Cases: FMT 21015 and 21018

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE

FINANCIAL MARKETS TRIBUNAL

BETWEEN

(1) WAQAR HASSAN SIDDIQUE

(2) ARIF NAQVI

Applicants

And

THE DUBAI FINANCIAL SERVICES AUTHORITY

Respondent

DECISION

Before:

His Honour David Mackie KC (President)

Ali Malek KC

Patrick D Storey

Afridi & Angell represented the Second Applicant, Arif Naqvi

Mr Paul Stanley KC, Ms Sophia Hurst and the DFSA Legal Department represented the Respondent

12 December 2022

I Introduction.

1. This application is an appeal by the Applicant, Mr Naqvi, against decisions of the Respondent, the Dubai Financial Services Authority ("*the DFSA*"), set out in a Decision Notice dated 8 August 2021 ("*the Decision Notice*"). Mr Naqvi referred that Decision Notice to the Financial Markets Tribunal ("*the FMT*" or "*the Tribunal*") by Notice of Appeal dated 7 September 2021 with Grounds of Appeal.

2. The DFSA found in the Decision Notice that the Applicant was knowingly concerned in contraventions by Abraaj Investment Management Limited ("*AIML*"), a non-DFSA authorised firm, for carrying out unauthorised Financial Service activities in or from the DIFC and for engaging in conduct that was misleading or deceptive or likely to mislead or deceive Limited Partners ("*LPs*") over the misuse of Abraaj Funds' monies.

3. The DFSA imposed on Mr Naqvi (1) a financial penalty of USD 135,566,183, (2) a prohibition order, prohibiting him from holding office in, or being an employee of, any Authorised Person, Designated Non-Financial Business or Profession, Reporting Entity or Domestic Fund; and (3) a restriction preventing him from performing any function in connection with the provision of Financial Services in or from the DIFC. These sanctions were imposed under Article 90(2) and Article 59(1) of the Regulatory Law (DIFC Law No 1 of 2004) ("*the Regulatory Law*").

4. On 3 January 2022 the Tribunal refused Mr Naqvi's application for privacy of the FMT proceedings (as well as for the non-publication of the Decision Notice), for the reasons set out in its published Decision ("*the January Decision*"). On 27 January 2022 the DFSA published the Decision Notice.

5. This is the decision of the Hearing Panel. The Decision is unanimous.

6. This case is a consolidation of the proceedings brought by the DFSA against Mr Siddique. Mr Siddique's application and its background is referred to in the January

Decision. Mr Siddique pursued his case but withdrew it in October 2022, with the permission of the FMT, so that his Decision Notice stands.

II Background and Legislative Structure.

(1) Jurisdiction

7. The FMT was created under 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.

8. 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 although by the FMT Rules of Procedure ("*the FMT Rules*"), Rule 54; *"A party may not without the permission of the Hearing Panel adduce any written or oral evidence which has not previously been disclosed to all other parties to the proceedings (in the case of oral evidence, in the form of a witness statement or expert opinion)".*

9. 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.

(2) Applicable Law

10. The law applicable to the Tribunal is the law of the DIFC. There is no requirement to follow precedents from any other legal system, whether in the financial services context or otherwise. However, the Tribunal, the regulatory framework and indeed the DIFC itself were modelled in large part on the legal and regulatory system of England and Wales, and so precedent from England and Wales (and other Commonwealth jurisdictions as appropriate) has persuasive authority.

(3) The FMT Rules

11. The FMT Rules describe the procedures that apply generally to the conduct of proceedings.

12. Rule 4 of the FMT Rules states that the FMT has "…*the discretion to adopt different procedures to ensure the just, expeditious and economical resolution of proceedings brought before the FMT*".

13. The overriding objective (Rule 7) of the FMT Rules is to enable the FMT to deal with cases fairly and justly. This involves:

> "(*a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;*
>
> *(b) avoiding unnecessary formality and seeking flexibility in the proceedings;*
>
> *(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;*
>
> *(d) using any special expertise of the FMT effectively; and*
>
> *(e) avoiding delay, so far as compatible with proper consideration of the case"*.

14. The FMT is not bound by formal rules of evidence. Rule 51 of the FMT Rules provides: "*The Hearing Panel may receive and consider any material by way of oral evidence, written statements or documents, even if such material may not be admissible in evidence in civil or criminal proceedings in a court of law*".

15. The FMT conducts a de novo rehearing of the process which led to the Decision Notice. De novo is a Latin phrase meaning "anew". In other words the FMT considers the matter afresh, as if for the first time.

16. The burden of proof lies on the DFSA to prove the case. By Rule 52 of the FMT Rules, the standard of proof is the balance of probabilities but as in previous cases (e.g., Waterhouse (FMT 17004), 219) we proceed on the basis that, given the impact of a finding of lack of integrity on the career of a professional person, such a finding should not be made in the absence of cogent evidence.

(4) Authorisation

17. Article 41 of the Regulatory Law prohibits a person from carrying out a Financial Service in or from the DIFC unless that person is (i) an Authorised Firm whose licence authorises it to carry out the relevant financial activity, (ii) an External Fund Manager managing a Domestic Fund, or (iii) an Authorised Market Institution whose licence authorises it to carry out the relevant financial activity.

18. The DFSA's Rulebook General Module ("*GEN*") Rule 2.12.1 defines the activity of "*Managing a Collective Investment Fund*", which includes the activity of "*managing or otherwise operating a Fund*".

(5) Misleading Conduct

19. Article 41B of the Regulatory Law (in effect from 21 August 2014) provides that a person "*must not, in or from the DIFC, engage in conduct in connection with … a Financial Service that is … (a) misleading or deceptive or likely to mislead or deceive; (b) fraudulent; or (c) dishonest*".

20. Article 66 of the Regulatory Law provides that "*A person shall not: (a) provide information which is false, misleading or deceptive to the DFSA; or (b) conceal information where the concealment of such information is likely to mislead or deceive the DFSA*".

(6) **Principles for Authorised Individuals**

21. Mr Naqvi was subject to the Principles for Authorised Individuals in GEN Section 4.4 with respect to his functions as Licensed Director of Abraaj Capital Limited ("*ACLD*") from 2006. GEN 4.4.1, Principle 1, provides that "*An Authorised Individual must observe high standards of integrity and fair dealing in carrying out every Licensed Function*."

22. The requirements of integrity were explained by the FMT in Waterhouse (supra) at [226-8]: "*The proper approach to questions of integrity has recently been clarified in the context of professional disciplinary proceedings by the Court of Appeal of England and*

Wales in Wingate v SRA [2018] 1 WLR 3969; [2018] EWCA Civ 266. In that case, Jackson LJ confirmed that the concept of integrity is broader than that of dishonesty (para 95). It is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members" (para 97) ... "Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead" (para 100)."

(7) Knowing concern

23. Article 86(1) of the Regulatory Law provides that if a person is knowingly concerned with a contravention of the Law or Rules committed by another person, then that person also commits a contravention and is liable to be proceeded against and dealt with accordingly.

24. Article 86(2) makes it clear that this applies also to an officer of a body corporate in relation to contraventions by that corporation. "*Officer*" is broadly defined by Article 86(6) to include "*director, chief executive, manager … or other similar officer*". Mr Naqvi was an "officer" of AIML and ACLD.

25. Article 86(7) provides:

> *"For the purposes of Article 86, a person is "knowingly concerned" in a contravention if, and only if, the person:*
>
> *(a) has aided, abetted, counselled or procured the contravention;*
>
> *(b) has induced, whether by threats or promises or otherwise, the contravention;*
>
> *(c) has in any way, by act or omission, directly or indirectly, been knowingly involved in or been party to the contravention;*
>
> *(d) has conspired with another or others to effect the contravention".*

26. In order to be knowingly concerned in a contravention (see Rollet v DFSA (FMT 21014, 12 January 2022):

a. The person in question must be proved to have known the facts which make the action or omission in question a contravention (and all the relevant facts);

b. It is irrelevant whether the person in question knew or believed that those facts constituted a contravention.

(8) **Penalty**

27. Article 90(2)(a) of the Regulatory Law provides that the DFSA may fine a person who is found to have contravened a provision of any legislation "*such amount as it considers appropriate*" in respect of a contravention.

28. Article 90(2)(g) of the Regulatory Law provides that the DFSA may "*make a direction prohibiting a person from holding office or being an employee of any Authorised Person, DNFBP, Reporting Entity or Domestic Fund*".

29. Article 59 of the Regulatory Law provides that the DFSA may restrict a person from performing "*any functions in connection with the provision of Financial Services in or from the DIFC*" if it "*believes on reasonable grounds that a person is not a fit and proper person*" to perform such functions.

III Procedural Background.

30. On 16 July 2019 and 29 July 2019, the DFSA's Decision Making Committee ("*the DMC*") issued Decision Notices to ACLD and AIML respectively. The action against ACLD was settled. AIML did not make any representations or refer the matter to the FMT.

31. Accordingly, the DFSA's findings were not challenged and the DFSA published the two Decision Notices on 30 July 2019.

32. As set out in paragraph 5 of the Decision Notice to ACLD, the DFSA found that ACLD, among other contraventions, had failed to maintain adequate Capital Resources at all times, contrary to the DFSA's Prudential – Investment, Insurance Intermediation and

Banking Module Rulebook ("*PIB*") Rule 3.2.2 and PIB sections 3.5 and 3.6, provided information to the DFSA relating to its Capital Resources which was false, misleading or deceptive, or concealed information relating to its Capital Resources when the concealment of that information was likely to mislead or deceive the DFSA, contrary to Article 66 of the Regulatory Law, and was knowingly concerned in AIML carrying on Financial Service activities in or from the DIFC without the required authorisation, contrary to Article 41 of the Regulatory Law.

33. Further, as set out in paragraph 5 of the Decision Notice to AIML, the DFSA found that AIML carried on Financial Service activities in or from the DIFC without the required authorisation, contrary to Article 41 of the Regulatory Law, and misled and deceived investors in order to conceal the misuse of investors' monies, contrary to Article 41B of the Regulatory Law.

34. AIML and ACLD were fined USD 299,300,000 and USD 15,275,925 respectively.

35. Investigations thereafter continued into a number of associated individuals, including Mr Naqvi, which ultimately led to the Decision Notice that is the subject of this reference.

36. On 6 January 2021, the DFSA Chief Executive appointed Sir Stanley Burnton as Decision Maker in relation to Mr Naqvi under Article 36(h) of the Regulatory Law. In the course of those proceedings, Mr Naqvi (who is the subject of a US criminal indictment in relation to which extradition proceedings from the UK are currently in process) asked Sir Stanley Burnton to stay the proceedings because of the US criminal proceedings (discussed in more detail below). That application was refused, and permission to bring a judicial review application was refused by the DIFC Court of First Instance (Sir Jeremy Cooke) on 27 July 2021. Mr Naqvi did not request a hearing for reconsideration of that decision.

37. As stated above, the Decision Notice against Mr Naqvi was issued on 8 August 2021, and a Notice of Appeal filed on 7 September 2021.

38. The DFSA has served witness statements from the following:

    a. Ms Farah Basil Saffarini, a Senior Manager in the DFSA's Enforcement Division. She gives an account of the DFSA's investigation into the Abraaj Group, Mr Naqvi, and others.

    b. Mr Peter John Brady, who was ACLD's DFSA Authorised Compliance Officer from 18 February 2015.

    c. Mr Sean Cleary, who in 2006 joined the advisory board of Abraaj Capital Limited, whose activities included advising Abraaj senior management on compliance, risk management, and best practice.

    d. Mr Khawar Mann, who worked at one of the Abraaj Funds (the Abraaj Growth Markets Health Fund, or "*AGHF*") from 2014 to 2019 as COO and then CEO.

39. The witnesses did not give oral evidence because of Mr Naqvi's decision not to challenge their testimony by cross examination.

40. The DFSA's case depends mainly on the contemporaneous materials and the inferences to be drawn from them. It is appropriate to seek, where possible, to base factual findings on inferences from the documentary evidence and known or probable facts. We have considered the frequently cited observations of Lord Leggatt (as he now is) in Gestmin SGPS SA v Credit Suisse (UK) Limited [2013] EWHC 3560 (Comm) at [16]-[22], as reiterated in Blue v Ashley [2017] EWHC 1928 (Comm) at [65]-[69].

41. There has been no hearing before us as Mr Naqvi asked for the appeal to be decided on the basis of written submissions and the DFSA consented to this. Rule 65 of the FMT Rules indicates that the Hearing Panel may "*with the consent of the parties, dispense with an oral hearing and make its decision on written submissions and evidence*". We agreed to this on the basis that we were satisfied that we could fairly decide the appeal on the basis of the materials before us.

42. Mr Naqvi has elected not to provide evidence in these proceedings by way of a witness statement or to be cross-examined. He did give an interview on a voluntary basis in London on 28-29 June 2018 and we have been provided with transcripts which we have read and taken into account.

43. The reason he did not adduce evidence is given in his Reply Submissions dated 26 October 2022 at para 11 as follows:

> *'Mr Naqvi* was *advised by his legal advisors that if he were to provide evidence in the FMT in the absence of those proceedings being private, Mr Naqvi would:*
>
> *11.1. Prejudice himself in the* criminal *proceedings against him in the US where he faces life imprisonment;*
>
> *11.2. Jeopardize his rights under the Fifth Amendment to the US Constitution to avoid self-incrimination; and*
>
> *11.3. Confer an unfair advantage to his prosecutors in the US.*
>
> *12. The FMT rejected Mr Naqvi's privacy application and Mr Naqvi was therefore compelled to follow the advice of his lawyers to remain silent in these proceedings.'*

44. We have accepted that this advice was given although there has been no waiver of privilege and we have not seen it. The criminal proceedings referred to are these. On 2 April 2019, a grand jury sitting in the Southern District of New York returned an indictment charging Mr Naqvi with 3 different counts related to alleged wire and securities fraud. On 23 May 2019 a grand jury returned a superseding indictment ("*the Indictment*") expanding these charges to include 16 counts of violation.

45. On 10 April 2019 pursuant to a provisional arrest request made by the United States to the United Kingdom Mr Naqvi was arrested in London. Mr Naqvi is currently in the United Kingdom where he contests the extradition request.

46. We deal below with the relevance of these criminal proceedings and Mr Naqvi's decision not to adduce evidence to rebut the case of the DFSA.

47. Mr Naqvi challenges the Decision Notice. He takes issue with none of the evidence adduced by the DFSA and, as explained above, has served none of his own. He asserts

his innocence but only in the most general terms, of what the DFSA claims is overwhelming evidence of him playing a central role in orchestrating repeated dishonesty over many years.

48. We have considered all the evidence and submissions carefully but in the interest of keeping this ruling within an acceptable length we mention only those matters and arguments which we consider to be relevant and significant. The sources of our written information are contained in the documents contained in the files for the case listed from A to F.

IV Background Facts

49. What follows are the facts largely taken from the Decision Notice. As we explain below, although this is a rehearing, it is incumbent on Mr Naqvi to set out his grounds of challenge to the facts and findings of the Decision Maker. Where the DFSA evidence is unchallenged and where Mr Naqvi has elected not to adduce evidence in rebuttal, we proceed on the basis that the facts stated below are established. We deal specifically in the Discussion on the matters relied upon by Mr Naqvi.

50. Mr Naqvi founded the Abraaj Group in 2002 as a private equity firm focused on making investments in emerging markets in the MENA region. The Group typically structured its private equity funds as separate limited partnerships, in which one Abraaj controlled entity would function as general partner, one would act as manager, and investors would be LPs.

51. This case concerns mainly three Abraaj entities:

    a. Abraaj Holdings, formerly Abraaj Capital Holdings Limited ("*AH*") was the ultimate parent company within the Group. It was incorporated in the Cayman Islands. It did not have any DFSA licence to carry on any Financial Services in or from the DIFC.

    b. AIML was also incorporated in the Cayman Islands. It served as the primary manager for the Abraaj funds. It did not have a DFSA licence to carry on any Financial Services in or from the DIFC.

c. ACLD, a subsidiary of AIML, was incorporated in the DIFC in March 2006, and authorised by the DFSA immediately after the time of its incorporation. It was licensed and authorised by the DFSA to carry on Financial Service activities in and from the DIFC. But its licence did not extend to managing a collective investment fund.

52. Mr Naqvi was Abraaj's largest shareholder. From its foundation until its collapse, he held a number of senior management positions including Group CEO and Executive Vice Chairman of AH. He was a board member of AH, AIML, and ACLD, and a member of various committees including the Global Investment Committee ("*GIC*"). He was authorised by the DFSA to perform the Licensed Director function at ACLD from 20 March 2006 until 3 April 2018.

53. In June 2018, AIML and AH declared bankruptcy. The Grand Court of the Cayman Islands appointed Joint Provisional Liquidators for both on 18 June 2018. Joint Official Liquidators were appointed on 11 September 2019. Because ACLD relied on its parents for funding, it also became insolvent, and applied to be voluntarily wound up. The DIFC Court ordered it to be placed into provisional liquidation on 15 August 2018. It was placed in official liquidation on 19 November 2019.

54. In practical terms, Mr Naqvi was externally the face of the Abraaj Group, promoting it, its funds, and its investments to the outside world. Internally, he was the ultimate decision-maker on key matters within the Group.

55. As Mr Cleary said in his witness statement at para 12:

> *"In my experience, Mr Naqvi was a dominant CEO who, having founded the Abraaj Group, felt the need to determine its course. He was the public face of, and the dominant personality in, Abraaj throughout my experience of the Abraaj Group. He also determined the agendas and content of the presentations at BOD meetings until and including that of 8 February 2018, and at all Investors Conferences at which I was present before then. Until 8 February 2018, in my experience, all members of the Abraaj executive team, including executive BOD members, deferred to him".*

56. Mr Naqvi was part of Abraaj's senior management from January 2002 until June 2018. Over the years, the Abraaj Group repeatedly faced liquidity issues caused by a number of factors including the Abraaj Group's investment commitments and operating expenses far exceeding its income.

V. The DFSA's case.

57. It is alleged by the DFSA that the misuse of Abraaj Funds' monies involved transfers of drawdown monies and sale proceeds from the exit of investments, from the Abraaj Funds to AIML, where such monies were used to satisfy liquidity demands, including replenishing other Abraaj Funds from which money had previously been taken.

58. AIML's allegedly misleading and deceptive conduct mainly occurred in two Abraaj Funds: the Abraaj Growth Markets Health Fund ("*AGHF*") and the Abraaj Private Equity Fund IV ("*APEF IV*").

59. As an Authorised Individual for ACLD and the Abraaj Group CEO, the DFSA contends that Mr Naqvi knew that ACLD was the only DFSA Authorised Firm in the Abraaj Group and, therefore, that AIML was prohibited from carrying on Financial Service activities in or from the DIFC.

60. Nonetheless, it is alleged that Mr Naqvi knew that AIML, as the manager of the Abraaj Funds, was conducting unauthorised Financial Service activities in or from the ACLD offices in the DIFC. In particular, Mr Naqvi marketed and promoted the Abraaj Funds by using Abraaj's presence in the DIFC and controlled the drawdown and disbursement of the LP contributions in Abraaj Funds.

61. The DFSA alleges that Mr Naqvi was personally involved in AIML carrying on unauthorised Financial Service activities in or from the DIFC. In particular, Mr Naqvi had his own physical office space in the DIFC from where he conducted AIML business. He participated in AIML Board meetings which were held at ACLD offices in the DIFC. He headed the Abraaj Group's Global Investment Committee ("*GIC*"), which took investment and divestment decisions for the Abraaj Funds in or from the DIFC. He

provided the investment teams located in the DIFC and others in the Abraaj Group with direction and commentary on the proposed asset valuations of Abraaj Funds.

62. From August 2014, it is alleged that AIML was engaged in conduct that was misleading or deceptive or likely to mislead or deceive LPs in relation to the Abraaj Funds it managed, contrary to Article 41B of the Regulatory Law. The DFSA alleges that Mr Naqvi played a central and significant role in AIML's contravention of Article 41B as he personally proposed, orchestrated, and executed actions that directly or indirectly misled and deceived LPs. In particular, Mr Naqvi knew that a significant portion of the sale proceeds from APEF IV investments was transferred to the Infrastructure and Growth Capital Fund ("*IGCF*") for its December 2015 financial year-end audit.

63. To conceal the misuse of the APEF IV sale proceeds, the DFSA say that Mr Naqvi set out a payment schedule which prioritised LPs based on how active they were in following up on their share of the sale proceeds and approved the strategy of withholding General Partner ("*GP*") reports from the LPs who had not received their share of the sale proceeds. He approved false explanations to be provided to APEF IV LPs regarding delays in distributing sale proceeds or the GP reports and communicated such explanations to LPs when, in fact, the reason for the delays was that sale proceeds had been used to cover Abraaj Group's liquidity shortfalls elsewhere in the business.

64. Mr Naqvi arranged to borrow USD 195 million, USD 196 million and USD 140 million from Company X for the purpose of temporarily depositing the cash in an Abraaj Fund's bank accounts for financial year-end audits, or to obtain bank balance confirmations, in order to mislead LPs over the actual balance in the Funds and conceal Abraaj Group's misuse of the Fund monies. Mr Naqvi signed the USD 195 million loan agreement with Company X on behalf of AIML and also signed all three loan agreements with Company X in his personal capacity as a guarantor.

65. Mr Naqvi approved the change of the financial year-end of APEF IV from 30 June to 31 December, so that APEF IV did not have to source approximately USD 201 million to cover the shortfall in the Fund for June 2017 audit purposes.

66. It is alleged that Mr Naqvi instructed other members of Abraaj senior management to withhold bank statements requested by the AGHF LPs and to share only an outdated AGHF bank balance confirmation, whereas AGHF's bank statements would have exposed the misuse of the Fund's monies. He directly responded to LPs, or approved responses provided by other members of Abraaj senior management, in the latter half of 2017, which gave the impression that the unused drawdowns were still held in the Funds' bank accounts. He attempted to quash a line of queries raised by a LP to prevent them potentially exposing the misuse of a Fund's money.

67. The DFSA contends that Mr Naqvi falsely rejected accusations from anonymous whistleblowing emails sent to a certain LP, which identified concerns about the misuse of LP drawdowns and investment sale proceeds that were in fact true. He arranged for a USD 350 million loan from Individual Y in order to conceal the shortfall in APEF IV and AGHF in late 2017.

68. Mr Naqvi also personally attended AH Board meetings and failed to disclose to other AH Board members actions by AIML in misusing Abraaj Funds' monies and actions taken to directly or indirectly mislead and deceive the LPs. By concealing this conduct from the AH Board, the DFSA says that Mr Naqvi ensured AIML's misleading and deceptive conduct continued.

69. Given these undisputed facts and conclusions the DFSA appears to have proved its case to the appropriate standard. Mr Naqvi submits however that this impression is incorrect and that his appeal should succeed.

VI Mr Naqvi's Defence.

70. Article 25 of the FMT Rules provides:

> *"The reference notice shall contain:*
>
> *(a) a concise statement of the facts;*
>
> *(b) the legislative provision under which the reference is brought;*

(c) a copy of the disputed decision and all material referred to in the decision;

(d) a summary of the grounds for contesting the decision".

71. Mr Naqvi's position is set out in the Grounds of Appeal dated 7 September 2021 ("*the Grounds*") and the Reply Submissions dated 26 October 2022.

72. The Grounds contend that the DFSA erred in its conclusions for 3 reasons (see the Grounds at para 3):

    a. First, that "*the DFSA has failed to consider all the relevant evidence*".

    b. Second, that "*the* DFSA *failed to apply the correct legal principles when assessing Mr Naqvi's conduct*".

    c. Third, that the sanction imposed upon Mr Naqvi "*is wholly disproportionate, unsubstantiated and unreasonable*".

73. Mr Naqvi advances 3 grounds of appeal.

    a. First, he denies that he was knowingly concerned in AIML's activities (Ground 1, the Grounds at para 7).

    b. Secondly, he denies that he was knowingly concerned with the alleged misleading and deceptive conduct of AIML (Ground 2, the Grounds at para 8)

    c. Thirdly, he contends that "*the DFSA's portrayal of the seriousness of the purported contraventions is misplaced and irrelevant*" (Ground 3 at paras 9-10). This is linked to the challenge to the sanction (particularly the financial penalty at the Grounds para 1).

74. Mr Naqvi makes the following contentions (in summary):

a. He says that the majority of the Decision Notice is dedicated to painting Mr Naqvi as being the *"face"* of the Abraaj Group and the *"ultimate decision maker on material or disputed matters"*, allegations that have not been established by direct evidence before the FMT.

b. Mr Naqvi asserts that the Abraaj Group was a highly regulated entity, with several separate legal entities in multiple jurisdictions. Each of these entities had their own decision makers, and internal processes and controls. The Abraaj Group was also supported by highly regarded law firms and accounting /regulatory firms.

c. Mr Naqvi says that the DFSA's evidence is insufficient to dispel the obvious inference that he could not have been the sole decision maker of the Abraaj Group and singlehandedly responsible for its downfall. Mr Naqvi's alleged control of the entire Abraaj Group, and its every single employee and advisor is a critical point as it has a material bearing on the fine imposed by the DFSA. We disagree.

d. Mr Naqvi submits that inferences cannot be drawn merely due to his silence in these proceedings. He says: "*He was advised to remain silent in these proceedings to prevent prejudice in criminal proceedings in other jurisdictions. While no direct legislation or case law exist in the DIFC which concern Mr Naqvi's right to remain silent in such circumstances, in the case of R v Beckles [2005] 1 WLR 2829 [13] the English Court of Appeal established the test for cases where adverse inferences should not be drawn merely on the basis of a defendant's silence in the context of criminal proceedings.*"

75. We have decided that it is convenient to deal with the issue of sanctions after we have considered the liability issues.

VII Discussion: Liability

76. The starting point is to look at the Grounds of Appeal where Mr Naqvi is required to set out his case. As explained above, he complains that the DFSA failed to consider the evidence.

77. It is striking that Mr Naqvi has not identified the "*relevant evidence*" in his Grounds of Appeal which he contends should have been taken into account by the Decision Maker but which was not. In circumstances where Mr Naqvi elected not to participate in the DFSA proceedings and elected not to present evidence, his argument is misconceived and fails.

78. Mr Naqvi also complains that DFSA failed to apply the correct legal principles, but he does not explain what those principles are. His argument therefore fails. Although this is a rehearing, an applicant is required to explain the grounds of challenge to the decision under consideration. It is not the function of the FMT to look for possible criticisms which have not been articulated. Mr Naqvi has the benefit of legal advice. This is not a technical point but it goes to the fairness of the process. If Mr Naqvi is unable to articulate a coherent case, he has to live with the consequences of this.

79. It is necessary to consider the effect of Mr Naqvi's decision not to cross-examine the factual witnesses who gave evidence for the DFSA and his decision not to adduce evidence by way of a witness statement.

80. As to the failure to cross-examine the DFSA's evidence, this means that we can rely on the DFSA's evidence as unchallenged and therefore it can be relied upon. A party in the position of Mr Naqvi is required to challenge in cross-examination the evidence of the DFSA if he wishes to submit that the evidence should not be accepted. This rule is an important one because it serves the function of giving the witness the opportunity of explaining any contradiction or any issue with respect to the evidence. The failure to cross-examine means that the witness evidence relied upon by the DFSA is accepted by Mr Naqvi.

81. What is striking about the present case is that Mr Naqvi declined to give a witness statement or to give oral evidence. He said he did this on the basis of legal advice because of the US criminal proceedings.

82. The DFSA says that the issue is whether we should draw any adverse inference from Mr Naqvi's failure to give evidence. The DFSA relies upon the frequently-cited principles set out by Brooke LJ (at 340) in *Wisniewski v Central Manchester Health Authority* [1998] PIQR 324; [1998] EWCA Civ 596:

> *"(1) in certain circumstances a court may be entitled to draw adverse influences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action;*
>
> *(2) if a court is willing to draw adverse inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness;*
>
> *(3) there must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue;*
>
> *(4) if the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified"*.

83. There is at the very least a case for Mr Naqvi to answer. The only issue is whether the existence of the US proceedings is a credible explanation for the lack of witness evidence of Mr Naqvi addressing the issues which it would be reasonable for him to address.

84. We note the existence of the US criminal proceedings but do not consider that they are relevant for present purposes. We reject the notion that Mr Naqvi was obliged to accept the legal advice that was given. It is up to Mr Naqvi whether he accepts the legal advice or not.

85. We note that Sir Stanley Burnton rejected the contention that Mr Naqvi's hands are tied in a way that would prevent him from offering such explanation as he might wish in

these proceedings. He refused a stay of proceedings on 19 April 2021 and pointed out at para 21 that the loss of "*the element of surprise*" in US proceedings was a factor of little if any weight. Sir Jeremy Cooke refused permission to apply for judicial review and agreed. He said at para 12:

> "As the Decision Maker said at paragraph 21 of the Decision, *"the loss of the element of surprise in the US proceedings"* by virtue of setting out a defence in the Regulatory Proceedings is not serious prejudice. It certainly is not enough to create a real risk of injustice. He relied on the dictum of the Privy Council in *Panton v Financial Institutions Services Ltd* [2003] UK PC 86:
> *"A stay* would *not be granted simply to serve the tactical advantages that the defendants might want to retain in criminal proceedings. The accused's right to silence in criminal proceedings was a factor to be considered, but that right did not extend to give a defendant as a matter of right the same protection in contemporaneous civil proceedings. What had to be shown was the causing of unjust prejudice by the continuance of the civil proceedings."*

We agree with the approach taken by the Decision Maker and Sir Jeremy Cooke.

86. More fundamentally this is not a case where the DFSA is seeking to invite the FMT to draw inferences solely on the basis of silence. The DFSA's case is based on the contemporary documents and the likely probabilities. It is not seeking to fill any gap in its case by relying on the Mr Naqvi's refusal to rely on factual evidence.

87. We can shortly summarise our approach and conclusions on liability.

    a. We have reviewed the statements, which are unchallenged and there is no reason to question their contents (and none has been suggested by Mr Naqvi) which are consistent with the documents in this case.

    b. We have also reviewed the main documents relied on in the Decision Notice and those drawn to our attention in the submissions of the parties. Nothing in this material suggests that the DFSA has failed to prove its case. Nothing in Mr Naqvi's submissions identifies errors or exaggerations by the DFSA. If the facts and matters relied on in the Decision Notice are correct then it is clear that the conclusions of the DFSA are justified and correct.

c. We have also reviewed paragraphs 26 to 46 of the DFSA's submissions and consider that they make good its case by detailed reference to the allegations, the pleadings and the key documents. Mr Naqvi has not sought to challenge that or to respond with a similar exercise. There is no reason to doubt the DFSA's case.

d. We accordingly find that the relevant facts and conclusions as set out in the Decision Notice are established and that Mr Naqvi committed the contraventions recorded in it.

88. Having stated our conclusions, we propose to consider the matters referred to in the Decision Notice. The Decision Notice (see paras 19 and 55) summarised the DFSA's case by stating that Mr Naqvi was knowingly concerned in (1) AIML's unauthorised Financial Services activities and (2) AIML's misleading deceptive conduct.

(1) Unauthorised Activities

89. The Decision Notice at para 55(1) states that "*as manager of the majority of the Abraaj Funds, AIML carried out unauthorised Financial Service activities in or from the DIFC under the IMAs* [Investment Management Agreements] *and Management Deeds"*.

90. The Decision Notice deals with Mr Naqvi's role and identifies AIML's unauthorised activities as follows.

91. First, as to Mr Naqvi's role:

a. Mr Naqvi was the founder and the largest shareholder of the Abraaj Group, where he held the positions of the Group CEO, Executive Vice Chairman of AH and Director of a number of entities in the Abraaj Group including AH, AIML and ACLD.

b. He was also a member of several committees within the Abraaj Group such as the Management Executive Committee ("*MexCom*"), the Compensation Committee and the GIC.

c. He was an Authorised Individual in that he was authorised by the DFSA to perform Licensed Functions at ACLD. In the period from 20 March 2006 until 3 April 2018, Mr Naqvi was authorised to perform the Licensed Director function at ACLD.

d. Internally, Mr Naqvi was the ultimate decision maker on material or disputed matters within the Abraaj Group.

e. Externally, Mr Naqvi was the 'face' of the Abraaj Group, promoting the Abraaj Group, its Funds and its investments in emerging markets in various publications and conferences.

f. He also held a number of Board positions at other institutions including a non-bank entity from which the Abraaj Group obtained temporary loans to fund shortfalls at the Abraaj Funds.

92. The Decision Notice at paras 61-64 gave 3 examples of AIML's unauthorised activities in which Mr Naqvi was involved:

a. GIC. Mr Naqvi headed the GIC as a permanent member of the committee and was the only member to have absolute negative vetoing power over investment decisions. The GIC was the principal investment and divestment decision making body for the Abraaj Funds. All permanent members of the GIC had Dubai residence status, with family homes in Dubai, and their own physical offices in the DIFC. The majority of the GIC meetings were held at the Abraaj offices in the DIFC. Through his role on the GIC, Mr Naqvi was involved in the investment and divestment decisions of the Abraaj Funds and provided the investment teams located in the DIFC and others in the Abraaj

Group with direction and commentary on the proposed asset valuations of Abraaj Funds.

b. Marketing the Abraaj Funds. Mr Naqvi was involved in marketing the Abraaj Funds. For example, on 4 February 2011, Mr Naqvi sent an email to a potential investor in APEF IV stating "*We are very keen for you to consider a substantial participation in the new fund, ABOF IV [APEF IV]*". In the same email, Mr Naqvi attached the APEF IV Private Placement Memorandum ("*PPM*") and a summary document that stated "*Abraaj Capital is the largest private equity group in the world outside the US and Europe ... The story of Abraaj is a global success story that started in Dubai, where the firm is headquartered – in the DIFC*".

c. Attending AIML Board Meetings in the DIFC. As a Director of AIML, from at least June 2011, Mr Naqvi participated in AIML Board meetings in or from the DIFC. The Board meetings discussed a range of matters including the Abraaj Funds, borrowings, and issuance of shares. From June 2011, Mr Naqvi attended over 15 AIML Board meetings in the DIFC, which were described in the meeting minutes as "HELD AT THE OFFICES OF ABRAAJ CAPITAL IN DUBAI". In the minutes of six other AIML Board meetings subsequent to June 2011, the location was described as 'Dubai' only, or by phone, or the location was not mentioned.

93. We consider (on a de novo basis) that all of the findings are justified. It was open to Mr Naqvi to seek to explain his position on these findings and to challenge them. He did not do this. Mr Naqvi has shown no basis for putting in issue the question of what services were carried out by AIML in or from the DIFC.

94. We also note that in addition to the finding that AIML was Managing Assets in or from the DIFC, there was also a finding that AIML from April 2007 to January 2018 was carrying on Financial Services activities of Managing a Collective Investment Fund (see Decision Notice at paras 169 and 173). We consider that the findings are justified. They are not challenged by Mr Naqvi and no defence has been shown.

(2) Misleading and Deceptive Conduct

95. The Decision Notices describe in detail how AIML misled investors. A number of events are identified and are relied upon in the DFSA's written submissions. It is pointless for us to repeat the DFSA's submissions which we consider to be well-founded and supported by the evidence relied upon. It is enough for us to summarise what we understand to be the main events relied upon by the DFSA by reference to certain events considered in the Decision Notice. We have considered all of them. They all display the same essential characteristics: the facts alleged in the Decision Notice are supported by the contemporaneous documents; they constitute misconduct that is misleading and/or deceptive and Mr Naqvi has declined to give an explanation for his conduct.

(a) Personal Loan (Decision Notice, para 65)

96. On 15 July 2014, Mr Naqvi received an email from Mr Lakhani (a managing director in the finance team at Abraaj) informing him that they would be required to transfer funds from APEF IV in order to fund Mr Naqvi's personal investment in shares. Mr Naqvi responded to Mr Lakhani stating "*Yes Rafique, I know*". Following which, on the same day, USD 2 million was transferred from APEF IV to AIML and USD 1 million was transferred from AIML to one of Mr Naqvi's personal companies for this purpose. During his interview with the DFSA (referred to above), Mr Naqvi confirmed that the personal loans he received from the Abraaj Group were interest free.

97. It was open to Mr Naqvi to rebut the matters mentioned above and to give an explanation of this. He declined to do this. This is clearly deceptive conduct and no innocent explanation has been given for this.

(b) Sale of Network International and Saham Finances (Decision Notice, paras 69-78)

98. In late 2015, APEF IV sold its stake in Network International ("*NI*") for USD 330 million, receiving the sale proceeds in two tranches. The first tranche of USD 135 million was received into an APEF IV account on 30 December 2015. On the same day, the entire USD 135 million was transferred to AIML's bank account. Subsequent transfers out of AIML's account on 30 December 2015 included (i) approximately USD

92 million to IGCF and (ii) USD 7.5 million to Silverline Holdings Limited ("*Silverline*"), a company wholly owned by Mr Naqvi, in order to fund his personal expenses.

99. Mr Naqvi was notified by Mr Lakhani that USD 92 million of the NI sale proceeds would be used to fill a shortfall in IGCF ahead of the December 2015 financial year-end "*so the IGCF audit can be completed without any complications*". Subsequently, Mr Naqvi received a confirmation from Mr Lakhani that proceeds from the sale of NI were transferred to fill the shortfall in IGCF, stating they had "*Received US$135million (partial) NI sale proceeds on 30 December 2015*" and "*were able to pay outstanding IGCF distribution and square off intercompany with AIML*".

100. In relation to the USD 7.5 million transfer to Silverline, Mr Naqvi provided Mr Lakhani with his approval to make this transfer and received a response from Mr Lakhani stating "*Only thing I will have* [to] *manage is the date of transfer as NI proceeds are expected on or after 29th Dec*".

101. By mid-February 2016, Mr Lakhani was reporting to Mr Naqvi projected cash shortfalls at the Abraaj Group of almost USD 300 million. Following a suggestion by Mr Lakhani, Mr Naqvi approved the use of the second tranche from the sale of NI of USD 195 million to fund partly these cash shortfalls.

102. In early 2016, APEF IV sold its stake in Saham Finances ("*Saham*") for USD 185 million and received the sale proceeds in March 2016. Over a third of this amount was transferred to AIML to meet various non-APEF IV liabilities, such as margin calls on an IGCF investment. Since a significant portion of the proceeds from the sale of NI and Saham were transferred to AIML to meet cash demands in other parts of the Abraaj Group and Abraaj Funds, APEF IV did not have sufficient cash to make the necessary distributions to LPs under its obligations under the Limited Partnership Agreement ("*the LPA*"). The LPA is an agreement between Abraaj Funds' LPs and GPs setting up the Funds.

103. Therefore, on 1 April 2016, Mr Naqvi sent an email to Mr Lakhani, Mr Siddique and Mr Abdel-Wadood (a managing partner at the Abraaj Group) proposing a Payment Schedule of approximately USD 224.4 million of the NI and Saham sales proceeds to LPs between April and June 2016 that would prioritise "*noise makers and those who will come back, with the latest being legacy investors and passive voices*", stating that this matter should be tightly controlled by a small group of people and "*nobody outside the loop knowing* [sic] *what is going on; as far as the rest of the Firm is concerned, all payments have been made*". Subsequently, Mr Naqvi was involved in several revisions of the Payment Schedule between April 2016 and June 2016.

104. On 3 May 2016, Mr Naqvi received a "Cash Update" from Mr Siddique setting out that the projected cash shortfall at APEF IV was estimated at approximately USD 30 million by the end of May 2016 and USD 108.3 million by the end of June 2016. The email explained that these projected cash shortfalls were mainly due to APEF IV not having sufficient cash to make the outstanding NI and Saham distributions to APEF IV LPs, adding that "*perhaps Rafique, Mustafa, you and I should meet"*.

105. The matters referred to above are documented (see: the DFSA's Answer at para 105-114). The Hearing Panel agrees with the DFSA's submission (at para 31 of its October 2022 submissions) that these facts establish a clear breach of Article 41B. They call for an explanation from Mr Naqvi but this is missing.

(c) APEF IV's June 2016 Financial Year End (Decision Notice, paras 79-86)

106. On 5 June 2016, Mr Naqvi received an email from Mr Lakhani alerting him that, after making the necessary adjustments, they would need to find USD 195 million on or before 30 June 2016, for the purpose of the APEF IV financial year-end audit, to cover the cash shortfall in APEF IV.

107. Mr Lakhani's email offered a number of possible solutions. The next day Mr Naqvi sent an email to Mr Lakhani titled "*If we got 200 M from* [Company X] *for one month from June 15 to July 15*". Mr Lakhani responded to Mr Naqvi stating "*We can show the balance available at 30 June*" for APEF IV, referring to being able to report a cash

balance in the financial statements of APEF IV which the auditors and LPs would have expected to see on that particular date.

108. Mr Lakhani's response to Mr Naqvi also suggested the required flow of funds from Company X (a third party company unrelated to the Abraaj Group) to Menasa Capital Management Holdings Limited ("*MCMHL*") to AIML to APEF IV. MCMHL was an entity partly owned by Mr Naqvi, which was unaudited and did not form part of the Abraaj Group for accounting consolidation purposes. Therefore, the suggested flow of funds and the associated accounting entries ensured that the USD 195 million payable to Company X would not appear in AIML's or APEF IV's financial statements.

109. On 9 June 2016, Mr Naqvi attended an AH Board meeting but did not disclose the USD 195 million cash shortfall or the suggestion to borrow from certain banks or non-bank entities such as Company X to fill this shortfall.

110. On or around 14 June 2016, Mr Siddique and Mr Lakhani discussed with Mr Naqvi the terms of the loan agreement with Company X, including the principal and interest amounts of the loan. Mr Naqvi responded that he had already agreed with senior management at Company X that the principal and interest amounts on the loan were USD 195 million and USD 5 million respectively and Mr Naqvi requested Mr Siddique and Mr Lakhani to finalise the loan documentation.

111. On 15 June 2016, Company X, MCMHL, AIML, Abraaj General Partner VIII Limited (i.e. the APEF IV GP) and Mr Naqvi entered into an agreement for a USD 195 million short term loan to be repaid on or before 15 July 2016, in return for a flat fee of USD 4.9 million (equating to an annual interest rate of approximately 71%).

112. Mr Naqvi was a signatory to the loan agreement, signing on behalf of AIML, and in his personal capacity as a guarantor to repay the loan and ensure that the terms of the agreement were 'strictly' adhered to. The terms of the loan agreement included the 'mechanism' dictating the cash flows for the USD 195 million loan, namely from Company X to MCMHL to AIML to APEF IV GP, in line with Mr Lakhani's suggestion to Mr Naqvi (as described above).

113. On 22 June 2016, Company X transferred USD 195 million, which was ultimately deposited into an APEF IV GP bank account. This enabled APEF IV to report the cash balance of USD 195.7 million expected by the LPs in its financial statements and produce a bank balance confirmation as at 30 June 2016 for APEF IV audit purposes.

114. Pursuant to the loan agreement signed by Mr Naqvi, on 5 July 2016, the principal amount of USD 195 million was repaid from the APEF IV GP bank account to Company X. On 20 July 2016, the interest of USD 4.9 million was paid by AIML to Company X.

115. Mr Naqvi has failed to provide an explanation for this deceptive conduct in which he was the instigator and heavily involved. The DFSA Answer at para 115-122 refers to all the relevant documents which confirm the accuracy of the summary above. Again, Mr Naqvi has declined to give any explanation for what took place, let alone an innocent explanation.

(d) Other events

116. It is unnecessary to go into the detail of the other events mentioned in the Decision Notice but they are as follows:

a. Delays in GP Reports and LP distributions (Decision Notice, paras 87-91).

b. AGHF Investor Monies and personal loans (Decision Notice, paras 92-97).

c. AGHF and APEF IV June 2017 (financial year-end), (Decision Notice, paras 98-107).

d. Fund Valuations (Decision Notice, para 108).

e. Responses to investor queries (Decision Notice, paras 109-119).

f. AGHF December 2017 bank balance confirmation (Decision Notice paras 120-131).

g. Funding the Shortfall (Decision Notice paras 132-138).

117. All the findings are supported by evidence and no attempt has been made by Mr Naqvi to challenge them.

118. It is necessary to deal with Mr Naqvi's defence in para 4 of the Grounds of Appeal where he asserts that "*it is denied that Mr Naqvi was knowingly concerned with the alleged misleading and deceptive conduct by AIML*". Rather than seeking to explain the documentary materials which evidence his knowledge of the misleading and deceptive conduct, he makes 3 arguments.

119. First, he says that he "*self-reported issues with the Abraaj Group in early 2018*". The acts complained of against Mr Naqvi had taken place for many years. A belated confession (if made) cannot go to the issue of liability but is potentially relevant to mitigation. However, as the DFSA has pointed out in its latest submissions, by reference to the unchallenged evidence of Ms Saffarini, the DFSA began to investigate ACLD in February 2018 because of reports in the US press. There was no admission by Mr Naqvi of wrongdoing by ACLD but that the information relied upon by the DFSA was "*not factual*".

120. As the DFSA points out (correctly in our view) at para 226 of its Answer:

> *"Mr Naqvi deserves no credit for what he reported to the DFSA in early 2018. He did no more than acknowledge what was either already known or he knew would soon be uncovered as a result of providing documents in response to DFSA Notices that had already been issued. In any case, what he reported fell a long way short of disclosing the full extent of the unauthorised activities and the misleading and deceptive conduct in which AIML and ACLD had engaged at his direction and he downplayed the seriousness of what had occurred".*

121. Second, it is said that "*Mr Naqvi's decisions were at all times for the interest of the Abraaj Group and its investors*". This is a hopeless argument and shows how Mr Naqvi misunderstood and continues to misunderstand his responsibilities. None of the matters alleged advanced the interests of the Abraaj Group. It is extraordinary to assert that the

matters recorded in the Decision Notice were in the interests of the Abraaj group or its investors.

122. Thirdly it is said that the Abraaj Group had a number of external advisers, auditors and further systems and controls which Mr Naqvi relied upon to ensure the legality of day to day activities. He also says that it is wrong to portray Mr Naqvi as the sole decision maker of the Abraaj Group. We reject these arguments without hesitation. It is not part of this Tribunal's function to consider whether there were others who might have some legal responsibility for what took place. Even if others bore responsibility this does not provide Mr Naqvi with an excuse for his misconduct.

VIII: Penalty

123. Having reached the conclusion that there have been contraventions for which a penalty is required, the Tribunal has to consider what sanctions are appropriate.

(1) Position of the DFSA

124. The DFSA contends:

> *'It is truly hard to imagine a much worse case, more deserving of condign punishment, or more clearly crying out for prohibition and restriction. Mr Naqvi has proved himself to have been a rapaciously dishonest man, who extracted vast wealth for himself by defrauding others. The penalties and other action imposed upon him are proportionate.'*

125. We set out below the main elements of the DFSA's case on the financial penalties.

126. First, it relies on the DFSA's policy regarding financial penalties as set out in Chapter 6 of its Regulatory Policy and Process ("*RPP*") Sourcebook. That provides a five-step framework based on the following three principles:

a. Disgorgement – that a firm or individual should not benefit from any contravention;

b. Discipline - a firm or individual should be penalised for wrongdoing; and

c. Deterrence – any penalty imposed should deter the firm or individual who committed the contravention, and others, form committing further or similar contraventions.

127. Secondly, the DFSA recognises that a penalty must be proportionate to the contravention (RPP 6-4-3).

128. Thirdly, the Decision Notice (at paras 182-207) sets out the factors and considerations taken into account in determining the appropriate level of the fine on Mr Naqvi. These include the impact and nature of the contraventions, and the fact that Mr Naqvi's conduct was deliberate and intentional and occurred over a prolonged period of almost 11 years. It points out that the Decision Maker found that Mr Naqvi's misconduct contributed to the collapse of the largest private equity firm in the region resulting in significant job losses, placing employees' end of service benefits at risk and is likely to have an adverse effect on the investors' and creditors' ability to recover their monies. It therefore had a very significant impact.

129. Fourthly, given the liquidation of ACLD and AIML and claims by various investors in the Funds, there were losses to investors. In its Decision Notice given to AIML, the DFSA estimates the losses to APEF IV and IGCF investors as at 31 March 2018 to be USD 183.9 million.

130. Fifthly, the Decision Maker also considered Mr Naqvi's remuneration over the duration of his contraventions. In the period from 1 April 2007 to 18 June 2018, Mr Naqvi's relevant remuneration was USD 169,457,728. The Decision Maker considered that a financial penalty equivalent to 40% of that amount appropriately reflects the seriousness of Mr Naqvi's contraventions (i.e. USD 67,783,091).The Decision Maker further took into consideration Mr Naqvi's role as the founder and CEO of the Abraaj Group, and ultimate decision-maker and "*driving force*" behind its activities (see paragraph 207 of the Decision Notice).

131. Mr Naqvi was a dominant CEO who created a culture of obedience and conformity to his views, thus risking the integrity and regulatory compliance of the entire organisation. The Decision Maker considered the fact that the Abraaj Group made over USD 2 billion in revenue over the period of Mr Naqvi's contraventions. Mr Naqvi was by far the greatest beneficiary at Abraaj in terms of salaries and bonuses. The Decision Maker therefore concluded that 40% of Mr Naqvi's relevant remuneration was not sufficient to deter him and other founders or CEOs in similar positions, who could remunerate themselves with hundreds of millions of dollars, from committing similar contraventions.

132. Accordingly, the Decision Maker decided it was appropriate to double the amount that was equivalent to 40% of Mr Naqvi's relevant remuneration and impose a financial penalty of USD 135,566,183. The DFSA explains why it is appropriate to take Mr Naqvi's income into account by reference to other cases.

133. The DFSA argues such an amount is entirely appropriate and proportionate given the exceptional circumstances of this case.

(2) Position of Mr Naqvi

134. Mr Naqvi's position on the financial penalty can be summarised as follows.

135. First, the DFSA has imposed the single largest fine in the history of the DIFC on Mr Naqvi – USD 135,566,183. Mr Naqvi refers to the DFSA's previous decision schedule and contends that it is wrong to impose a penalty based on Mr Naqvi's remuneration.

136. Secondly, the amount of the fine is vastly disproportionate to the alleged contraventions and that the DFSA has not established that the fine is in line with sections 6-4 and 6-6 of the RPP. Mr Naqvi denies that he was the "face" of the Abraaj Group and that he has undermined the confidence of the investors in the DIFC and damaged its reputation. He contends that the DIFC has continued its growth since the collapse of the Abraaj Group as a leading financial centre

137. Thirdly he challenges the finding that he "*abused his position and took advantage of his seniority by fostering a culture of obedience and instilling a culture of fear around him to direct other Abraaj employees also to engage in deceptive and misleading conduct*".

138. Fourthly he contends that he had legitimate right to his remuneration from the Abraaj Group based on his performance and contributions. He disputes the finding that "*created a culture of obedience and conformity to his views, thus risking the integrity and regulatory compliance of the entire organisation. Accordingly, Mr Naqvi was able to instruct and influence those working for him to originate and execute acts of misleading investors*".

139. In summary he contends that the fine imposed is disproportionate and that the DFSA has not correctly applied the guidance set out in sections 6-4 and 6-6 of the RPP of the Regulatory Policy and Procedure Handbook.

(3) Discussion

140. We consider that the Restriction and Prohibition are appropriate and see no reason to take a different view to that expressed in the Decision Notice. This is a case of serious misconduct on the part of Mr Naqvi. He was centrally involved in a sustained course of unauthorised Financial Service activities and misleading and deceptive conduct by AIML. It follows that he is not fit and proper and poses a risk to users and prospective users of Financial Services within the DIFC.

141. In view of the nature and scale of the improper conduct of Mr Naqvi it is clear that he is not a 'fit and proper person' and that the prohibitions and restriction imposed by the DFSA are appropriate and essential.

142. The issue between the parties is the size of the fine. The Tribunal has power to affirm, set aside or vary the fine.

143. The fine is to be determined according to RPP 6-6. A fine on an individual involves consideration of some thirty matters and then of thirteen questions of aggravation and mitigation. The provision is therefore difficult to summarise and can be found at The DFSA Regulatory Policy and Processes Guide (thomsonreuters.com).

144. Our starting point must be that the facts which we have accepted to be true and the findings of liability which follow are correct. The misconduct in this case is extraordinarily serious.

145. Mr Naqvi in his Reply Submissions at para 18.4 says "*It simply beggars belief that Mr Naqvi could single-handedly control and influence such a large organisation*…"

146. However we do not approach the case on the basis that Mr Naqvi acted alone in the misconduct. The DFSA has taken action not only against Mr Naqvi but others. But what is clear is that Mr Naqvi was at the heart of the Abraaj Group and played an essential part in the matters set out in the Decision Notice.

147. We also reject Mr Naqvi's argument in his Reply Submissions at para 18.3 that "*the DFSA disregards the fact that Mr Naqvi was key to the success of the Abraaj Group*…". We agree with Paragraph 11 of the DFSA's Reply Submissions which calls this "*a quite astonishing submission*" in circumstances where "…*that Group collapsed into insolvency through his chronic and repeated dishonesty*".

148. The issue then becomes one of whether to uphold a fine equivalent to 80% of Mr Naqvi's remuneration over the period or to increase it or reduce it. We consider that it is a wholly appropriate fine. The penalty is unusually high but the remuneration that Mr Naqvi received was high amidst conduct that was exceptionally serious and the cause of what appears to have been unprecedented harm to the entire community of the DIFC.

149. We agree with the DFSA that the income that Mr Naqvi received from the Abraaj Group was directly related to his actions which resulted in the contraventions found in the Decision Notice and upheld by us.

150. We also consider that deterrence is important in a case like this so to discourage others in engaging in similar activities.

151. A relevant consideration when imposing a financial sanction is the offender's ability to pay. We do not have regard to that at this point as Mr Naqvi has made no disclosure. That disclosure would of course involve a full and documented account of the whereabouts of all funds obtained by Mr Naqvi as a result of the activities which are the subject of this case. It is however open to Mr Naqvi to apply under the hardship provisions of RPP 6-7, providing all this information, if he wishes his means to be taken into account.

152. We do not therefore see any reason to reduce or increase the fine which will remain that imposed by the Decision Maker.

IX: Conclusion

153. The Application is refused and the penalties imposed by the Decision Maker will remain in place and the Fine (as specified in para 13(1) of the Decision Notice) shall be paid within 30 days of the date of this Decision.