the trading history shows that from time to time the Bitcoin Fund was susceptible to sharp price movements in short periods of time. Consequently because of the low level and infrequent occasions of trading in the security, any trading at all can give rise to sharp price movements.

59. We also accept that the underlying assets held in the Bitcoin Fund, namely cryptocurrency, are prone to price volatility and therefore the Bitcoin Fund would be susceptible to external events occurring in the cryptocurrency market.

The Trades

60. At 11:51:05 am on 28 April 2022, a C, using Al Ramz's online trading platform, placed a sell order for 24 units of the Bitcoin Fund valued at US\$ 1,188. At 12:04:34 pm on same day, C placed a buy order for 24 units of the Bitcoin Fund valued at US\$ 1,188. The buy orders were immediately executed.

61. At 11:38:05 am on 29 April 2022, C placed a further sell order for 55 units of the Bitcoin Fund valued at US\$ 1,320. At 2:47:20 pm the same day, C placed a buy order for 55 units of the Bitcoin Fund valued at US\$ 1,320. The buy orders were immediately executed.

62. The total value of the Trades was US\$ 2,508.

63. No brokers or other employees of Al Ramz were involved in the placing or execution of the Trades as they were placed by C using Al Ramz's online trading system. For the reasons described at [53] above, the Trades were not detected by Al Ramz's order management system.

Initial requests for information from NASDAQ Dubai

64. On 29 April 2022 Ms Binal Vajani (Manager of Market Regulation and Deputy MLRO at NASDAQ Dubai) emailed Ms Elissar Yahya (Assistant Vice President of Risk and Compliance at Al Ramz) requesting information about the trades on 29 April 2022 (but not 28 April), namely:

- (1) details of the ultimate beneficial client;
- (2) a copy of the order instruction;

(3) Know your customer (“KYC”) documents of C; and

(4) an explanation of “the motivation behind the transactions – noting no change in beneficial ownership”.

65. On 5 May 2022 Ms Yahya responded to Ms Vajani, attaching C’s Account Opening Form (including the KYC documents). She confirmed that C was the ultimate beneficiary and that all orders were online orders. Nothing was said about the motivation for the transactions.

66. On 13 May 2022 NASDAQ Dubai submitted an MQR for April 2022 online to the DFSA. An accompanying spreadsheet recorded that NASDAQ had commenced an investigation into Al Ramz on 29 April 2022, describing the incident which led to the investigation as: “Wash Sale and Unusual Price” under the category “Market Manipulation”. The investigation was described as still “Open”.

67. It would appear that Ms Vajani had not received Ms Yahya’s email of 5 May 2022 as on 19 May 2022 Ms Vajani emailed Ms Yahya asking her urgently to advise on when Al Ramz would respond to her request on 29 April.

68. Ms Yahya replied on the same day explaining that Al Ramz had provided the information on 5 May and re-attached its response to NASDAQ Dubai.

69. It seems that Ms Vajani did not receive this email either because on 25 May 2022, Ms Vajani sent a further chaser email to Ms Yahya. Ms Vajani referred to the obligation under section 3.4 of the NASDAQ Dubai Rules in Rulebook 1- Equities to act in an open and cooperative manner. She also explained that as a regulated exchange they had an ongoing reporting obligation to the DFSA and that "we are obliged to investigate certain trading patterns and to escalate any that we are not able to adequately explain".

70. On 27 May 2022, Racha Lucero (General Counsel at NASDAQ Dubai) emailed Ms Yahya referring to the previous requests for information "in connection with an ongoing query" and warning that refraining from providing information in an open and cooperative manner constituted a breach of the NASDAQ Dubai Rules.

71. On the same day Ms Yahya responded to Ms Lucero explaining that the information requested had already been emailed to Ms Vajani on 5 May 2022 and 19 May 2022. She said that Al Ramz was aware of its obligations towards NASDAQ Dubai and that they aim to be as transparent and cooperative as required. She said she would be sending the documents in three emails due to size limitation and asked for confirmation once those had been received.

72. We think it is more likely than not that the original emails were not received, possibly due to the size limitations referred to in Ms Yahya’s last e-mail. It would appear that the e-mails sent by Ms Yahya on 27 May 2022 were received because on 17 June 2022 Ms Vajani acknowledged receipt of an e-mail from Ms Yahya and in the absence of any other communications in evidence since 27 May 2022, we infer that Ms Vajani was referring to Ms Yahya’s e-mail of 27 May 2022.

73. We therefore infer that due to some unexplained technical difficulties the e-mails sent by Ms Yahya before 27 May 2022 were not received by NASDAQ Dubai. Accordingly, Al Ramz cannot be criticised on the basis of being uncooperative with NASDAQ Dubai by failing to

respond promptly to its requests. The evidence showed that they did respond promptly to the original request and the various chasing emails.

74. On 17 June 2022, Ms Vajani sent a further email to Ms Yahya, identifying that she had “skipped” asking for information about the trades on 28 April and asking for:

- (1) confirmation that the trades on 28 April were also placed by C; and
- (2) mode of payment for the Trades.

Ms Vajani went on to say:

“It was noted that trades for 28th and 29th April resulted in Wash Sale – noting no change in beneficial ownership as client being on both sides of the trade. As you are aware that self matching of trades can lead to an artificial appearance of activity which is a contravention of Rule 3.5 Nasdaq Dubai Business Rulebook and therefore is strictly prohibited on our Market. Can you please confirm if above self matching trades were flagged by your internal surveillance system? If yes, please provide the course of action taken by your firm”.

Calls with the Client and NASDAQ Dubai’s further enquiries

75. On 20 June 2022, an Al Ramz Trader (“NK”) spoke directly to C. The call was transcribed as an English translation. The relevant extract is set out below:

“NK: Hi, hi, brother Yaqub. Umm, Yaqub, I just received an email, and I want to confirm something with you. Mr Yaqub [FULL NAME]. As I informed you, brother Yaqub, regarding trading in Nasdaq markets, umm, it’s very important, because we are not allowed to place buy and sell orders on the same account at the same price. This is against the rules and regulations, okay? And as I mentioned to you, it’s very important to follow the trades closely, When we place them on the system, there shouldn’t be a gap between the bid and ask prices. Like I told you before, for example, if a stock is being requested at the limit down, it is not allowed for us to sell small amounts at the limit down, which would cause a large drop... a significant drop with small quantities. There must always be a balance between supply and demand with the volumes, and it’s also important to raise awareness among investors on this topic. Especially since you’re still new to Nasdaq trading, I understand this, and God willing, you’ll be more compliant in the future with this matter. It’s very important that we monitor our trades carefully and not place buy and sell orders for the same stock, at the same price, for the same person. And if there are price gaps, we should always ask before proceedings. For instance, if you have a quantity you want to sell at the limit down, it’s important to request approval from the market before executing the trade to avoid impacting the stock price and causing significant drops or rises with small quantities. Is that clear, brother Yaqub?”

C: Yes, God willing

NK: May God bless you and thank you. I hope that you will be cautious with the upcoming trades. God bless you.

C: Yeah, but as for Bitcoin, there were just two trades like this, and then I adjusted them, and that’s it. After that, I was just following the market

[indiscernible].

NK: Yes, according to supply and demand within the rules and regulations of our markets, Nasdaq, and the Dubai and Abu Dhabi markets, correct?...

God bless you, thank you. It was a pleasure speaking with you, Yaqub. Thank you, take care, bye.”

76. It is clear from this extract that the Al Ramz trader was warning C that the Trades had not been in compliance with the Rules of NASDAQ Dubai, explaining why wash trades were unacceptable, as Ms Vajani had observed in the passage from her email quoted at [74] above. C was warned against any repeat behaviour and the clear implication from his comment that in subsequent trades he was “just following the market” was that he understood that in executing the Trades he was trying to move the market.

77. On 21 June 2022, Ms Yahya responded to Ms Vajani’s email of 17 June 2022, confirming that the Trades had been executed online by C, that C “transferred his sell proceeds from equity sub acc. to future sub acc”, and reporting on the call with C said:

“We contacted the client and explained the regulations and the market rules about placing such orders under the same NIN.² Client reassured to immediately stop executing trades of such nature”.

78. Ms Yahya did not answer the question as to whether the self-matching trades had been flagged by Al Ramz’s surveillance systems.

79. On 24 June 2022, Ms Vajani emailed Ms Yahya asking “Did client explained [sic] the rationale for placing the orders on both sides of the order book resulting into self-matched trades?”

80. On 28 June 2022, Ms Yahya responded but did not give a direct answer. She said:

“The client confirmed that he was not aware of the applicable rules and committed to comply with the market rules for future trade, Internally, we will closely monitor his trading activities to ensure full compliance.”

81. On 13 July 2022, in the absence of Ms Yahya on leave, Ms Vajani asked her colleague, Rizwan Qureshi, for the recording of the call with C.

82. On 15 July 2022 Mr Qureshi replied, advising that the Al Ramz IT team had located the record of the call and would contact him to work out how the file could be sent to him. On the same day Ms Vajani replied to Mr Qureshi thanking him and asking: “can you please confirm if your surveillance systems and/or reports were able to flagged [sic] the self-matching trades for 28th and 29th April?”

83. On 18 July 2022 the recording of the call was sent to Ms Vajani. After listening to the call, Ms Vajani emailed Mr Qureshi asking for the following information:

- (1) the date of the call;
- (2) whether it was the first communication with C;
- (3) the economic rationale for the Trades; and
- (4) whether Al Ramz’s surveillance systems/reports were able to flag the Trades.

² National Investor Number, a unique identifier issued to persons who wish to trade on public stock markets.

84. On 22 July 2022, an Al Ramz Trading Manager (“AAK”) spoke to C. The call was transcribed as an English translation. The relevant extract is set out below:

“C: God willing. The point is, first of all, I didn’t know whether this was allowed or not! I’m just a trader; I like to trade.

AAK: Yes.

C: I saw there was no supply, no demand, so I was the first to offer and the first to place an order.

AAK: Yes.

C: I sold to myself and bought from myself. Brother, I didn’t buy millions; I bought for...

AAK: Yes.

C: It was a small amount, may be a thousand dollars, two thousand dollars. I sold and it was done. In fact, I’m already out of Bitcoin, I have no goal behind this, nothing. Now, today they told me it’s forbidden, and the government has all my respect. The government said it’s forbidden, we told them we’re ready to comply.

AAK: That’s [indiscernible], true.

C: So that’s it, I mean, the government said it’s forbidden, and we told them we’re ready to comply with all due respect. We won’t repeat this again. you. It was a pleasure speaking with you, Yaqub. Thank you, take care, bye.” On the contrary, I actually bought, not in one or two or three trades, but in five trades while it was going down.

AAK: Hmm, hmm

C: In this way, I have no intention to do anything wrong. First of all, we don’t eat from unlawful gains; we don’t want anything haram.”

85. On 22 July 2022, Mr Qureshi provided a response to Ms Vajani’s questions, as set out in her email of 18 July 2022 as follows:

(1) the call had taken place on 20 June 2022;

(2) it was the first communication with C and there had been no prior communication with him;

(3) another call had now taken place and Mr Qureshi was arranging for the file to be sent to Ms Vajani; and

(4) in terms of surveillance, Al Ramz’s systems were currently unable to flag self-matching trades.

86. A recording of the call was sent to Ms Vajani on the same day.

87. On 25 July 2022 Ms Rajani emailed Mr Qureshi identifying that, during the call on 22 July, the Client had referred to a conversation with “Ms Nisreen” in which he explained the rationale for the Trades. Ms Vajani noted the call on 20 June 2022 did not include such a conversation. She asked Mr Qureshi to confirm if there was any other communication made by Ms Nisreen.

88. On 4 August 2022 Mr Qureshi emailed Ms Vajani explaining that he had discussed the matter with the broker who had confirmed:

- (1) a further conversation had taken place on the broker's mobile phone (which Mr Qureshi had been unaware of);
- (2) the Client had called for a general discussion regarding market conditions; and
- (3) when the matter of NASDAQ rules and regulations was raised, the call was ended, and the discussion continued the same day on a recorded line.

Compliance Meeting between NASDAQ Dubai and the DFSA on 1 September 2022

89. A routine compliance meeting between NASDAQ Dubai and DFSA took place on 1 September 2022. Ms Al Suwaidi and others attended for the DFSA. Ms Lucero, General Counsel, and others attended for NASDAQ Dubai. An agenda for the meeting was circulated on 31 August 2022. Item 4 on the agenda was a standing item identified as "Breaches of continuing obligations by Reporting Entities admitted to trading." There was no further detail under this item.

90. As confirmed by Ms Al Suwaidi in her evidence, the meeting lasted about 20 minutes. There then followed a process by which minutes of the meeting were produced. What happened was that one of the DFSA employees who attended the meeting recirculated the original agenda which under each agenda item was populated with a summary of what was discussed under that item.

91. The first iteration of this document was circulated at 10.23 on 1 September. Agenda Item 4 now included a comment bubble from the DFSA employee which stated: "ND, please provide more detail on the breach. Thanks". It is therefore clear that a breach of the NASDAQ Rules had been discussed at the meeting. Ms Al Suwaidi has no clear recollection of the detail that was discussed at the meeting.

92. At 15.28 on the same day Ms Lucero circulated an email to the attendees attaching an updated version. Agenda Item 4 had been amended by NASDAQ Dubai to include the following details:

"Wash trades were executed in Bitcoin Fund on the 28th and 29th of April 2022 by Al Ramz's client as below: [Times and value of the Trades] Market Surveillance (MS) followed up with Al Ramz Compliance Officer (CO), however the CO did not act in an open and cooperative manner and also as [sic] failed to provide a satisfactory reason regarding the motivation behind the trades, if these trades were flagged by Member's internal surveillance system; and if there was any action taken against the client in a timely manner. The above act by the CO contravenes Nasdaq Dubai Business Rulebook in relation to the following:

- Al Ramz employees not acting in an open and cooperative manner, be honest and truthful and not mislead or conceal any material matter in compliance with your obligations under Rule 7.6.3 of Nasdaq Dubai Business Rulebook;
- Al Ramz should refrain from providing Nasdaq Dubai with any information which is false, misleading or inaccurate in compliance with your obligations under Rule 7.6.4 of the same Business Rulebook;

- Al Ramz should ensure the use of recorded lines when communicating with clients including for receipt of client instructions and in obtaining further information as requested from Nasdaq Dubai; and
- Al Ramz should ensure that all individuals that have access to online trading or any other means of trading have sufficient and adequate understanding of Nasdaq Dubai Business Rules.

We shall share the detailed investigation report by next week.”

93. At 15.58 on the same day DFSA emailed Ms Lucero attaching the “final meeting minutes” with the same information as the version edited by NASDAQ Dubai.

94. It is not clear how the information regarding the wash trades was imparted to DFSA at the meeting, and whether, as Al Ramz has suggested, it was prompted by DFSA. Ms Al Suwaidi has no recollection on this point, and we can make no finding on the issue, although we do not consider the point to be material to our decision.

NASDAQ Dubai Warning Letter of 2 September 2022 and its Investigation Report

95. On 2 September 2022 Ms Lucero emailed Al Ramz attaching a Warning Letter issued against Al Ramz (“the Warning Letter”). The email identified that, following its investigation into the Trades, NASDAQ Dubai had decided that Al Ramz “did not comply with Nasdaq Dubai Business rules relating to conduct”.

96. The NASDAQ Warning Letter stated that:

(1) Al Ramz’s Compliance Officer (“CO”) had not acted in an open and cooperative manner in breach of rules 3.4 and 7.6.3 of the NASDAQ Dubai Business Rulebook because she had “failed to provide information and documents requested in a timely manner despite several reminders” (noting that the CO had explained that information had been sent to NASDAQ Dubai and that the delay was caused by NASDAQ’s IT systems’ inability to receive emails).

(2) NASDAQ Dubai’s review also suggested that Al Ramz had failed to answer NASDAQ Dubai’s queries about (i) the motivation behind the Trades; (ii) whether the Trades were flagged by Al Ramz’s internal surveillance system; and (iii) if there was any action taken against C in a timely manner.

(3) Al Ramz had also breached rule 7.6.4 of the NASDAQ Dubai Business Rulebook by telling NASDAQ Dubai that only one call had taken place between the trader and C. This revealed a “practice” of contacting clients on mobile phones and attempting to “conceal” information.

97. The Warning Letter made no reference to Market Abuse.

98. As we have said, we do not consider that Al Ramz can be criticised for the delay in responding to NASDAQ Dubai’s initial enquiries. However, it is clear from our findings at [65], [78] and [85] that Al Ramz failed to answer NASDAQ Dubai’s questions regarding C’s motivation for the Trades, whether the Trades had been picked up by Al Ramz’s surveillance systems and the rationale for C’s trading either promptly or in a manner that was fully cooperative.

99. On 8 September 2022, Ms Yahya emailed three employees of Al Ramz (including Mr Odeimeh and Mr Qureshi) and identifying that she had spoken to Ms Lucero from NASDAQ

Dubai who had confirmed “that no further action will be taken this time” and that “[i]f they notice another misconduct then it will be reported to DFSA”.

100. On the same day Hema Ravindran (Senior Manager in Market Oversight at NASDAQ Dubai) emailed Ms Al Suwaidi stating: “As discussed in the Compliance DFSA-ND meeting of last week i.e. 1 September 2022, please find attached the Investigation Report relating to trading in QBTC shares by Member Al Ramz Capital LLC. Please do let us know if we should submit through the portal”.

101. The attached Investigation Report (“the Investigation Report”) identified that NASDAQ Dubai had “investigated cases of possible wash trades”. It repeated many of the allegations in the Warning Letter. It concluded by stating that:

(1) Al Ramz’s conduct had contravened rules 3.4, 7.6.4 and 7.6.3 of NASDAQ Dubai’s Business Rulebook by failing to provide information correctly; and

(2) “The trading activity by the client [NAME] who matched its own trade intentionally seeing no demand in the security to cause significant price impact in [the Bitcoin Fund] for two consecutive days raises suspicion. Coupled with the lack of evidence such as telephone recordings made to the client by the Member firm, to prove conclusively the intention behind the trades may be considered as a contravention of Article 54 of DFSA’s Code of Market Conduct³ and MS⁴ therefore is referring the matter to DFSA for further review and investigation.”

102. Also on 8 September 2022, Ms Al Suwaidi responded by email as follows:

“If you suspect Market Abuse, kindly submit it through the STOR online form on the portal. The form allows upload of supporting documents, where you could attach the investigation report.”

103. Later that day NASDAQ Dubai submitted a STOR. The form made it clear that it “should be completed by Relevant Firms at the first instance of having reasonable suspicions of market abuse”. Under the heading “Description of the nature of the suspicion” the description given in the relevant tick box was “fraud and market manipulation”. The reason given for the suspicion was simply “wash trade”, but it appears that the Investigation Report was attached, as suggested by Ms Al Suwaidi in her email earlier in the day.

DFSA’s investigation

104. On 13 October 2022, based on NASDAQ Dubai’s STOR submission the DFSA commenced an investigation into suspected contravention of REC 3.4.5(1) by Al Ramz which ultimately led to the issue of the Decision Notice.

DISCUSSION

Introduction

³ This presumably was intended to be a reference to Article 54 of the Markets Law, as quoted at [27] above.

⁴ Abbreviation for the Market Surveillance division of NASDAQ Dubai.

105. In the light of our findings of fact, we now turn to consider the three issues identified above that we need to resolve in order to determine this reference. For convenience, we set them out again as follows:

- (1) Correctly construed, does the notification obligation in REC 3.4.5 require that a Recognised Member must suspect Market Abuse? (“**the Construction Issue**”)
- (2) Has the DFSA discharged the burden of demonstrating that there were “reasonable grounds” for suspicion? (“**the Reasonable Grounds Issue**”)
- (3) Alternatively, has the DFSA demonstrated that it is appropriate in all the circumstances to impose a fine against Al Ramz under Article 90(2)(a) of the Regulatory Law? (“**the Sanction Issue**”)

The Construction Issue

Introduction

106. As Mr Khan correctly observed in his closing submissions, this is a pure question of construction of the words used in REC 3.4.5(1).

107. The cardinal rule for the construction of legislation is that it should be construed according to the intention expressed in the language used. The function of the court or tribunal is to interpret legislation according to the intent of those that made it, and that intent is to be deduced from the language used. Consequently, in practice both a literal and purposive approach will be taken to the words of the provision in question. In that regard, account must be taken of the mischief that the provision in question is intended to address and the words used must be construed in the context of the relevant legislative provisions as a whole.

108. For convenience we set out again in full the relevant provisions of REC 3.4.5:

“(1) A Recognised Member must notify the DFSA immediately if it:

- (a) receives an order from a Client, or arranges or executes a transaction with or for a Client; and
- (b) has reasonable grounds to suspect that the order or transaction may constitute Market Abuse.

(2) The notification under (1) must specify:

- (a) sufficient details of the order or transaction; and
- (b) the reasons for the Recognised Member suspecting that the order or transaction may constitute Market Abuse.”

109. As Mr Khan observed, the issue is whether (correctly construed) the expression “has reasonable grounds to suspect” in REC 3.4.5(1)(b) requires that: (i) a Recognised Member must have an actual suspicion of Market Abuse which is based on reasonable grounds (Al Ramz’s construction); or (b) there are reasonable grounds for suspecting in a purely objective sense irrespective of whether the Recognised Member actually suspects Market Abuse (the DFSA’s construction).

110. As Mr Khan submitted, on both constructions, there is an objective element. The DFSA's position is that the test is purely objective (without any need to hold a suspicion) whereas Al Ramz's position is that the test is partly objective (having reasonable grounds) and partly subjective (actually having suspicion). On Al Ramz's case, the subjective element is that the person concerned actually suspects that the trades in question may constitute Market Abuse and the objective element is whether there are reasonable grounds for that suspicion. As Mr Khan submitted, suspicion is a state of mind well short of belief.

111. If Al Ramz's construction is correct, this reference must succeed, and the Decision Notice must be set aside. DFSA does not advance an alternative case that it can prove what was in the corporate mind of Al Ramz at the relevant time so as to satisfy a part-subjective test. Because of the way in which the case has been investigated by the DFSA, there is no evidence of attribution before the FMT. We make no criticism of the DFSA in that regard. As we have mentioned before, at all stages during the DFSA's investigation and during the regulatory proceedings Al Ramz had taken the view that the test in REC 3.4.5 was a purely objective one. Accordingly, quite understandably, DFSA did not investigate the attribution issue.

112. Mr Khan's submissions regarding Al Ramz's construction can be summarised as follows:

(1) Correctly construed, REC 3.4.5 clearly requires "a state of mind" rather than a "state of affairs".

(2) There are three powerful indications that the expression "has reasonable grounds to suspect" is intended to have a subjective element.

(a) First, the heading of REC 3.4.5 refers to "Suspected Market Abuse". If something is suspected, it is believed to be a possibility. This is an express reference to a state of mind rather than a state of affairs. Such wording envisages that a suspicion of market abuse is actually held. It is permissible to rely on headings as an aid to interpretation in cases of ambiguity.

(b) REC 3.4.5(2)(b) requires that any notification under sub-rule (1) must specify "the reasons for the Recognised Member suspecting". This undeniably refers to a subjective state of mind (i.e. the Recognised Member's state of mind), and not an objective state of affairs, sub-rule (2) is a mandatory requirement to explain to the DFSA why a Recognised Member suspects Market Abuse when making a notification under sub-rule (1).

(c) REC 3.4.5 is accompanied by guidance which repeatedly reiterates the subjective nature of the requirement. The guidance immediately beneath the rule refers to "the requirement to notify the DFSA of suspected Market Abuse" and confirms that the guidance for Authorised Firms in GEN Rule 11.10.12A also applies. That guidance again refers to a subjective state of mind, for example stating that Rule 11.10.12A requires the firm to notify the DFSA if it reasonably suspects that a client's order or transaction may constitute Market Abuse.

(3) There is evidence that the DFSA itself understands the rule as having a subjective element, as referred to at (4) to (7) below.

(4) The STOR form explanatory notes require the reporting entity to provide details of its suspicion when they say, "This form should be completed by Relevant Firms at the first instance of having reasonable suspicions of market abuse".

(5) In Markets Brief 24 (quoted at [32] above) it is made clear that actual suspicion is required, stating that the reporting obligations require firms to notify STORs “as soon as it has a reasonable suspicion of market abuse” and “Firms should aim to share all information available to them to support their suspicions of market abuse...”.

(6) Ms Al Suwaidi in her e-mail of 8 September 2022 to NASDAQ Dubai, quoted at [102] above stated “if you suspect market abuse,... submit it through the STOR...”.

(7) When cross examined on her email of 8 September 2022 Ms Al Suwaidi stated that it was her understanding that only actual suspicion triggers an obligation to report.

(8) The UK Upper Tribunal’s decision in *Carrimjee v FCA* [2015] UKUT 0079 which concerned a similarly worded provision under the UK regulatory rules supports Al Ramz’s construction.

(9) Alternatively, any ambiguity in the wording of REC 3.4.5 must be resolved by construing the provision as having a subjective element. This is required by the presumption against doubtful penalisation, the principle of legality and the presumption of fairness.

(10) A construction of REC 3.4.5 which includes a subjective element would not frustrate the purpose of the rule. In most cases, a suspicion will be readily formed. This undermines any concern that, by applying a subjective test, the regulator will not receive information that is necessary for it to scrutinise.

113. We reject these submissions. In our view the proper construction of REC 3.4.5 leads to the conclusion that the obligation to notify the DFSA of potential Market Abuse arises where there are reasonable grounds for suspecting Market Abuse in a purely objective sense irrespective of whether the Recognised Member actually suspects Market Abuse. We now set out our reasons for this conclusion.

114. Mr Khan relies in particular on four cases which he submits supports his case that REC 3.4.5 requires a subjective state of mind rather than a state of affairs. In each of these cases, Mr Khan submits, the words “has reasonable grounds to suspect” were held to mean that the person concerned had actually to suspect the existence of the state of affairs in question.

115. The first of these cases is *O’Hara v Chief Constable of the Royal Ulster Constabulary* [1997] AC 286 where the question was whether an arrest had been lawfully made. The relevant statutory provision read:

“A constable may arrest without warrant a person whom he has reasonable grounds for suspecting to be . . . (b) a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism to which this Part of this Act applies...”

116. It was common ground that the arresting officer had the necessary suspicion. The question was whether the constable objectively had reasonable grounds for suspecting that the plaintiff was concerned in an act of terrorism.

117. The House of Lords held that the test laid down by the statute to determine whether reasonable grounds for the suspicion to justify arrest existed was partly subjective, in that the arresting officer must have formed a genuine suspicion that the person being arrested had been concerned in acts of terrorism, and partly objective, in that there had to be reasonable grounds for forming such a suspicion.

118. The second case is *Khan v Director of the Assets Recovery Agency* (SPC00523, 23 February 2006). The question before the Special Commissioners for Income Tax was whether the respondent Director had the power to make an assessment to income tax in a particular case. Section 317 of the Proceeds of Crime Act 2002 provided that he had such a power if the “qualifying condition” was met. The relevant provision was set out in section 317 (1) as follows:

“For the purpose of this section the qualifying condition is that the Director has reasonable grounds to suspect that –

(a) income arising or a gain accruing to a person in respect of a chargeable period is chargeable to income tax or is a chargeable gain (as the case may be) and arises or accrues as a result of the person’s or another’s criminal conduct (whether wholly or partly and whether directly or indirectly)

...”

119. At [39] the Special Commissioners held:

“The expression “reasonable grounds to suspect” requires us to be satisfied on two counts. First, we need to be satisfied that the Director or an authorised member of her staff, here Mr Archer, had formed the genuine suspicion in his own mind that the income arose as a result of the criminal conduct of the person. Second, we need to be satisfied that what was in his mind was, viewed objectively, reasonable in the sense that it amounted to a reasonable suspicion. If confirmation for this is needed, it is found in the decision of House of Lords in *O’Hara v Chief Constable of the Royal Ulster Constabulary* [1997] AC 286, a case concerned with the statutory powers of arrest conferred on a constable....”

120. The third case is *R v Saik* [2007] 1 AC 18 where the House of Lords construed Section 93C of the Criminal Justice Act 1988. That provided:

“A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person’s proceeds of criminal conduct, he-(a) conceals or disguises that property; or (b) converts or transfers that property or removes it from the jurisdiction, for the purpose of assisting any person to avoid prosecution for an offence to which this Part of this Act applies or the making or enforcement in his case of a confiscation order.”

121. The House of Lords held that that knowledge, as applied to an offence under this provision, meant awareness that the property was in fact the proceeds of crime or intention that it should be and that suspicion that it might or would be was not sufficient.

122. Lord Hope made the following observations at [51] to [53]:

“51. Section 93C(2) requires proof of what the defendant knew or had reasonable grounds to suspect on the one hand, and of the purpose for which he engaged in the activities that the subsection prescribes on the other. The appellant submits that there is an incompatibility between these two requirements. This is because proof that the defendant had reasonable grounds to suspect is an objective requirement it does not require proof of an actual suspicion on his part while proof that his purpose was to assist another to avoid prosecution or the making of a confiscation order is a subjective one. How, Mr Krolick asked, can a person who did not know that the property was another person’s proceeds of criminal conduct, and of whom all that can be said is that he had reasonable grounds to suspect that this was so, be held to be guilty of engaging in the prescribed activities for the purpose which the subsection describes? He said that the two propositions were incompatible. The prosecution could never establish that the defendant had the required purpose if all that it

could establish was that he had reasonable grounds to suspect, but did not actually suspect, that the property was the proceeds of criminal conduct.

52. I think that the apparent mismatch between these two requirements is based on a misunderstanding of what the first proposition involves. The test as to whether a person has reasonable grounds to suspect is familiar in other contexts, such as where a power of arrest or of search is given by statute to a police officer. In those contexts the assumption is that the person has a suspicion, otherwise he would not be thinking of doing what the statute contemplates. The objective test is introduced in the interests of fairness, to ensure that the suspicion has a reasonable basis for it. The subjective test of actual suspicion is not enough. The objective test that there were reasonable grounds for it must be satisfied too. In *O’Hara v Chief Constable of the Royal Ulster Constabulary* [1997] AC286, where the issue related to the test in section 12(1) of the Prevention of Terrorism (Temporary Provisions) Act 1984 which gave power to a constable to arrest a person without warrant if he had reasonable grounds for suspecting that he was concerned in acts of terrorism, I said, at p 298:

“In part it is a subjective test, because he must have formed a genuine suspicion in his own mind that the person has been concerned in acts of terrorism. In part also it is an objective one, because there must also be reasonable grounds for the suspicion which he has formed. But the application of the objective test does not require the court to look beyond what was in the mind of the arresting officer. It is the grounds which were in his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed.”

53. The words used in section 93C(2) can, in my opinion, be analysed in the same way. By requiring proof of knowledge or of reasonable grounds to suspect that the property was criminal proceeds, the subsection directs attention in the case of each of these two alternatives to what was in the mind of the defendant when he engaged in the prohibited activity. Proof that he had reasonable grounds to suspect the origin of the property is treated in the same way as proof of knowledge. The subsection assumes that a person who is proved to have had reasonable grounds to suspect that the property had a criminal origin did in fact suspect that this was so when he proceeded to deal with it. A person who has reasonable grounds to suspect is on notice that he is at the same risk of being prosecuted under the subsection as someone who knows. It is not necessary to prove actual knowledge, which is a subjective requirement. The prosecutor can rely instead on suspicion. But if this alternative is adopted, proof of suspicion is not enough. It must be proved that there were reasonable grounds for the suspicion. In other words, the first requirement contains both a subjective part that the person suspect and an objective part that there are reasonable grounds for the suspicion.”

123. Mr Khan submits that paragraph 52 of Lord Hope's opinion demonstrates that the meaning of “reasonable grounds to suspect” assumes that the person in question has actual suspicion of the matters concerned.

124. As Mr Robinson submitted, the requirement in the statutory provision in question for the defendant to have a “purpose” of assisting avoiding prosecution etc. led the House of Lords to conclude that actual suspicion was needed in the first part of the offence. Baroness Hale said at [102] that:

“...the substantive offence requires that the accused actually suspects that the money is the proceeds of crime. Without that actual suspicion, he cannot act with the purpose required.”

125. Lord Brown said the same at [108]:

“Plainly he could not have that illicit purpose unless subjectively he also either actually knew or at the very least suspected the property to be hot”.

As Mr Robinson observed, Lord Brown made it clear at the beginning of [108] that on their own the words “reasonable grounds to suspect” that the property was “hot” imposed an objective test, as they meant “objectively grounds existed which would make a reasonable person suspect that the property was hot”.

126. In *LLC Synesis v Secretary of State for Foreign Commonwealth and Development Affairs* [2023] 3 WLR 927 the facts were that the Secretary of State had designated the claimant company by name for sanctions purposes under regulation 5 of the Republic of Belarus (Sanctions) (EU Exit) Regulations 2019 on the basis that he had reasonable grounds to suspect that the claimant was an involved person within regulation 6(1)(a) in that the claimant was, or had been, involved in the commission of serious human rights violations or abuse in Belarus and/or the repression of civil society in Belarus.

127. The court said this at [71] and [72]:

“71. A distinction needs to be drawn and maintained between the statutory threshold—“reasonable grounds to suspect”—and the standard of review applied by this court. The former requires a state of mind rather than a state of affairs. The threshold is part objective and part subjective, otherwise “reasonable” would be otiose...

72. Mr Haines was right to submit that the “reasonable grounds to suspect” formulation appears in a number of different statutory contexts. From the perspective of the decision-maker, whether he be a police officer or a Secretary of State, the words always mean the same thing. The role of the court may, however, vary somewhat according to the context and, in particular, whether human rights are in play.”

128. Al Ramz relies on the statement at [72] of *Synesis* that the “reasonable grounds to suspect” wording requires a state of mind.

129. In our view these cases concern statutory contexts which are completely different to the legislative context of REC 3.4.5. As Mr Robinson submitted, these cases are to be correctly characterised as “decision-maker” cases.

130. Each of those cases considered statutory provisions where the statute gave a specified decision-maker a discretion and power to act in a specific way, to the potential detriment of the object of the power. The discretion and power only arise where the decision-maker “has reasonable grounds to suspect”. The purpose of the qualification is to ensure that the power is only exercised where the decision-maker has reasonable grounds to exercise it. The assumption therefore must be that the power only arises where the decision-maker has actual suspicion of the matters in question and then there is a check and balance for the protection of the citizen, in that in order for the power to be exercised that suspicion must arise on reasonable grounds. Therefore, when considered in the statutory context, the proper construction of the relevant provision is that it is to be read as the person concerned “suspecting [the relevant state of affairs] on reasonable grounds”. That is clearly a reference to a state of mind rather than purely a state of affairs.

131. REC 3.4.5 has a different character. It is a notification provision: it requires a person to make a notification to the DFSA where a state of affairs exists. As Mr Robinson submitted, the purpose of REC 3.4.5 and analogous rules in the DFSA Rulebook is to combat the misconduct

of Market Abuse by ensuring that Recognised Members and others provide information in their possession regarding possible Market Abuse to the DFSA in order to allow it to investigate effectively. That purpose is shown by the words used in REC 3.4.5(1) itself, including the need to notify where there are reasonable grounds to suspect a trade “may” be Market Abuse and including the need to notify “immediately”.

132. As Mr Robinson submitted, those words indicate that the DFSA is to be notified as soon as possible, of matters that “may” be Market Abuse but require investigation. The aim is to put the DFSA in the best possible position to identify and prevent Market Abuse and thus to further its statutory objectives, in particular those referred to at [16] above.

133. The case of *R v Lane* [2018] UKSC 36 well illustrates the difference between the decision-maker cases and cases where a purely objective test is to be applied.

134. Lord Hughes set out the issues in the case at [2] to [4] of his judgment as follows:

“2. The two appellants are charged with the offence of entering into funding arrangements connected with terrorism, contrary to section 17 of the Terrorism Act 2000 (“the Act”) the appellants are charged with sending money overseas, or arranging to do so, when they knew or had reasonable cause to suspect that it would, or might, be used for the purposes of terrorism.

3. The section of the Act which creates this offence says as follows:

“17 Funding arrangements

A person commits an offence if- (a) he enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another, and (b) he knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.”

4. The question which arises on this appeal concerns the correct meaning of the expression “has reasonable cause to suspect in section 17(b). Does it mean that the accused must actually suspect, and for reasonable cause, that the money may be used for the purposes of terrorism? Or is it sufficient that on the information known to him there exists, assessed objectively, reasonable cause to suspect that that may be the use to which it is put?”

135. The courts below had concluded that the correct answer was that the words used in the statute plainly mean that it is sufficient that on the information known to the accused, there exists, assessed objectively, reasonable cause to suspect that the money may be used for the purpose of terrorism.

136. The appellants said that given the well-established presumption that an offence-creating provision ought to be construed as requiring an element of mens rea the provision must be given the meaning that an accused must actually suspect that the money may be put to terrorist use.

137. Lord Hughes observed at [8] that the presumption as to mens rea had often been applied to the construction of statutes creating offences where the meaning is in doubt. However, he went on to say at [9] that the presumption is not a power in the court to substitute for the plain words used by Parliament a different provision. He went on to say at [12] that the presumption on which the appellants relied is a principle of statutory construction, which must give way to either the plain meaning of the words, or to other relevant pointers to meaning which clearly demonstrate what was intended.

138. At [13], Lord Hughes said that the words of section 17(b) were such as, at first sight, suggest an objective test. He went on to say:

“The section makes it an offence where the defendant either “knows” or “has reasonable cause to suspect”. It does not say what one would expect it to say if it meant that the defendant must be proved actually to have suspected, that is: “if . . . he knows or suspects . . .” Nor, for that matter, does it say: “if . . . he knows or reasonably suspects . . .” It is thus very difficult to see this statutory provision as one . . . which is silent as to the state of mind required for commission of the offence.”

139. Lord Hughes went on to consider *O’Hara* and *Saik*, and in particular the passages in Lord Hope’s opinion in *Saik* quoted at [] on which Mr Khan relies in this case. He said this at [16] to [17]:

“16. It is certainly true that in [*Saik*] [2007] the House of Lords concluded that this section imported a requirement that the defendant actually suspect, as well as that he did so on reasonable grounds. Whilst the section under discussion in the present case speaks not of reasonable “grounds” but of reasonable “cause” for suspicion, it is not necessary to contemplate any distinction between the two for the purposes of the present argument. The appellants rely particularly on what Lord Hope said at paras 51—53, where he concluded that to stipulate for reasonable grounds for suspicion assumed the existence of actual suspicion. Lord Hope drew an analogy with statutory powers of arrest, including that considered in [*O’Hara*] case which was section 12(1) of the Prevention of Terrorism (Temporary Provisions) Act 1984. There a constable was given powers to arrest without a warrant if he had reason to suspect the person arrested was concerned in terrorism. As Lord Hope remarked in both cases, such a power of arrest plainly assumes an actual suspicion and adds the requirement that it be held on reasonable grounds. It plainly does not contemplate a constable arresting someone whom he might have grounds to suspect, but of whom he has no suspicion, still less someone about whom he has not thought at all, but of whom it could be said that objectively there existed reasonable grounds to suspect him.

17. The existence or otherwise of reasonable grounds for suspicion was not an issue in *R v Saik*. . . . As all their Lordships, including Lord Hope at para 51, made clear, section 93C(2) contained within its own terms the answer to any issue about its construction. Since the statutory offence which it created could be committed only if the defendant acted with the purpose of assisting someone else to avoid either prosecution or a confiscation order, the section necessarily meant, or assumed, that the defendant had actual suspicion. As Lady Hale succinctly put it at para 102: “Without that actual suspicion, he cannot act with the purpose required.” For these reasons it is not possible to read either *R v Saik* or *O’Hara*’s case as laying down a universal proposition that if a statute speaks of a person having “reasonable cause to suspect, that will always assume that he has to have actual suspicion.”

140. Applying this analysis to the present case, we gratefully adopt the reasoning of Lord Hughes at [13] of *R v Lane*, as set out at [138] above. When Lord Hughes said that the words of Section 17(b) in that case suggested an objective test he was obviously not referring to the word “knows” in the section, because that word suggests a subjective test. Instead, he was referring to the words “has reasonable cause to suspect” and, as Lord Hughes stated, those are not the words which one would expect if the section required actual suspicion. In this case, if we were to accept Mr Khan’s submissions, we would need to accept that the words in question should be read as if the requirement to notify arose where “the Recognised Member suspects on reasonable grounds...” The words actually used plainly do not have that meaning, as Lord Hughes’s analysis clearly demonstrates. A purely objective test is also consistent with the purpose of REC 3.4.5, as set out at [131] and [132] above.

141. Support for the purpose of notification obligations such as REC 3.4.5 can be found in the decision of the UK's Upper Tribunal in *Carrimjee v FCA* [2015] UKUT 0079 (TCC).

142. In that case, the regulator contended that Mr Carrimjee lacked integrity because he knew or suspected there was a risk that his client was engaging in market abuse and turned a blind eye to it. The allegation was that Mr Carrimjee suspected that market manipulation was the goal of his client and that his client held structured products which were related to the intended manipulation, yet he turned a blind eye to his client's trading in those products through Mr Carrimjee's firm. The Tribunal said that if that were shown to be the case, then that would demonstrate a lack of integrity on Mr Carrimjee's part and thus a breach of Principle 1 of the regulator's principles of conduct for approved persons: see [26] of the decision. A finding of a lack of integrity would therefore have been based on a finding of actual knowledge or suspicion of market abuse on Mr Carrimjee's part, that is a purely subjective test.

143. The Tribunal was also able to consider an alternative case that Mr Carrimjee's conduct demonstrated a lesser degree of culpability in failing to spot that the trading potentially amounted to market abuse, rather than having any actual knowledge or suspicion. Such a finding would amount to a breach of Principle 2 of the regulator's principles of conduct for approved persons (duty to act with due skill, care and diligence) and would not require a finding of actual knowledge or suspicion of market abuse on Mr Carrimjee's part.

144. The regulator failed to make out its case on integrity. However, the Tribunal found that Mr Carrimjee had failed to act with due skill, care and diligence in breach of Principle 2, based on a finding that Mr Carrimjee had caused his firm to fail to comply with the following provision⁵ of the regulator's supervision manual:

“A firm which arranges or executes a transaction with or for a client in a qualifying investment admitted to trading on a prescribed market and which has reasonable grounds to suspect that the transaction might constitute market abuse must notify the [Authority] without delay.”

145. It can immediately be seen that the wording of this provision is very similar to the wording of REC 3.4.5.

146. The Upper Tribunal said this at [309] and [310]:

“309. All market participants, and in particular approved persons, have a responsibility to be alert to the possibility of market abuse when asked to trade or arrange a trade for a client in the relevant markets. The Authority has specific rules requiring a firm which arranges or executes a transaction for a client on markets such as the LSE to notify the Authority if he has reasonable grounds to suspect that a proposed transaction might constitute market abuse. The relevant provision is SUP15.10.2R which is set out in paragraph 20 above. The firm is expected to have procedures in place to enable individuals within the firm to recognise and report internally such suspicions in order that the firm might comply with its reporting obligations. Suspicious transaction reports are an important source of intelligence for the Authority in that they enable the Authority to pick up what is going on at the “coal face” and identify possible market abuse.

310. Consequently, an individual approved person who fails to report suspicions internally when he should have suspected the risk of market abuse will inevitably have failed to act with due, skill care and diligence in breach of Statement of Principle 2, and such a failure

⁵ SUP 15.10.2R of the Financial Conduct Authority's Rulebook

should be regarded as serious. In this case the consequence of [client's] trading in the Reliance GDRs may have been that the closing price of a security in the LSE's closing auction was manipulated with a knock on effect on many market participants.”

147. Mr Khan submitted that earlier in its decision the Upper Tribunal had proceeded on the basis that the duty in SUP15.10.2R was partly objective and partly subjective. He referred to [249] of the decision which reads:

“...if either Mrs Parikh or Mr Carrimjee had suspicions as to [client's] trading strategy and that it might result in market abuse, it was their duty to make further enquiries as to the purpose of the trading in question and a failure to do so would, on the legal test we have identified, amount to a failure to act with integrity. If suspicions were not aroused, but should have been there may still be culpability on the part of the person concerned.”

148. We reject that submission. The reference in the first line of that quote to the individuals having suspicions (obviously a reference to actual knowledge) was made at the point in the decision where the Tribunal was discussing whether or not Mr Carrimjee had acted without integrity on the basis that he was turning a blind eye to the question as to whether his client's trading potentially amounted to Market Abuse. Obviously, as we have indicated at [142] above, in order to establish a lack of integrity some degree of knowledge on the part of Mr Carrimjee would have to have been found.

149. As we have mentioned, the Tribunal did not find a lack of integrity on Mr Carrimjee's part. The Tribunal then had to go on to consider whether Mr Carrimjee was culpable by reference to Principle 2 and SUP 15.10.2R. The Tribunal held that the test in these provisions is a purely objective one. This is made clear in the last sentence of [249] where the Tribunal made it clear that culpability may still arise where suspicions were not aroused but should have been. The same point is also made clear in the first sentence of [310] of the decision.

150. The last sentence of [309] of *Carrimjee* makes reference to the importance of suspicious transaction reports which give the regulator the opportunity of identifying possible Market Abuse and being an important source of intelligence. It appears to us that the same is true in relation to the DFSA and its ability to meet its statutory objectives.

151. It follows that an objective interpretation of REC 3.4.5 furthers that purpose whereas, as Mr Robinson submitted, a part objective part subjective interpretation would frustrate that purpose. As Mr Robinson observed, a Recognised Member who was too trusting of his client would never report but on the other hand an overly cautious market participant may make reports on a large scale unnecessarily, a situation which the “reasonable grounds” qualification is designed to prevent. Furthermore, there needs to be an incentive for the incompetent Recognised Member who was unable to see Market Abuse when it is staring him in the face to improve their behaviour. Thus, the objective test in REC 3.4.5 will achieve the purpose of improving market behaviour.

152. There are also practical difficulties of investigating a case to determine whether a Recognised Member actually suspected market abuse in a particular set of circumstances. The temptation will be very great for a person under investigation to claim to have had no suspicions of Market Abuse at all, no matter how many indications of Market Abuse come to their attention. It may be an onerous process, particularly in a large firm, for the DFSA to establish which individuals have the necessary knowledge that can be attributed to the firm to establish suspicion on the part of the firm itself.

153. It is no answer to say that in most cases a suspicion will be formed, and the regulator will receive the information it needs to investigate possible Market Abuse.

154. We do not consider that REC 3.4.5(2) (b) assists Al Ramz. This is the provision that stipulates what a notification under REC 3.4.5(1) must specify. Obviously, it can only apply to cases where a person is, in fact, making a notification and a person can only make a notification when he has formed the opinion that the circumstances that are being notified may amount to Market Abuse.

155. REC 3.4.5(2) (b) requires the notification to specify “sufficient details of the order or transaction; and (b) the reasons for the Recognised Member suspecting that the order or transaction may constitute Market Abuse”. It is therefore unsurprising that the provision talks of the Recognised Member “suspecting” the possibility of Market Abuse because the provision is only concerned with actual notifications. It is therefore of no assistance in interpreting the clear wording of REC 3.4.5(1).

156. Neither does the guidance referred to at [25] above help with the construction of REC 3.4.5(1). That guidance refers to notification of “suspected Market Abuse” but, as Mr Robinson submitted, those words are not indicating a subjective test and are simply a useful shorthand for what must be notified under the Rule. The same is true of the heading to REC 3.4.5. In any event, the guidance is subordinate to the wording of the Rule itself.

157. That is even more the case in relation to the other matters on which Mr Khan relies, that is the explanatory notes to the STOR form, Ms Al Suwaidi’s email of 8 September 2022 or her oral evidence to the FMT. The STOR form was not shared with Al Ramz and does not purport to interpret REC 3.4.5(1). It cannot be regarded as an aid to construction. Ms Al Suwaidi did not in her email or oral evidence purport to give a legal opinion on the construction of REC 3.4.5(1). At its highest she was expressing her own view as to when notification had to be made and, as we have held, notification can only happen if the notifier holds an actual suspicion of potential Market Abuse.

158. Finally, we do not consider that there is any ambiguity in the wording of REC 3.4.5 which would bring the presumptions against doubtful penalisation, legality or fairness into play. As with all presumptions of statutory interpretation, as was made clear by Lord Hughes in *R v Lane*, they are displaced by the plain meaning of the words, or to other relevant pointers to meaning which clearly demonstrate what was intended: see [137] above. For the reasons we have given, the plain meaning of the words construed in their context and the purpose of the provision lead to the conclusion that the test in REC 3.4.5(1) is a purely objective one.

159. We therefore determine the construction issue in favour of DFSA. The obligation to make a notification under REC 3.4.5 arises when on the information known to a Recognised Member there exists, assessed objectively, reasonable grounds to suspect that a transaction or order may constitute Market Abuse.

The Reasonable Grounds Issue

Introduction

160. In order to determine this issue, we need to consider whether the DFSA has discharged the burden of demonstrating that at any time after the Trades had been executed, on the information known to Al Ramz there existed, assessed objectively, reasonable grounds to

suspect that the Trades may constitute Market Abuse. It is common ground that at no point did Al Ramz make any notification to that effect under REC 3.4.5.

161. We should make it clear at the outset it is not necessary for the DFSA to prove that the Trades did in fact amount to Market Abuse. The obligation to notify the DFSA under REC Rule 3.4.5(1) arises where the person concerned has reasonable grounds to “suspect” that trades “may” constitute Market Abuse. It does not require the notifier to conclude, or “be satisfied”, that the trades “do” constitute Market Abuse. That is consistent with the purpose of the provision which is to provide information to the DFSA which will enable it to investigate possible Market Abuse, as swiftly as possible.

162. Before turning to evaluate the facts and consider whether they gave Al Ramz reasonable grounds to suspect that they may amount to Market Abuse, there are two disputed factual issues which we need to consider as follows:

(1) Did NASDAQ Dubai tell the Applicant there was no need for the Applicant to notify the DFSA of the Trades?

(2) Was NASDAQ Dubai’s submission of its STOR prompted by the DFSA following the meeting of 1 September 2022?

163. As far as the first of these issues is concerned, Al Ramz relies on the email of 8 September 2022 referred to at [98] above which reports NASDAQ Dubai stating that “No further action will be taken this time. If they notice another misconduct, then it will be reported to DFSA.” The suggestion appears to be that the reference to “another misconduct” was a reference to C’s conduct.

164. However, in our view this statement is referring only to the misconduct of Al Ramz regarding provision of information, not misconduct of C. Indeed, Mr Odeimeh accepted that was the case in his oral evidence. Mr Odeimeh also accepted that this email says nothing at all about the need for Al Ramz to notify the DFSA of the Trades.

165. As far as the second of these issues is concerned, Al Ramz relies on Ms Al Suwaidi’s email of 8 September 2022 referred to at [102] above when in response to NASDAQ Dubai’s question as to whether it should submit its investigation report through the DFSA’s online portal she replied: “If you suspect Market Abuse, kindly submit it through the STOR online form on the portal”.

166. In our view, this email does not demonstrate that Ms Al Suwaidi was prompting NASDAQ Dubai to notify its suspicions of Market Abuse. We consider that it is more likely that she was giving guidance on the appropriate process to use when notifying.

167. Accordingly, we do not consider that at any time Al Ramz could have formed the impression from any of the actions of NASDAQ Dubai or the DFSA that it had no need to make a notification regarding the Trades under REC 3.4.5.

168. We now turn to consider the DFSA’s case that at various points from 29 April 2022 to 2 September 2022 Al Ramz had information that gave it reasonable grounds to suspect that the Trades may amount to Market Abuse. The test we should apply to that information is whether a reasonably competent trader in the position of Al Ramz would have understood that the information concerned gave it reasonable grounds to suspect that the Trades may amount to Market Abuse. In our view, the reasonably competent trader would understand what amounts

to Market Abuse and has the ability to recognise circumstances indicating a potentially suspicious trade.

28 and 29 April 2022: The placing of the Trades followed by the price spike

169. Al Ramz submits that none of these events gave rise objectively to reasonable grounds to suspect Market Abuse. As regards the Trades themselves and the accompanying price spike Mr Khan submits:

(1) Although self-matching trades can amount to Market Abuse, the overwhelming majority do not. Mr Odeimeh gave the example of market makers who had multiple strategies which overlapped as well as the example of asset managers that hold money for multiple clients where different clients could be selling, and others could be buying and there was a match between the trades.

(2) The DFSA's Code of Market Conduct only identifies that a wash trade “may” result in or contribute to Market Abuse and that the DFSA must ultimately consider a number of general factors, including the experience and knowledge of the person, the level of liquidity on the market, and whether there is a legitimate rationale for the transaction.

(3) There were specific circumstances in this case which meant, objectively, the Trades alone were not sufficient to give rise to reasonable grounds for suspecting Market Abuse as follows:

(a) C had been subject to know your customer checks which found no trace of any previous misconduct;

(b) C had agreed to Al Ramz’s terms and conditions which included an obligation to comply with all applicable laws in relation to Market Abuse;

(c) C’s previous trading history did not reveal any indicators of Market Abuse or self - matching trades;

(d) the Trades only involved two transactions and were for small amounts with a total value of US\$ 2,508;

(e) The Trades were in an illiquid stock with a low trading value and volume which meant that its price could rise or fall sharply despite an absence of significant trading in volume or quantity;

(f) the Trades involved a stock which was also inherently volatile, with significant daily price fluctuations being commonplace;

(g) the Trades did not result in any obvious economic benefit for C; and

(h) in his evidence, Mr Jalal accepted that the Trades alone did not give rise to an automatic duty to report.

170. We reject those submissions for the following reasons.

171. We accept that a price spike is always likely to occur when a trade, even a small trade, in a generally illiquid stock which is rarely traded, occurs. We accept that such event alone would not give rise to a reasonable suspicion of market abuse to a reasonably competent trader. However, in this case the price spike was greater than any other previous price spikes that Mr Odeimeh had identified in his evidence and there were a number of suspicious factors aside from the price spike that would have led a reasonably competent trader to conclude that the Trades may amount to market abuse.

172. There is the fact that the Trades were self-matching. Again, that alone would not give rise to a reasonable suspicion of Market Abuse but the fact that there was no change in beneficial ownership would, along with the price spike, in our view give rise to reasonable suspicion of Market Abuse on the part of reasonably competent trader. On the basis of this information, it would have been clear to a reasonably competent trader that the trades were in fact wash trades.

173. As the DFSA's Code of Market Conduct makes clear, as referred to at [31] above, one of the examples given of conduct that might amount to Market Abuse is a wash trade, that is where there is no change in beneficial interest or market risk.

174. Therefore, as there was no change in beneficial ownership, Al Ramz would have known immediately the Trades were executed that they had not been executed by a market maker or asset manager but by one of its own individual retail investors.

175. As a Recognised Member, Al Ramz's trading would be subject to the Markets Law. Accordingly, in our view Al Ramz had a duty to familiarise itself with that law and the terms of the guidance contained in the Code of Market Conduct. Indeed, Mr Odeimeh in his evidence accepted that he knew about the Code of Market Conduct. Consequently, Al Ramz should in our view have recognised that the Trades were wash trades and for that reason alone should have given rise to a suspicion that the Trades may amount to Market Abuse. Accordingly, once Al Ramz was aware of the fact that there had been no change in beneficial ownership notification should have been made under REC 3.4.5. That would have enabled the DFSA to investigate the matter further and consider whether in fact Market Abuse had occurred.

176. The fact that a wash trade may constitute Market Abuse is sufficient in our view for a duty to notify once such a trade has been identified. Accordingly, the other factors that may point in the other direction, as identified by Mr Khan in his submissions, are irrelevant to the question of notification, but they may be relevant factors for the DFSA to take into account in considering whether in fact the trades in question amounted to Market Abuse. What Al Ramz cannot do is refrain from making the notification on the grounds that other factors mean that the Trades do not amount to market abuse. That is a matter for the DFSA to investigate but it can only do so on the basis of information which market participants are bound to provide.

177. We do not accept that in his evidence, Mr Jalal accepted that the Trades alone did not give rise to a new automatic duty to report. Mr Jalal said that "It doesn't require a conclusion, but I think it definitely requires questions to be asked". We agree. Mr Jalal's answer is consistent with an understanding on his part that the Trades should have raised reasonable suspicion on Al Ramz's part.

178. Our conclusion on this issue is sufficient for us to conclude that Al Ramz breached the terms of REC 3.4.5. However, it would be helpful if we were to express our views on the other aspects of DFSA's case as they were fully argued.

29 April 2022: NASDAQ Dubai's request that Al Ramz explain the motivation for the Trades

179. As referred to at [64] above, on 29 April 2022, when NASDAQ Dubai emailed the Applicant asking it, among other questions, to explain "the motivation behind the trade – noting no change in beneficial ownership".

180. Mr Khan submits that this email merely indicates that NASDAQ Dubai was investigating the trades in line with its regulatory obligations and that because it was investigating and

necessarily followed that NASDAQ Dubai did not consider that there were reasonable grounds for suspicion.

181. In our view, it is irrelevant what NASDAQ Dubai thought. What this email reveals, however, is that NASDAQ Dubai had concerns because there was no change in beneficial ownership, which as we have found should have alerted Al Ramz's suspicion. The request for information concerning the motivation for the Trade should have been a further alert for Al Ramz because it was a clear indication that without a reasonable explanation there was reasonable suspicion of Market Abuse.

20 June and 22 July 2022: telephone calls between C and Al Ramz

182. As we have found, when Al Ramz replied to NASDAQ Dubai's email of 29 April 2022 on 5 May 2022 it did not reply to the request for information regarding motivation for the Trade.

183. In our view, Al Ramz should have promptly followed up with C on that issue, but it did not do so until it called C on 20 June 2022. The relevant part of the transcript of that call is set out at [75] above.

184. In our view, this conversation shows that the Al Ramz Trader understood that the Trades may have amounted to Market Abuse, when he said, "It's very important that we monitor our trades carefully and not place buy and sell orders for the same stock, at the same price, for the same person." As we said at [76] above, it is clear from this conversation that the Al Ramz Trader was warning C that the Trades had not been in compliance with the Rules of NASDAQ Dubai, explaining why wash trades were unacceptable.

185. Accordingly, it is unarguable that these suspicions should have been notified to DFSA under REC 3.4.5.

186. The same point arises in respect of the conversation of 22 July 2022. The relevant extract from the transcript is set out at [84] above.

187. As Mr Robinson submitted, this conversation shows that Al Ramz's representative on this call also understood the Trades breached NASDAQ's Rules which prohibit, among other things, activity designed to create an "artificial appearance" of activity in an instrument and "any action" that "may reasonably be expected to create any false or misleading impression as to the market in, or price or value of, any Admitted Financial Instrument." It also shows C saying that he placed the Trades to give an artificial appearance of trading activity when he said that he "saw there was no supply, no demand, so I was the first to offer and the first to place an order". As Al Ramz later put it, C "was clearly frustrated by the lack of liquidity in the market" and so placed the Trades.

188. Again, it is unarguable that these matters should have been notified to DFSA by Al Ramz promptly under REC 3.4.5.

NASDAQ Dubai Warning Letter of 2 September 2022

189. As we have found at [96] above, this letter dealt with NASDAQ Dubai's findings as to Al Ramz's failure to act in an open and cooperative manner in response to NASDAQ Dubai's enquiries. The Warning Letter made no reference to Market Abuse.

190. Mr Jalal accepted in his evidence that there was no new information in this letter. We agree and it adds nothing further to DFSA's case.

Conclusion

191. We conclude that the DFSA has discharged the burden of demonstrating that at all times after the Trades had been executed, on the information known to Al Ramz there existed, assessed objectively, reasonable grounds to suspect that the Trades may constitute Market Abuse. It is common ground that at no point did Al Ramz make any notification to that effect under REC 3.4.5. Accordingly, Al Ramz breached that provision by failing to make that notification.

192. We therefore determine the Reasonable Grounds Issue in favour of DFSA.

The Sanction Issue

Introduction

193. The final issue for us to determine is whether it is appropriate to impose a sanction. Al Ramz does not take issue with the quantum of the fine, nor with the DFSA's position that it is fair and appropriate to take enforcement action.

194. As referred to at [18] above, Article 90(2)(a) of the Regulatory Law gives the DFSA the power to fine a person who has contravened a provision of any legislation administered by the DFSA such amount as it considers appropriate in respect of the contravention.

195. We have decided that Al Ramz has contravened REC 3.4.5. We must decide whether DFSA's decision to impose a fine of US\$ 25,000 in respect of that contravention is fair, appropriate and proportionate in all the circumstances. As referred to at [33] above, we have the power to affirm, vary or set aside the DFSA's decision.

196. DFSA's policy in relation to the imposition of a fine can be found in Chapters 6 and 7 of the RPP Sourcebook. We are not bound by that policy, but we should give it due regard and only depart from it if we have good reason to do so. We do not consider that there is any reason why we should depart from the policy in any respect in this case and accordingly our starting position is to consider whether, in line with the DFSA's policy a fine should be imposed in this case.

197. The following (non-exhaustive) factors that the DFSA will consider in deciding whether to exercise its power to fine are identified at paragraph 6-2-1 of the RPP Sourcebook:

- (1) the DFSA's objectives (in Article 8(3) of the Regulatory Law including the principle of fairness);
- (2) deterrence;
- (3) nature, seriousness and impact of the contravention;
- (4) whether the contravention involved a "number of" persons;
- (5) the benefit gained or lost as a result of the contravention;

- (6) the conduct of the person after the contravention;
- (7) the difficulty in detecting and investigating the contravention;
- (8) whether there was any concealment;
- (9) the disciplinary record and compliance history of the person;
- (10) whether the person “acted in accordance with DFSA guidance and other published materials”;
- (11) action taken by the DFSA in previous similar cases; and
- (12) action taken by other domestic or international regulatory authorities.

198. The policy confirms that the DFSA will not take action against a person for behaviour that it considers to be in line with guidance and other materials.

199. Al Ramz argues that no sanction should be imposed for five reasons. We shall deal with each of these in turn.

Al Ramz has complied with the published guidance

200. Mr Khan submits that the relevant guidance unarguably stipulates that a regulated entity should make a STOR when it has an actual suspicion of Market Abuse. He submits that the DFSA has not rebutted Al Ramz’s evidence that it did not suspect Market Abuse.

201. We have found that the guidance is only relevant to a firm that actually makes a notification under REC 3.4.5. As we found at [156] above, the reference to the obligation to report “suspected Market Abuse” is not indicating a subjective test and the words are simply a useful shorthand for what must be notified under REC 3.4.5.

202. Accordingly, we place no weight on this factor.

Fairness requires that Al Ramz should be treated the same as NASDAQ Dubai

203. Mr Khan submits that NASDAQ Dubai’s STOR was prompted by DFSA at the meeting held on 1 September 2022 and did not take place until 8 September 2022. No action has been taken against NASDAQ Dubai for this late notification and in the circumstances no action should therefore be taken against Al Ramz for its failure to notify.

204. We have been unable to make a finding that the STOR was prompted by the DFSA. In any event, we have had no evidence from NASDAQ Dubai as to why they did not notify until 8 September 2022 and no party sought to call them as a witness. In the circumstances, it would be unfair of us to make any findings as to whether or not there was a good reason for the late notification.

205. Accordingly, we place no weight on this factor.

The breach was not serious because the Trades were small

206. Mr Khan submitted that the Trades were for small amounts. A limited number of people were involved. The Trades were not detected or blocked. The Trades did not result in any economic

benefit or discernible impact on the market. The deterrence objective was accordingly of no real importance.

207. As Mr Robinson submitted, these points ignore what C might have been planning, possibly by increasing amounts or durations of trade in order to move the market and sell his holdings.

208. In our view, the breach was significant. There needs to be a credible deterrence to dissuade firms from failing to meet their obligations to make a STOR. A financial penalty in this case will meet that objective.

209. Accordingly, we place no weight on this factor.

No benefit was gained by Al Ramz.

210. We agree but we regard this as a neutral factor, and it does not outweigh the other factors mentioned above.

No weight should be attached to Al Ramz's previous regulatory history

211. There is no suggestion that this is a factor that has been relied on by the DFSA and we place no weight on this factor. We heard no submissions on the point.

Conclusion

212. We turn now to the relevant factors identified at [197] above. In our view the need for credible deterrence and the nature and seriousness of the contravention lead us to the conclusion that it is appropriate that a fine be imposed in this case.

213. As we have said at [150] above, suspicious transaction reports are an important source of intelligence for the DFSA. Such reports are important in assisting the DFSA to meet its statutory objectives, in particular its objective 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.

214. Accordingly, it is appropriate in this case for a financial penalty to be imposed on Al Ramz in a sum of US\$ 25,000.

DIRECTIONS

215. In accordance with Article 29(4) of the Regulatory Law:

- (1) We affirm the original decision of the DFSA as set out in the Decision Notice;
- (2) We remit the matter to the Chief Executive of the DFSA with a direction to impose a fine of US\$ 25,000 on the Applicant.

216. Any application for costs must be submitted within 28 days of the release of this decision in accordance with Rules 76 and 77 of the FMT's Rules of Procedure.

DISPOSITION

217. The reference is dismissed.

TIMOTHY HERRINGTON
PRESIDENT
FINANCIAL MARKETS TRIBUNAL