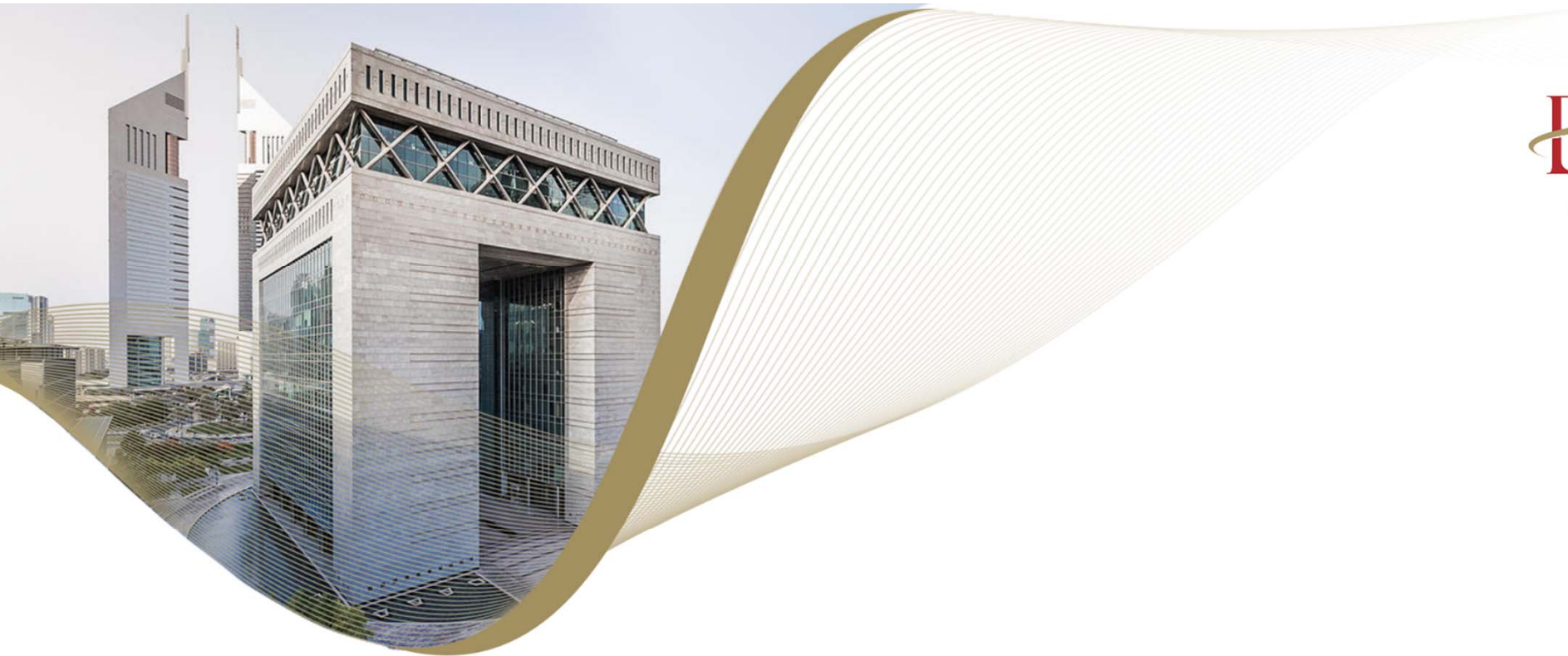




# DFSA Annual Outreach Session 2023

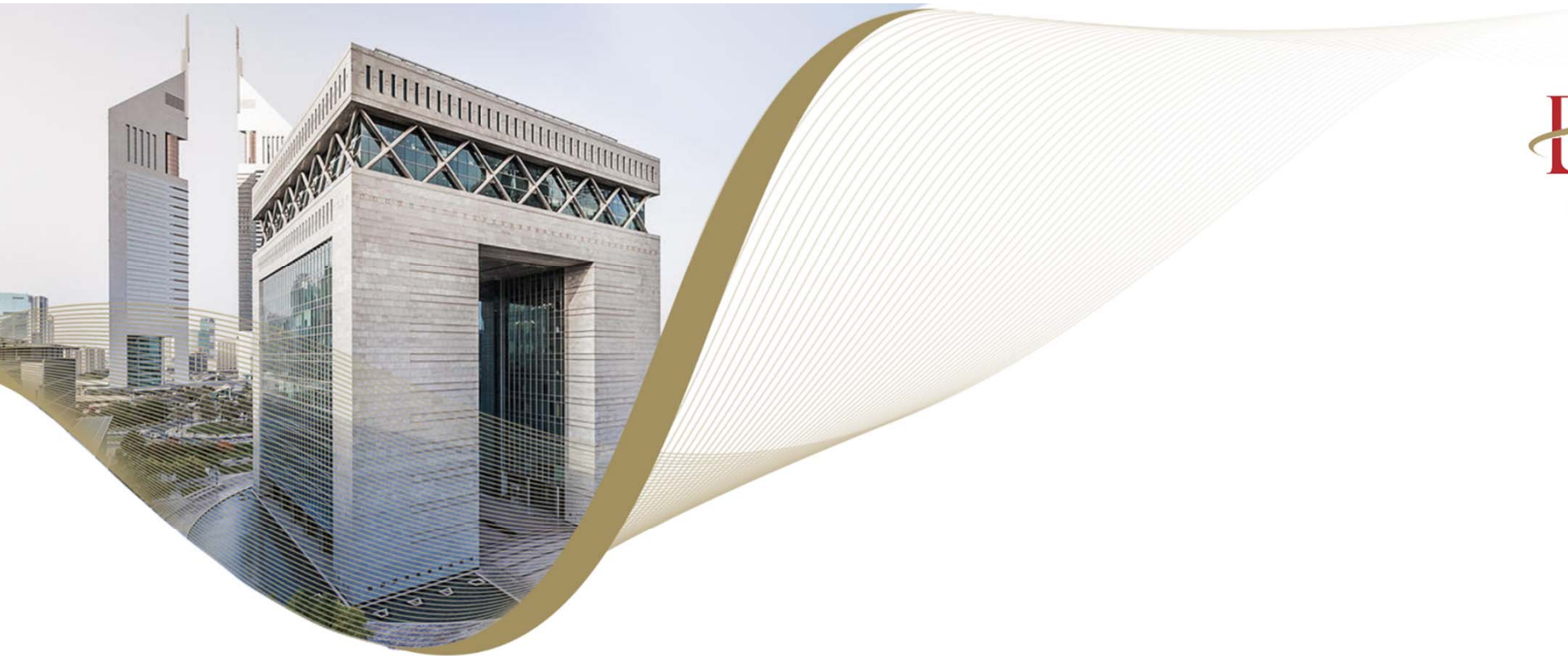
31 May 2023

***DFSA Disclaimer: no reliance: Please note that this presentation is only intended to provide a general and informal overview of the matters stated in it. This presentation is not any form of, and must not be relied upon on any basis whatsoever, as legal or professional or any other form of advice and is provided on a general, non-binding basis only. The DFSA makes no representation or warranties as to the accuracy, completeness or timeliness of any of the information in this presentation.***



# Opening Remarks

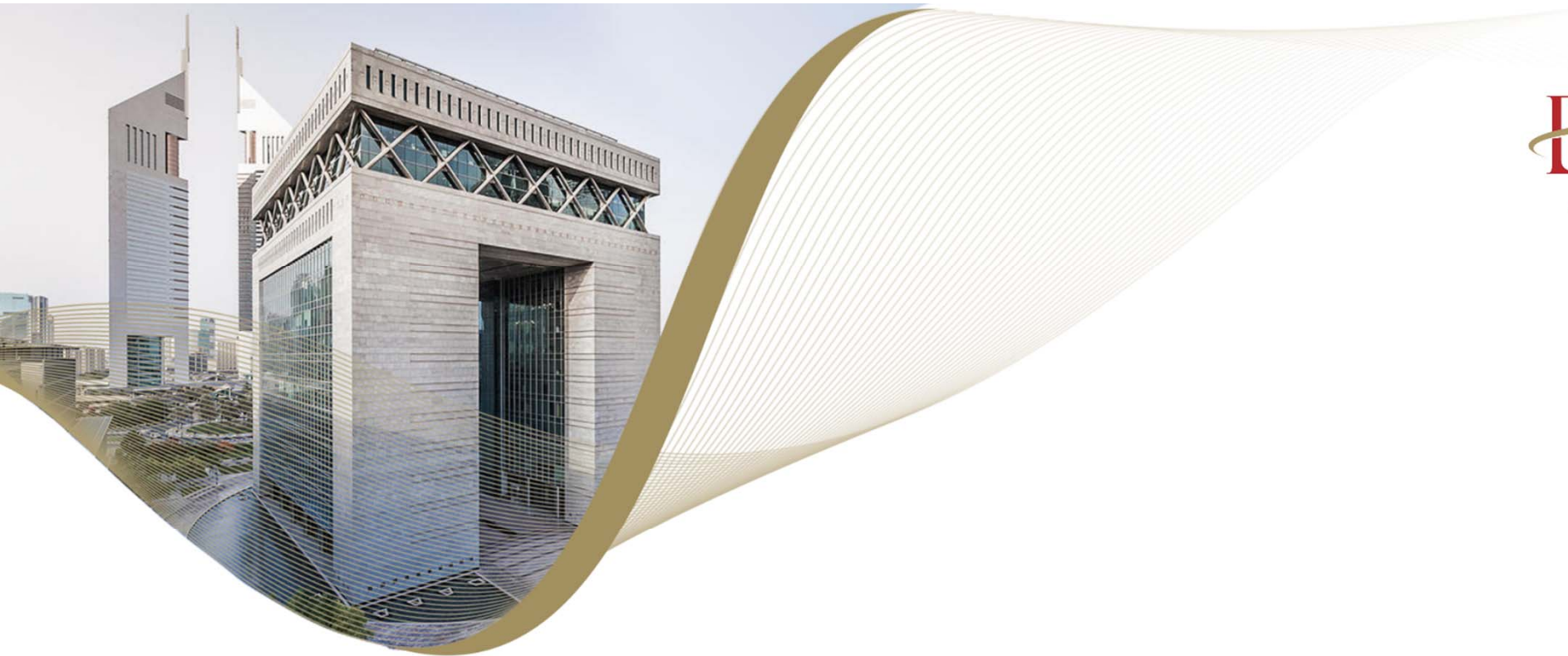
## Ian Johnston, Chief Executive DFSA



# Supervision Key Messages

## Justin Baldacchino, Managing Director Supervision





Policy, Strategy & Risk (SPR) Update  
Anita Wieja-Caruba, Associate Director SPR  
Andrew Bojkowski, Associate Director SPR

## Recent Policy projects

- Cyber security
- Whistleblowing
- Regulatory requirements for lower risk firms – Part 1
- CPD requirements
- Credit funds
- Tokens - Investment & Crypto

## Sustainable Finance / ESG

Multi-level engagement to implement strategic ESG vision:

- UAE – SFWG & COP28
- DIFC and Dubai
- International

### Recent publications:

- UAE SFWG Progress reports
- Climate And Environmental Risk Management (DFSA Task Force on Sustainable Finance)
- Markets Briefs and Podcasts on ESG bonds and on Greenwashing

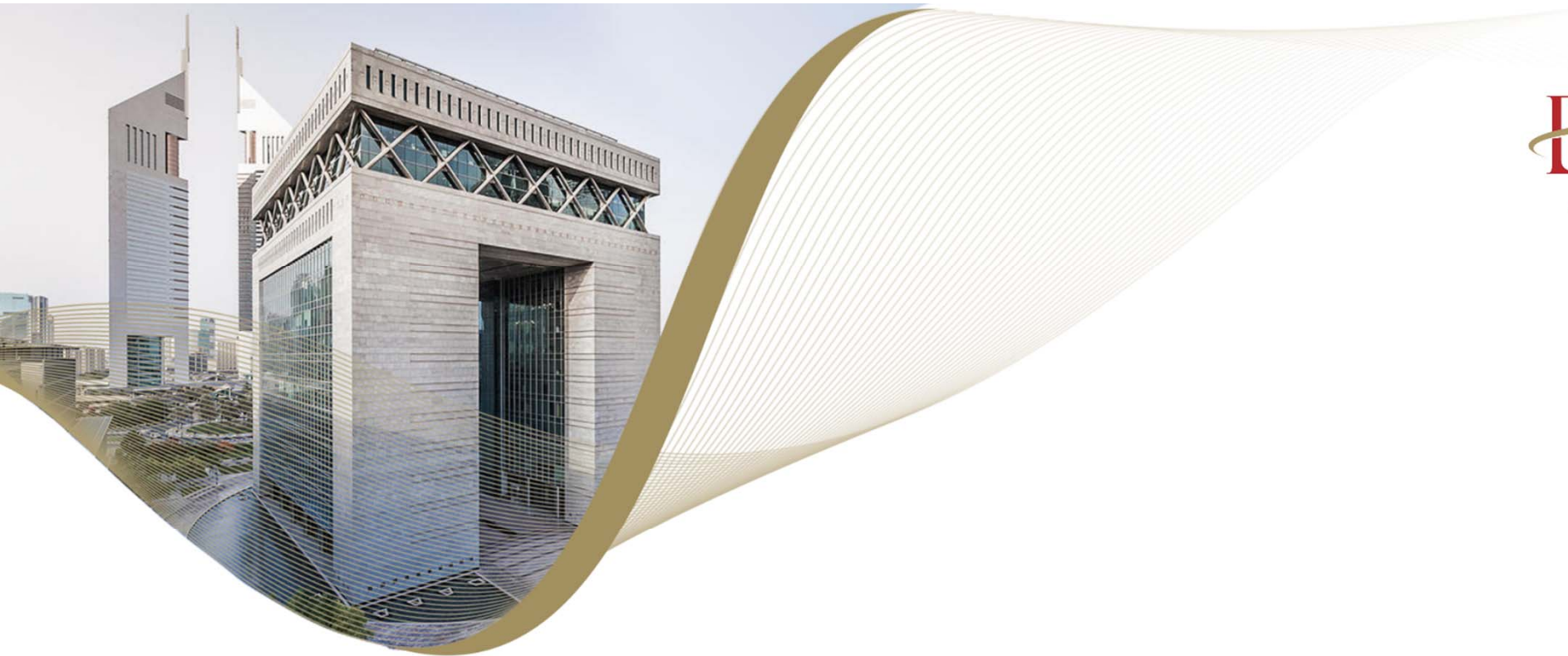
## Upcoming Policy projects

- AML / CFT Rule updates
- Updates to PIB in line with Basel III requirements
- Client Assets
- Crypto-assets - Part 2
- Funds review
- Preparations for Financial Sector Assessment Program review
- Regulatory requirements for lower risk firms – Part 2

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Thank you!





Enforcement Update  
Patrick Meaney  
Managing Director, Head of Enforcement

## Things to cover

- Investigation Methodology, Resources and Process
- Investigation Targets and Priorities
- Settlement Process
- Publicity
- Penalties
- What to do if you are investigated

# Investigation Methodology, Resources and Process



- Complaints ([complaints@dfsa.ae](mailto:complaints@dfsa.ae)), whistle-blowing ([whistle@dfsa.ae](mailto:whistle@dfsa.ae)) and intelligence gathering increasingly the source of investigations
  - If you know other firms are not doing the right thing it is in your interests to tell us about it
- Resources assigned depending on investigation priority
  - lower priority investigations may progress more slowly
  - Enforcement head count increased from 12 to 16 in 2022
- Increased use of Here and Nows (Dawn Raids) to obtain data at the commencement of the investigation when appropriate
- Consideration given to early interviews of subjects

# Investigation Checks and Balances

- Referral criteria assess whether matters warrant being resourced as an investigation
- Investigation planning ensures:
  - use of investigation powers are proportional to seriousness; and
  - early decisions are made to discontinue an investigation when evidence does not substantiate occurrence of a breach.
- Annotated draft notices replace investigation reports as a mechanism for getting comments from subjects
  - Not done in every case
  - Time frames to respond short (issued at same time as settlement offer - response deadline one week after expiry of settlement offer)
- Legal review of recommendation to commence DMC proceedings and supporting documents



# Investigation Subjects and Priorities



- More individuals than firms – resulting in more FMT reviews
  - but costs orders can be made against applicants, e.g. if grounds found not to be reasonable
- Individuals tend to be senior – SEOs, Directors and Chief Compliance Officers
- Key investigation priorities are:
  - AML/CTF system and control failings
  - misleading investors;
  - misleading the DFSA or obstructing investigations; and
  - Unauthorised activity (policing the perimeter)

## Settlement Process

- Strict timelines (28 or 42 days) to accept settlement offer
  - Extensions rarely granted
- One 'take it or leave it' opportunity to get a 30% fine discount
- Concessions on content, including breaches and seriousness, dependent on evidence of factual error or mischaracterisation
- Concessions on penalty dependent on changes to:
  - seriousness;
  - applicable revenue stream/ time period; or
  - aggravating/mitigating factors.
- Increased mitigation for:
  - early and “above and beyond” assistance to investigation and acceptance of culpability
  - offering EU to remediate or pay restitution to victims

# Publicity



- Publicity of enforcement cases critical to credible deterrence
  - DIFC financial service providers need to understand the nature and seriousness of breaches and how the penalty was calculated
  - Imposing appropriate and proportionate penalties on wrongdoers reassures investors and users of DIFC financial services that misconduct is detected and deterred
  - Decision Notices are published on the website and MRs issued
- Previously the default position was that DNs would not be published if the subject sought FMT review
  - but in 2019 this was reversed creating a presumption that Decision Notices be published as soon as practicable
  - resulting in applicants for FMT review applying for the FMT hearing to be in private and publication of DN to be deferred (Al Masah, Rollet, Bhandari, Naqvi/Siddique and KPMG/Navalkar)

## Publicity (continued)

- The DIFC Court of Appeal decided that the FMT had not erred when it decided the KPMG/Navalkar DNs be published as follows:

*“... the Hearing Panel does not consider that the Applicants have adduced cogent evidence of serious harm, sufficient to displace the statutory presumption in Article 29(5) for the Decision Notices to be published.”*

- DIFC Court of Appeal stated that:

*“Article 29(8) sets out necessary conditions for the prohibition of publication of information relating to a DFSA decision. It does not establish them as conditions under which such an order must be made. The FMT is not shown to have erred in law...”*



# Penalty

- Most of our Decision Notices will impose a financial penalty
- The three principles of penalty setting have not changed

DISGORGEMENT

DISCIPLINE

DETERRENCE

- Five steps to calculating the amount have not changed BUT methodology and emphasis has changed

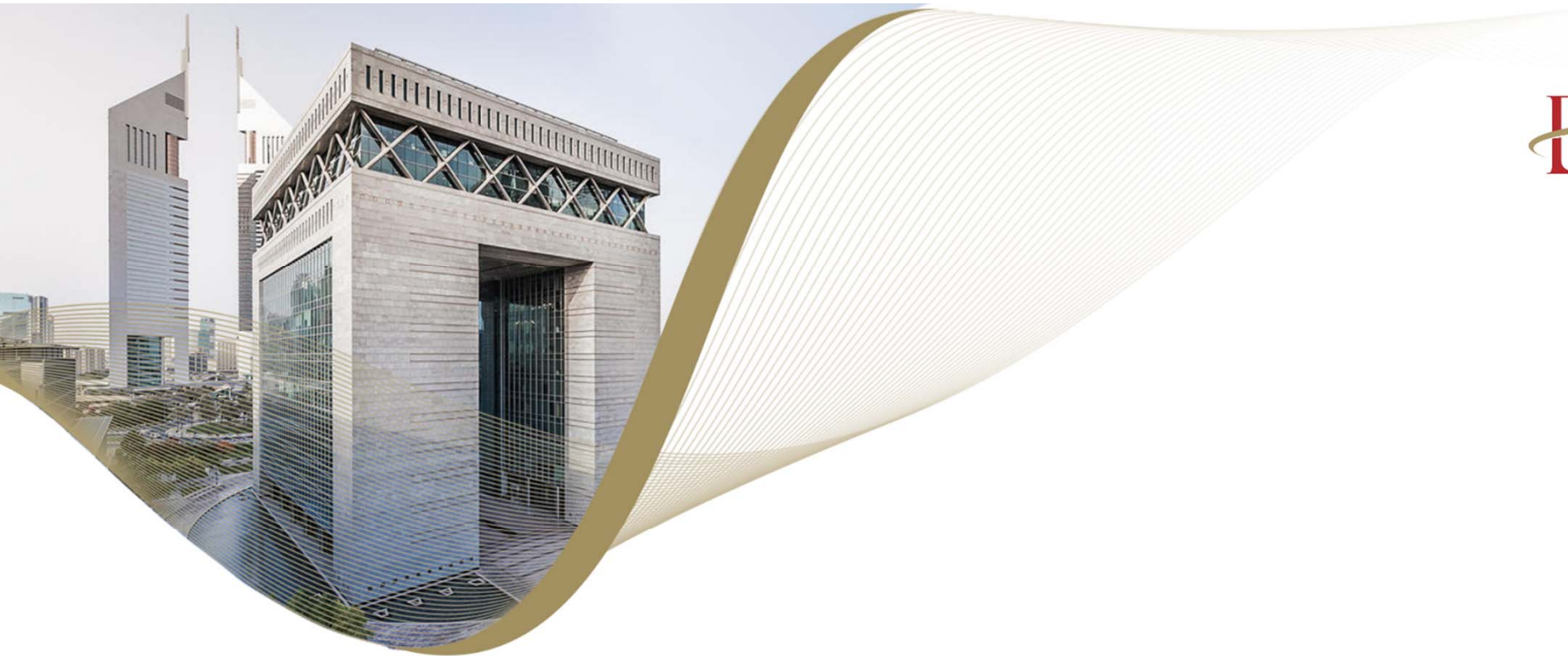
- 1) Disgorgement
- 2) Seriousness
- 3) Mitigating and Aggravating factors
- 4) Deterrence
- 5) Settlement Discount

## What to do if you are investigated

1. Co-operate, co-operate, co-operate
2. Be frank and fulsome
3. Engage (good) outside counsel
4. After consulting with us, do a thorough internal investigation and take appropriate internal disciplinary action
5. Be objective and try not to get locked into a defensive posture or wedded to a favourable version of events
6. Be open to settlement

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Thank you!



# Financial Crime Risk: General Updates, Trends and Issues

## Andrew Turrell, Senior Manager Supervision



# Agenda

- Financial Crime Engagement in the UAE
- DFSA Financial Crime Supervision
- Issues and Trends
- UAE Supervisory Authority Sub-Committee's Thematic Reviews
- Priorities



## Financial Crime Engagement in the UAE

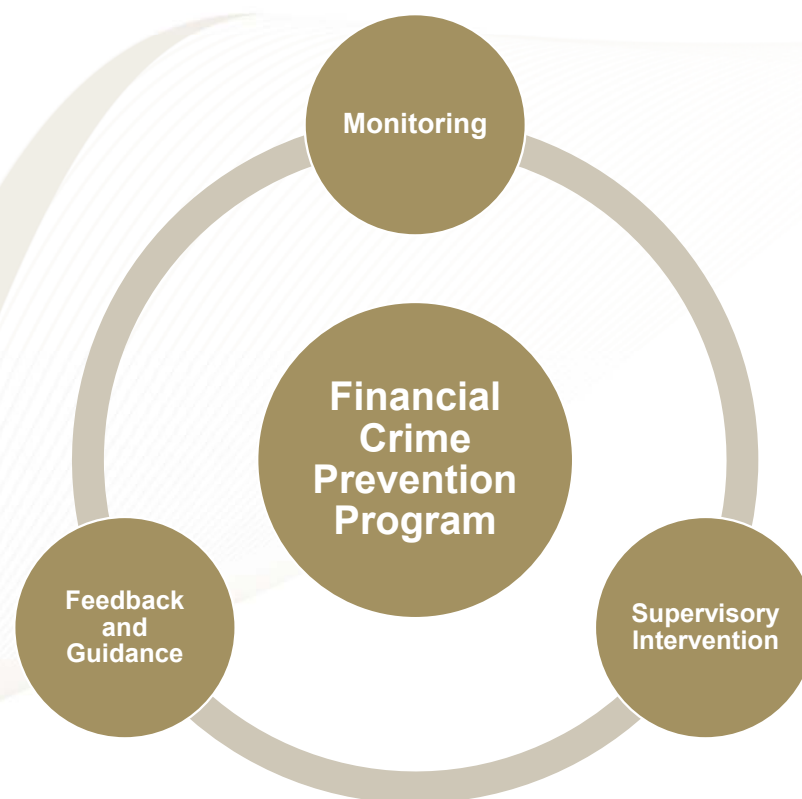
- In March 2022, the FATF updated its statements for countries under review which resulted in placing the UAE under increased monitoring.
- The FATF Action Plan covers 7 areas. Key items that the DFSA have been involved cover, but not limited, to the following:
  - identifying and maintaining a shared understanding of the ML/TF risks between the different DNFBP sectors and institutions
  - showing an increase in the number and quality of STRs filed by FIs and DNFBPs
  - proactively identifying and combating sanctions evasion.
- The DFSA fully supports the UAE's commitment to this key regulatory priority, and we continue to work alongside our fellow regulators and relevant government authorities on this file.
  - UAE 2<sup>nd</sup> National Risk Assessment
  - UAE Counter-Proliferation Risk Assessment

# Pro-active Supervision of AML/CFT and CPF Risks in the DIFC



Source: RIS as at 23 May 2023

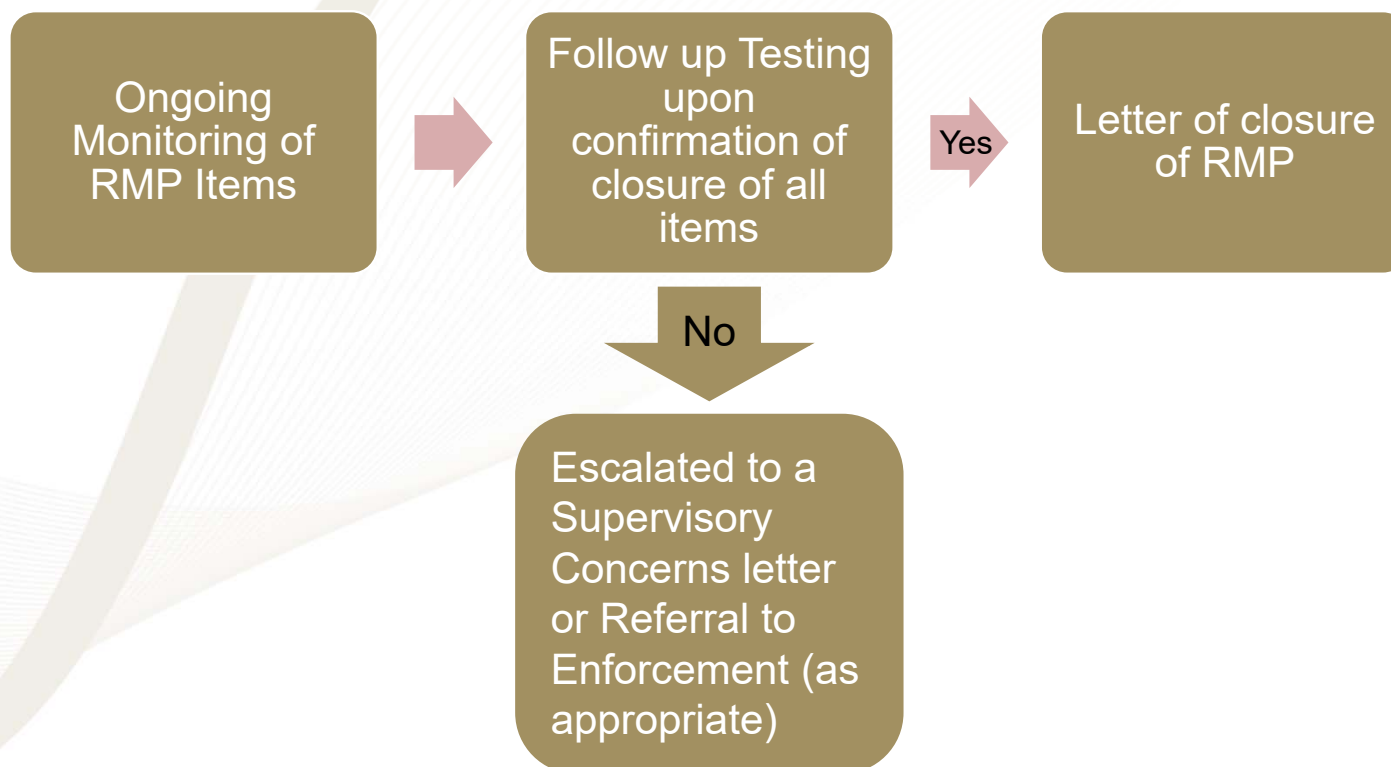
# Pro-active Supervision of AML/CFT and CPF Risks in the DIFC





# AML Risk Assessment Follow up Process

- In Q4 2021, the DFSA enhanced the AML Risk Assessment Follow up Process.



## Issues and Trends

# Item 1: Role and Responsibility of MLRO



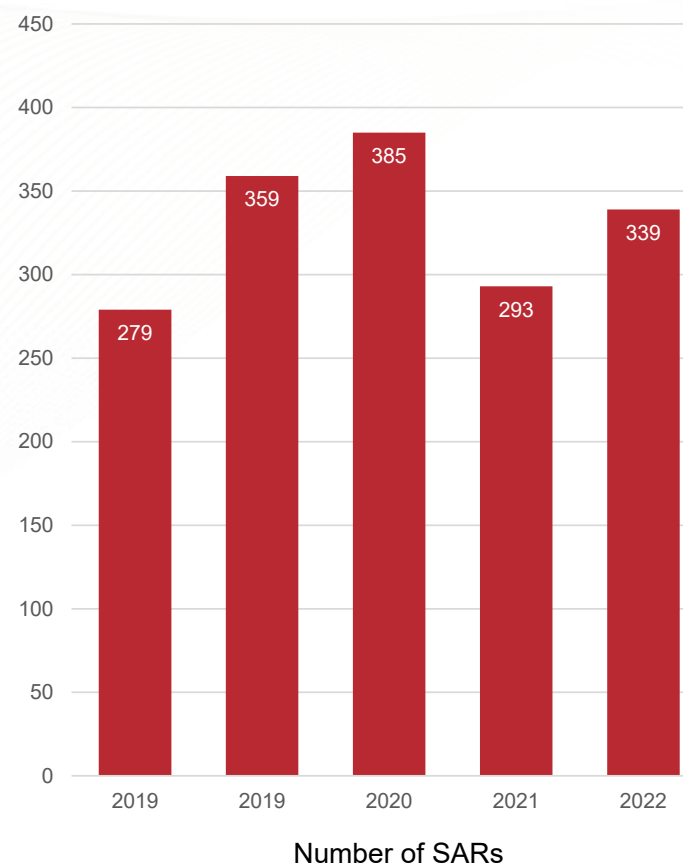
- Federal AML Legislation and DFSA AML Rulebook obligations
  - appropriate competence and experience
  - direct access to the Firm's senior management
  - sufficient resources
  - a level of seniority and independence within the Relevant Person to enable them to act on their own authority; and
  - timely and unrestricted access to information sufficient to enable them to carry out their responsibilities in *AML 11.4.1*.
- Common concerns observed by the DFSA in MLRO candidate
- 20 June 2022: The DFSA issued a Dear SEO Letter on The Role of Money Laundering Reporting Officers at Relevant Persons

## Item 2: Other key observations

- Ownership of risk
- AML Business & Customer Risk Assessments
- Policies & Procedures

## Item 3: SAR reporting and quality of SARs

- Number of SARs in line with risk/business profile
- Internal MLRO Notifications
- Threshold for reporting
- Feedback and Guidance: Quarterly FIU Feedback to Reporting Entities highlighting areas of possible improvement





## Item 4: Targeted Financial Sanctions Obligations

- In 2019, the UAE issued new legislation covering Targeted Financial Sanctions. The legislation was updated in 2020
- In 2022, the DFSA updated the AML Rulebook to emphasis the need for understanding Counter Proliferation Financing risks
- Observations from 2022 Risk Assessments across Relevant Persons

Breach Classification	Percentage
TFS Systems and Controls	39%
TFS Screening	21%
TF/PF Risk Assessment	6%
Subscription to EO Notification System	24%
TFS Training	9%

## Item 5: High Risk Jurisdictions

- In 2021, the UAE amended certain provisions of Federal Decree-law No. (20) of 2018, on anti-money laundering and combating the financing of terrorism and financing of illegal organisations
- Specifically, Article 12 expanded National Anti-Money Laundering & Combating Financing of Terrorism & Financing of Illegal Organisations Committee (UAE NAMLCFTC) competences to coordinate with the relevant authorities on identifying:
  - high-risk countries
  - necessary countermeasures to be taken
  - Other measures commensurate with the degree of risk
- To date, NAMLCFTC, issued two decisions in respect to High-Risk Jurisdictions. The decisions relate to:
  - the FATF Public Statements on the list of high-risk jurisdictions subject to a Call for Action (the **Black List**);
  - the FATF Public Statements on the list of Jurisdictions under Increased Monitoring (the **Gray List**); and
  - relevant counter-measures and enhanced due diligence to be applied by Relevant Persons concerning the Black List and Gray List.
- The UAE NAMLCFTC website which sets out certain information concerning UAE National AML/CTF initiatives, including updates on AML/CTF developments (e.g. for 'high risk countries')

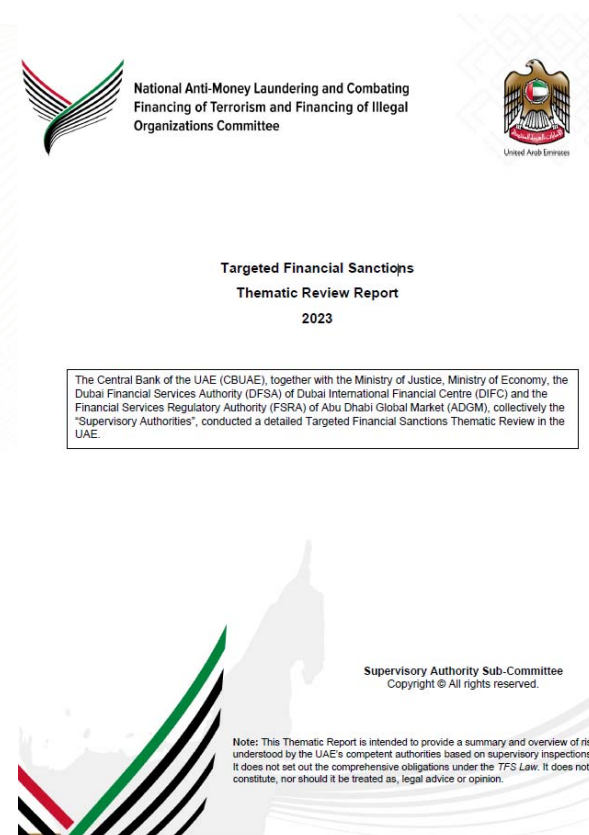
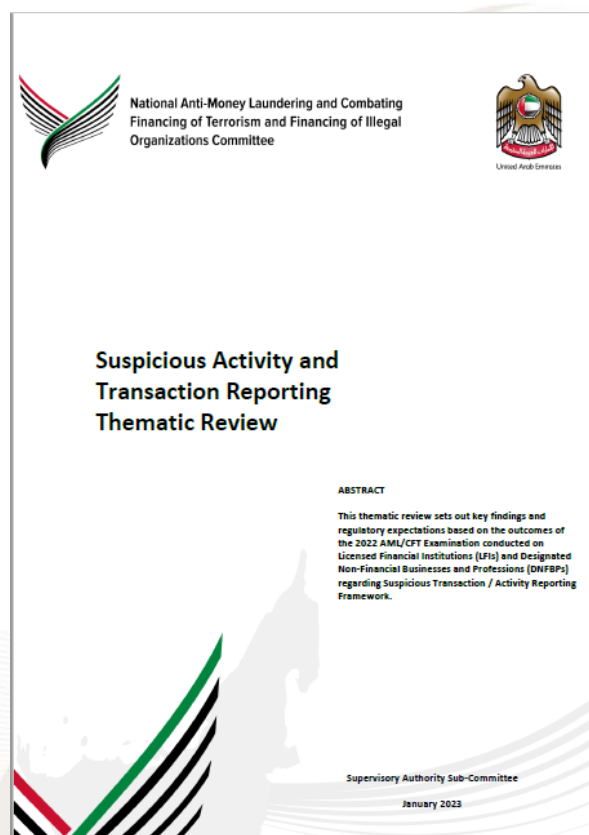
## UAE Supervisory Authority Sub-Committee's Thematic Reviews



# Introduction

- In June 2022, the DFSA conducted a survey to assess the level of compliance with STR/SAR Reporting and Targeted Financial Sanctions (TFS) Compliance by Authorised Firms and Designated Non-Financial Businesses and Professions and Registered Auditors (together 'DNFBPs')
- The Survey was sent to 650 Authorised Firms and DNFBPs
- The DFSA received a total of 518 responses (80%) by the set deadline of 21 June 2022. Respondents were from all supervised sectors
- In H2 2022, the DFSA validated the responses and conducted follow up reviews. The findings and regulatory expectations were consolidated in a report published by the UAE Supervisory Authority Sub-Committee in May 2023

# UAE Supervisory Authority Sub-Committee's Thematic Reviews





# UAE Supervisory Authority Sub-Committee's Thematic Reviews



- **Next Steps...**

- Relevant Persons to conduct a self-review on the identified gaps reflected in both reports
- Where gaps are identified, Relevant Persons are required to report to the DFSA on their findings and proposed mitigation measures **no later than 31 July 2023**
- If no gaps are identified, no reporting is required

# Priorities



- The DFSA will continue with its business as usual by conducting Risk-based Supervision of Relevant Persons
  - AML Risk Assessments & Follow up Reviews
  - Macro reviews of AML Returns and DNFBP Annual Information Return
  
- Thematic Reviews
  - TFS Compliance (continued)
  - SARs (continued) with a focus on quality of timing of SARs
  - CPD requirements of MLROs
  
- Continued support to the UAE

## Useful links

- DFSA website and hotlink – Dear SEO letters, updates
- DFSA Firms portal <https://www.dfsa.ae/>
- NAMLCFTC – UAE NRA & HRC  
<https://www.namlcftc.gov.ae/en/>
- EOCN website – TFS/dual use goods and guidance  
<https://www.uaieec.gov.ae/en-us/>
- UAE FIU – reporting, updates, guidance  
<https://www.uaefiu.gov.ae/en/>
- CBUAE – joint supervisory guidance  
<https://www.centralbank.ae/en/our-operations/anti-money-laundering-aml/>

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