ENFORCEABLE UNDERTAKING

[redacted]

This Enforceable Undertaking is made under and for the purposes described in Article 89 of the *Regulatory Law (DIFC Law No 1 of 2004)*.

The commitments in this Enforceable Undertaking are offered to the Dubai Financial Services Authority by [redacted].

Capitalised terms not otherwise defined in this Enforceable Undertaking have the meanings given to them in the *DFSA Rulebook, Glossary Module*.

Definitions

[redacted]	[redacted], a person who held the position of an Associate Director/Relationship Manager with the Firm
DFSA	Dubai Financial Services Authority
DIFC	Dubai International Financial Centre
Firm	A DFSA Authorised Firm which employed [redacted]
Markets Law 2004	*Markets Law (DIFC Law No 12 of 2004)*
Regulatory Law	*Regulatory Law (DIFC Law No 1 of 2004)*
The Client	The client affected by [redacted]' conduct

[redacted]

Background and admitted facts

Employment and role

1. [redacted] was employed at the Firm from 21 November 2011 to 21 March 2013. [redacted] was permitted under the Firm's authorisation to provide advice to, and arrange custody, credit or deals in investments for Professional Clients of the Firm.

2. [redacted] was not authorised, and at all material times was aware that he was not authorised, by the Firm to execute transactions on a discretionary basis on behalf of Clients.

Hold mail

3. Prior to joining the Firm, when [redacted] was employed at an affiliated firm in the UAE, [redacted] forged The Client's signature on a request form to change The Client's address to "hold mail" status. The Client was unaware of this. As a consequence, The Client did not receive any original account statements from the Firm.

Falsified documents

4. In July 2012, [redacted] provided information to The Client about two structured products. The structured products were not on the Firm's approved product list.

5. [redacted] sought and received The Client's authorisation to make the investments by asking The Client to sign and return documents approving the investments.

6. On 22 July 2012, on the basis of the information provided by [redacted], The Client instructed [redacted] to execute two investments in the structured products as follows:

   6.1 USD1,000,000 in a fixed maturity plan; and

   6.2 USD3,266,181.27 in a switchable SKEW note

7. However, [redacted] did not execute the transactions referred to in paragraph 6.

8. The Firm's procedure required [redacted] to provide the signed authorisation documents to the Firm's Client Service Department in order that the transactions could be executed. However, [redacted] did not provide the signed authorisation documents to the Client Service Department in an attempt to hide them from the Firm's management.

[redacted]

9. On 28 July 2012, [redacted] prepared and sent to The Client a false investment confirmation letter stating that the transactions referred to in paragraph 6, had been executed, when in fact they had not.

10. From time-to-time, [redacted] also prepared and sent to The Client false account statements which included fabricated details about the transactions referred to in paragraph 6.

11. [redacted] provided the information to The Client, referred to in paragraphs 9 and 10, knowing that the information was false and misleading.

Unauthorised investments and forgery

12. On 8 August 2012, [redacted] executed a transaction of USD3,450,075.90 in a structured product on behalf of The Client without The Client's knowledge.

13. In executing the transaction referred to in paragraph 12, [redacted] completed the following forms on behalf of The Client and also forged The Client's signature on the forms:

    13.1 A subscription form dated 26 July 2012. This form also incorrectly stated The Client's address was "hold mail" (see paragraph 3);

    13.2 A product agreement dated 26 July 2012; and.

    13.3 A prospectus setting out the terms and conditions of the structured product dated 26 July 2012.

14. On 26 December 2012, [redacted] executed a further transaction of USD5,000,000 in a structured product on behalf of The Client without The Client's knowledge.

15. In executing the transaction referred to in paragraph 14, [redacted] completed the following forms and forged The Client's signature on the forms:

    15.1 A subscription form dated 10 December 2012. This form also incorrectly stated The Client's address was "hold mail" (see paragraph 3);

    15.2 A product presentation document dated 6 December 2012; and

    15.3 A prospectus setting out the terms and conditions of the structured product dated 3 December 2012.

[redacted]

16. [redacted] did not inform The Client that he had executed the transactions referred to in paragraphs 12 and 14, and The Client was unaware of the of forgery referred to in paragraphs 13 and 15.

DFSA investigation

17. On 23 May 2013, the DFSA commenced an investigation pursuant to Article 78 of the Regulatory Law to determine whether or not [redacted] conduct contravened DFSA administered Laws and Rules.

The DFSA's concerns

Dishonest conduct

18. The DFSA is concerned that [redacted] has engaged in dishonest conduct (as outlined in paragraphs 3 to 16) by:

18.1 Executing unauthorised transactions;

18.2 Forging The Client's signature on a number of documents; and

18.3 Creating and sending false letters and account statements to The Client relating to transactions that were not executed.

Contraventions of the Markets Law 2004

19. The DFSA is concerned that, by engaging in the dishonest conduct specified in paragraph 18, [redacted] has contravened Article 54(c) of the Markets Law 2004 by engaging in conduct relating to Investments that he knew, or reasonably ought to have known, perpetrates a fraud on a person.

20. The DFSA is also concerned that [redacted] has contravened Article 55 of the Markets Law 2004 by disseminating information to The Client which gives, or is likely to give, a false or misleading impression as to one or more Investments when he knew, or could reasonably be expected to know, that the information was false and misleading.

[redacted]

Fitness and propriety to perform functions in the DIFC

21. The DFSA is concerned that [redacted]' dishonest conduct would support a reasonable conclusion that [redacted] is not fit and proper to perform any functions in connection with the provision of Financial Services in the DIFC pursuant to Article 58(1) of the Regulatory Law.

Mitigating factors

22. The DFSA acknowledges that:

 22.1 [redacted] has cooperated fully with the DFSA's investigation;

 22.2 The Client did not suffer financial loss as a result of [redacted]' misconduct; and

 22.3 [redacted] did not make any financial gain as a result of his misconduct.

Acknowledgement of misconduct and contravention

23. [redacted] acknowledges the DFSA's concerns as outlined in paragraphs 18 to 21. [redacted] further acknowledges that he engaged in the dishonest conduct outlined in paragraphs 3 to 16 and that such conduct would constitute contraventions of Articles 54(c) and 55 of the Markets Law 2004.

Terms and conditions of undertaking

24. In respect of the matters set out in this Enforceable Undertaking, [redacted] undertakes that he:

 24.1 Will not perform any functions in or in connection with the provision of Financial Services in the DIFC for a period of 6 years; and

 24.2 Will pay a financial penalty of USD20,000 to the DFSA within 28 days, from the date of this Enforceable Undertaking.

25. The DFSA accepts the undertakings by [redacted] specified in paragraph 24 above.

26. [redacted] agrees to comply with any reasonable and lawful directions given to him by the DFSA, in relation to compliance with his obligations under this Enforceable Undertaking within a reasonable period prescribed, at the sole direction of the DFSA.

[redacted]

27. [redacted] undertakes that he will not make any public statement that in any way conflicts with the intent and purpose of the Enforceable Undertaking or that disputes the concerns reached by the DFSA as recorded in this Enforceable Undertaking.

Remedies for breach of undertaking

28. [redacted] acknowledges the right of the DFSA, at its sole discretion, to reasonably determine whether he has failed to satisfy the terms and conditions of this Enforceable Undertaking.

29. In the event the DFSA determines [redacted] has failed to satisfy the terms and conditions of this Enforceable Undertaking, then the DFSA reserves the right to pursue any remedy available to it in law without further notice, including but not limited to those remedies specified in Article 89(4) of the Regulatory Law.

Address for service of documents or process

30. [redacted] agrees that his address for service of any letter, document or process in relation to this Enforceable Undertaking is:

Mr [redacted]

[redacted]

Further acknowledgements

31. This undertaking is drafted and agreed to as between the DFSA and [redacted].

32. A person who is not a party to this Enforceable Undertaking has no rights under Part 10 of the *Contract Law (DIFC Law No.6 of 2004)* or otherwise to enforce any term of this Enforceable Undertaking.

33. Subject to paragraph 34 below, the facts and matters contained in this Enforceable Undertaking are without prejudice to the DFSA and [redacted] in that they may not be used, produced or relied upon in any other proceedings, including, without limitation any civil, administrative or criminal actions or proceedings that may be brought by any other person or agency.

[redacted]

34. Paragraph 33 above does not prevent the DFSA from: seeking any court order in relation to this matter; or bringing any action to enforce a term or condition of this Enforceable Undertaking.

35. This Enforceable Undertaking is governed by and shall be construed in accordance with the laws of the DIFC. The parties irrevocably agree that the DIFC Court shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of, or in connection with this Enforceable Undertaking.

36. This Enforceable Undertaking does not affect the DFSA's power to investigate or take further action against [redacted] in relation to any other concerns, or matter arising from future conduct or findings, other than the facts and concerns set out in this Enforceable Undertaking.

37. The DFSA may issue a media release upon execution of this Enforceable Undertaking referring to its terms and the concerns of the DFSA that led to its execution. Further, the DFSA may make this Enforceable Undertaking available for public inspection.

38. This Enforceable Undertaking takes effect on the date on which it is executed by the DFSA's authorised delegate.

[redacted]

10 SEP 2013

[redacted]

Date

Accepted by the Dubai Financial Services Authority under Article 89 of the Regulatory Law by its authorised delegate:

[redacted]

10 SEPTEMBER 2013

Date

Dubai Financial Services Authority