
DECISION NOTICE

To: Equitativa (Dubai) Limited

DFSA Reference: F001310

Address: Level 23, East Entrance
Index Tower
Dubai International Finance Centre
PO Box 482015, Dubai
United Arab Emirates

Date: 5 December 2021

ACTION

1. For the reasons given in this Notice, the Dubai Financial Services Authority (the **DFSA**) has decided to impose on Equitativa (Dubai) Limited (**Equitativa**) a fine of USD 210,000, pursuant to Article 90(2)(a) of the Regulatory Law (the **Fine**).
2. Equitativa agreed to settle this matter. The DFSA has therefore decided to reduce the fine by a settlement discount of 30%. Were it not for the settlement discount the DFSA would have imposed a fine of USD 300,000 on Equitativa.
3. This Notice is addressed to Equitativa alone. Nothing in this Notice constitutes a determination that any person other than Equitativa breached any legal or regulatory rule, and the opinions expressed in this Notice are without prejudice to the position of any third party, or of the DFSA in relation to any third party.

DEFINITIONS

4. Defined terms are identified in this Notice by the capitalisation of the initial letter of a word or of each word in a phrase and are defined either in Annex B to this Notice or in the DFSA Rulebook, Glossary Module (**GLO**). Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.

EXECUTIVE SUMMARY

5. Equitativa is an Authorised Firm operating in the Dubai International Financial Centre (**DIFC**). Equitativa manages a fund named Emirates REIT (CEIC) PLC (**EREIT** or the **Fund**). Equitativa was authorised by the DFSA on 14 November 2010. Equitativa is both the Fund Manager and the Reporting Entity in respect of EREIT.
6. EREIT is a Real Estate Investment Trust and Public Fund whose Securities are admitted to trading on NASDAQ Dubai. EREIT's portfolio of properties is composed of commercial, retail and educational assets. One of these properties was a school located in Dubai Investment Park (the **School**), operated by the British Columbia Canadian School (**BCCS**). While EREIT continues to own the leasehold for the land and the buildings that comprise the School's site, the School is not operational and the site has been vacant since the end of the 2017/2018 academic year.
7. BCCS remains in debt to EREIT for outstanding rent arrears in excess of AED 9 million. BCCS disputes the debt. BCCS first defaulted on its rental payments in late 2017. Between January 2018 and August 2018, Equitativa undertook a number of actions in relation to the defaults, including renegotiation of the rental payment dates (each of which was subsequently missed), serving arrears notices and final demands for payment on BCCS, and filing a criminal case against the CEO of BCCS (as the signatory to the rental cheques) in response to dishonoured BCCS cheques. Ultimately, in late August, EREIT served notices to terminate its lease and related ancillary agreement with BCCS with immediate effect. These actions were taken by Equitativa in order to pressure the operator to accept capital injections from potential investors and to resume rental payments as well as to facilitate the entry of a new operator for the School.
8. Equitativa engaged an external auditor (the **Auditor**) for the purposes of carrying out:
 - a. a review¹ of EREIT's interim unaudited financial statements for the six-month period ended 30 June 2018; and
 - b. the audit of EREIT's financial statements for the financial year ending 31

¹ The Markets Law (Article 45), the Market Rules (Rule 6.9.2(1)) and the Collective Investment Rules (Rule 9.4.1(1)) require the production of interim reports, however it is not a requirement to have those reports audited. Equitativa, of its own volition, appointed its auditor to carry out a review of its interim financial statements in accordance with the relevant International Accounting Standards. It is common industry practice for interim financial reports of publicly listed entities to be reviewed and signed by the auditors.

December 2018

9. In the period between June 2018 and the signing of the half year financial statements, while EREIT's 2018 half year financial results were being prepared, Equitativa failed to take reasonable steps to ensure that it or its employees reported to the Auditor certain information which was relevant to the recoverability of the debt owed by BCCS, including the following facts:
 - a. That BCCS had notified Equitativa on 30 July 2018 of its decision to close its operations at the School, that it would not open for the new academic year in September 2018. Whilst BCCS told Equitativa that it was in discussion with an operator to take over the lease, it did not give specifics or otherwise demonstrate that those discussions were substantive or at an advanced stage;
 - b. That Equitativa presented rent cheques from BCCS which had been dishonoured and had, on that basis, filed criminal charges against the CEO of BCCS; and
 - c. That Equitativa was making preparations to terminate the leases with the BCCS in the days immediately following the signing of the half year financial statements on 27 August 2018 and the release of the same on 28 August 2018 in order to improve its negotiating position and have the ability to be able to start discussions with operators as a back-up plan.

In doing so, Equitativa breached Rule 9.3.5(e) of the Collective Investment Rules (**CIR**) in respect of half year financial statements for the period ended 30 June 2018, which the Auditor reviewed.

10. Equitativa also declined a request from the Auditor to make a representation as to the collectability of all receivables, on which the Auditor could rely for its review purposes.
11. On 28 August 2018 and again on 11 November 2018, Equitativa, in its role as the Fund Manager of EREIT, made announcements to the market including video messages, posted on its own website and on YouTube, that accompanied its 2018 half year results and 2018 third quarter financial results respectively.
12. During the 28 August video presentation, Equitativa senior executives commented on the financial performance of various assets in the EREIT fund portfolio, but did not disclose BCCS' decision to close its operations at the School.

13. During an investor video presentation on 11 November, Equitativa senior executives again commented on the financial performance of various assets in the EREIT fund portfolio. Equitativa did disclose the closure of the School, but the then CFO potentially misled investors by stating that a new operator of the School had been “secured” and would begin operating in the next academic year. At that time, other than a non-binding offer letter, which had been accepted, none of the legal or contractual steps necessary to allow the operator to begin operations at the School were in place.
14. Equitativa made misleading statements in relation to the Fund on two occasions:
 - a. the first on 28 August 2018, when it released its half year financial statements which included an approximate USD 2 million receivable owed by BCCS but did not include any provision for non-recovery of some or all of the relevant receivable when the accounting standards which Equitativa applied required that all or part of the debt be provisioned; and
 - b. the second on 11 November 2018, when the then CFO made a positive statement that it had “secured” a new operator for the School while, other than accepting a non-binding offer, the operator had not in fact made any binding commitment to operate the School, and did not have the regulatory approvals it would need to do so.
15. In both cases, Equitativa breached Article 56(2) of the Collective Investment Law 2010 **(CIL)**.
16. Further, EREIT’s half year financial statements for the six-month period ended 30 June 2018 that were published on 28 August 2018 failed to truly and fairly represent the impact of the closure of BCCS on the collectability of the BCCS receivables, the valuation of the School and the net profits of EREIT. This was contrary to the International Financial Reporting Standards and therefore in breach of CIR Rule 9.2.1(2) and Article 41 of the Markets Law 2012.
17. The DFSA commissioned an external accounting and auditing expert to provide independent advice and opinions on the accounting issues in this matter (the Expert) and the Expert’s final report was provided to the DFSA on 30 June 2021 (the Expert Accounting Report).
18. The DFSA notes that a full provision in respect of the BCCS rent due was made in the full year audited financial statements for 2018 that were published in April 2019.

Penalty

19. Given the nature and seriousness of Equitativa's contraventions, the DFSA considers it appropriate in the circumstances to impose the Fine on Equitativa.

FACTS AND MATTERS RELIED UPON

PART A – Background

20. This section sets out the background to the persons and firms relevant for this Notice.
21. The Equitativa Group manages real estate assets across several funds. One company within the Equitativa Group, Equitativa, manages EREIT. EREIT was established in 2010 in the DIFC and is registered by the DFSA as a Public Fund.
22. The Fund's Securities were admitted to the Official List and admitted to trading on NASDAQ Dubai on 8 April 2014.
23. The Fund consists of properties across Dubai including commercial, retail and educational premises. According to the 2020 EREIT Annual Report published on 6 May 2021, the Fund's portfolio was valued at USD 690 million for the financial year ended 31 December 2020.
24. EREIT has no employees of its own. Pursuant to a fund management agreement, the staff of Equitativa carry out its functions, including all communications with BCCS and EREIT's other tenants.
25. Equitativa was incorporated on 27 October 2010 and authorised by the DFSA on 14 November 2010 to carry on the Financial Services of Advising on Financial Products and Managing a Collective Investment Fund. As the Fund Manager and Reporting Entity of EREIT, and pursuant to Article 41(1) of the Markets Law 2012 (the **Markets Law**), Equitativa is responsible for making disclosures, in respect of and through EREIT as a Listed Fund, of financial information and inside information (as defined in Article 63(1)(a) of the Markets Law). In addition, Equitativa is required to make disclosures of "*any other information or material change which occurs in relation to a Reporting Entity*".
26. The relevant individuals who made public disclosures on behalf of Equitativa which are relevant to the facts and matters set out in this Notice were:
 - a. the co-founder, Deputy Chairman, and CEO of Equitativa (the **CEO**); and

- b. the then Group CFO of Equitativa and EREIT from April 2017 to January 2019 (the **CFO**).

PART B: Relevant facts and matters

27. In 2015, an Egypt based school operator established BCCS as a UAE limited liability company, which then leased a 25,000 square metre plot of land from Dubai Investment Park (**DIP**), which became the site of the School.
28. In September 2016, EREIT entered into a series of lease and sub-lease agreements with BCCS and DIP to effectively fund the design and construction of the School which BCCS would lease and operate for a period of 28 years. The construction of the School was governed by the 'Istisna Agreement for the Design and Construction of The British Columbia Canadian School' (the **Istisna Agreement**) entered into between BCCS and EREIT on 1 September 2016.
29. The School construction was to be delivered in two phases. Phase One was to be completed by August 2017 and Phase Two was to be completed by August 2018. The estimated budget for the total build was AED 85m. The rent was set at AED 7.7m for the first year and AED 10m for the second year, with a clause in the contract giving EREIT the right to adjust the rent yearly in order to secure a net yield of 10% over development costs.
30. The School was intended to have capacity for 1,500 pupils across primary and secondary facilities at the site. During its first and only year of operation, approximately 85 pupils were enrolled at the School.

BCCS payment defaults

31. The School began operating with its first intake of pupils in September 2017, the start of the 2017 – 2018 academic year. The following month, BCCS informed Equitativa that it was facing financial issues and wanted to renegotiate the rent amount and the schedule of rent payments.
32. On 4 October 2017, the Chief Executive Officer and owner of BCCS (the **BCCS CEO**) met with Equitativa staff to discuss, amongst other matters, the financial difficulties facing BCCS.
33. On 19 October 2017, the BCCS CEO sent EREIT a letter formalising his earlier request for an extension of time and a rescheduling of rent payments due for the 2017 – 2018 academic year. The letter also requested EREIT to not cash the cheques already

provided, stating that BCCS would issue fresh cheques, with amended dates, as part of the rescheduled payment agreement BCCS sought.

34. On 19 October 2017, an EREIT internal memo attaching the above letter, and copies of the cheques referred to, was circulated to members of the Equitativa Asset Management team. It noted, amongst other things, that:

“the tenant has been suffering from cash flow issues caused primarily by the weak Egyptian Pound following the up-pegging from the US Dollar and exacerbated by mediocre enrolment numbers of the new school in DIP for the start of the 2017 academic year”

35. In its 19 October letter, the BCCS CEO claimed that BCCS was negotiating with a potential investor who was expected to provide the cash needed to fund the rent payments. Later, in an email dated 23 October 2017, the BCCS CEO informed Equitativa that the investment had not materialized as the investor had made a “*terrible offer*” and that “*without bringing an investor, the likelihood to pay anything this year is very low*”.
36. On 7 December 2017, EREIT sent a letter to BCCS with a revised schedule of payments. Despite ongoing negotiations in the last quarter of 2017, Equitativa and BCCS failed to come to an agreement regarding the proposed payment schedule. The effect of the rescheduling would have been to move the due date for the outstanding payments from 2017 to 2018.
37. On 19 December 2017, Equitativa sent BCCS an EREIT Notice of Rent Arrears (dated 18 December 2017) for non-payment of rent and enclosing copies of two BCCS cheques dishonoured by the issuing bank due to insufficient funds. The unpaid cheques totalled AED 3,250,000.
38. BCCS replied the same day with a letter, contesting the amount owed, and stating for the first time in correspondence with Equitativa that Equitativa had failed to deliver investment in the School’s construction set out in the Istisna Agreement.
39. One month later, on 18 January 2018, Equitativa wrote to BCCS, listing the now three rent cheques that had been dishonoured by the bank for insufficient funds totalling AED 6,170,000. Equitativa proposed a new payment schedule for the outstanding rent due by BCCS, and requiring BCCS to deliver new post-dated cheques. This offer letter was countersigned by the BCCS CEO.

40. An amendment to the Lease Agreement was duly made giving effect to the new payment schedule dated 18 January 2018 and was signed by both parties.
41. On 4 February 2018, EREIT's Auditor delivered a presentation to EREIT's board. Among the Auditor's recommendations for the improvement of internal controls was "*implementing a policy for provisioning of long outstanding receivables*". As the new IFRS rules were to be implemented from 1 January 2018, the Auditor noted that there was "*no formal accounting policy in place in relation to provisions for doubtful debts based on ageing of the balance receivables*" and offered consulting services to assist in defining the formal policy.
42. EREIT's "Management comments" to the Auditor's recommendation was that:
- "The Group has a policy of objectively accessing (sic) each receivable balance individually and identifying receivables which have higher credit risk. The Group does a through (sic) review of its receivables at the end of the year and categories (sic) them into 3 risk categories. These categories are high credit risk, low - medium credit risk. The group has extensive process of categorising its receivables into the risk categories."*
43. In March 2018 BCCS informed Equitativa that it had received a letter of intent from a local investor and requested from Equitativa a further extension for the payments due on 31 March 2018. The BCCS CEO stated "*We are looking at closing this deal within the coming 30-40 days, so we would like to reschedule all payments till (sic) 31st of May 2018*". Subsequently, on 30 July 2018, an internal Equitativa communication indicated that the deal failed in the early stages of negotiation: "*We were shown a LOI signed by them to buy the OpCo (think for AED 50m) but we didn't got (sic) a copy of it. After due diligence they lost interest and no proposal was presented*".
44. On 31 March 2018, Equitativa received a part payment of AED 1.4 million from BCCS in respect of overdue rent.
45. Following further payment reminders, on 27 May 2018, Equitativa sent BCCS a final arrears notice demanding BCCS settle within 7 days the rent arrears amounting to AED 9.7 million and stating its intention to initiate legal proceedings against BCCS if the arrears were not paid.

Legal proceedings

46. BCCS did not meet the demands in the final arrears notice. In June 2018, Equitativa sought an external legal opinion on the prospects of bringing legal proceedings against BCCS, given the breaches. On 30 July 2018, the law firm advised Equitativa that the School lease should be terminated before 1 September 2018 so as to allow Equitativa to entertain discussions with other operators.
47. On or about 10 July 2018, Equitativa Senior Legal Counsel instructed solicitors acting for Equitativa that criminal proceedings should be filed with Dubai Police against the BCCS CEO in relation to the dishonoured cheques.
48. On 18 July 2018, external counsel acting for Equitativa confirmed that criminal proceedings had been issued.

School Valuation

49. In preparation for the publication of the half year results, EREIT commissioned the valuation of the assets in the fund including a valuation of the School. The valuer recorded a valuation of AED 150.7 million (USD 41 million) for the School at 30 June 2018.
50. The valuation method adopted by the valuer was based on the gross development value, the cost to complete and the net rental stream of the BCCS property and a capitalisation rate which reflected the occupancy of the property.
51. The valuer assumed that the property was tenanted on 30 June 2018, and would continue to be tenanted for the entire duration of the lease of 28 years. The rent payment schedule provided by Equitativa to the valuer did not include any notes disclosing the ongoing arrears position in respect of BCCS.

School closure

52. On 8 July 2018, the Khaleej Times published an article speculating on the closure of the School. Equitativa had been approached for comment by the reporter who authored the article the same day.
53. A further article regarding the School was published on 10 July 2018 confirming the closure of the School, and containing a quote from the Knowledge and Human Development Authority (**KHDA**) acknowledging the School had closed:

“We are aware that BCCS has sent a communication to parents informing them of the school's closure, though we have yet to receive the official request from the school. KHDA will assist all students affected by the closure to find seats in schools by the start of the coming academic year”

54. When questioned at interview regarding the closure of the School, the CEO disagreed that the School was officially closed on 10 July 2018, citing a lack of a formal notification from BCCS or the KHDA, despite the steps taken by Equitativa, including initiating legal proceedings.

Management Representation Letter

55. On 18 July 2018, a member of Equitativa's finance team received an email from the Auditor asking why no accounting provision had been made for the rent owed by BCCS when it was more than 180 days overdue. That member of Equitativa's finance team forwarded the email to the CFO, stating *“will have a chat with [Auditor employee] consistent with our conversation this morning about BCCS”*. Asked at interview about the meeting discussed, the CFO said he did not recall it.
56. On 9 August 2018, Equitativa sent a marked-up version of the Management Representation Letter to EREIT's Auditor regarding the 2018 half year review, wherein Equitativa deleted the following statement:

“We confirm that the Group's rental and service income receivables of USD 8,097 thousand are fully performing and we do not have any doubt on the balance collectability”.

57. On 14 August 2018, EREIT's Auditor replied to Equitativa, requesting to add back the representation above, stating *“Please keep the point on collectability of receivables, you can suggest different wording but we need this point in the rep letter given that no provision was recorded for overdue receivables”*. However, Equitativa replied:

“that is not possible, firstly how can we guarantee collectibility (sic) and secondly further provisions have been recorded as per our current assessment. We are recording our videos tomorrow. This hasn't been a very smooth first half review, let's try to be more coordinated moving forward”

58. There was no further follow up from the auditor upon receiving the reply from Equitativa.

59. As at 30 June 2018, BCCS was by far EREIT's single largest defaulting tenant. The Auditor's initial insistence that a representation was necessary reflected the Auditor's concern over collectability of those receivables. No evidence was found that the Auditor was provided with any information which prompted its request for the specific representation, aside from the amount and ageing of the rental receivable.
60. On 15 August 2018, the Management Representation Letter (dated 8 August 2018), which did not include any confirmation by EREIT's management regarding the collectability of outstanding rent amounts, was signed by both the CFO and the CEO. That letter did, however, state that "*To the best of our knowledge and belief, no events have occurred subsequent to the balance sheet date and through the date of this letter that may require adjustment to or disclosure in the aforementioned condensed interim financial information.*"
61. The Auditor confirmed to the DFSA that it did not recall being advised by Equitativa of the difficulty in collecting the arrears, or that criminal proceedings had been initiated against the BCCS CEO for the dishonoured rent cheques.

EREIT 2018 Half Year (Interim) results announcements

62. On 28 August 2018, Equitativa published EREIT's 2018 half year results, including a half year report, video, press release and investors call. By that time:
 - a. BCCS had defaulted on various payments as they came due, provided Equitativa with dishonoured cheques, entered into several negotiations with Equitativa on past due rentals and received several rent arrears notices from Equitativa;
 - b. Equitativa had declined to provide a specific representation to its Auditor relating to the recoverability of rent receivable as at 30 June 2018;
 - c. Equitativa had commenced criminal proceedings against the BCCS CEO, who was not residing in the UAE at the time;
 - d. BCCS had notified Equitativa of its decision to close the School;
 - e. Parents of children at BCCS had been given notice that the School would not be operating at the start of the next academic year;
 - f. The prospective investor relied on by BCCS to fund the new rent payment schedule had fallen through; and

- g. Equitativa was in the process of finalising notices to terminate the BCCS leases. On the advice of Equitativa's legal counsel, those notices were issued to BCCS at the end of August 2018. The termination of the BCCS leases resulted in the BCCS property being vacant.
63. The EREIT 2018 half year report did not disclose or reflect, events having occurred subsequent to the 30 June 2018 reporting date as required by the accounting standards. Had such events been included in the half year report, this would have resulted in an impairment to the valuation of the School, and a provision of some or all of the BCCS receivable as at 30 June 2018.
64. In particular, drafting of the notices for the termination of the BCCS' leases was ongoing from early July 2018 until they were issued on 28 and 29 August 2018 and should have been factored into the EREIT 2018 half year report published on 27 August 2018.
65. The June 2018 valuation report, finalised on 11 July 2018, assumed that the BCCS property was tenanted and would continue to be tenanted for the duration of the lease of 28 years. Had risk surrounding the credit-worthiness of the tenant and likely vacancy of the School been reflected, this would have resulted in an impairment (i.e., reduction) to the value of the School as at 30 June 2018.
66. As an illustrative example provided by the Expert, applying certain assumptions, the impairment to the value of the BCCS property as at 30 June 2018 would have been approximately USD 2 million, approximately 5% of the value of the School. The Expert arrived at this assessment by adjusting only the capitalisation rate, and not the net rental streams, as applied in the June 2018 valuation report, to reflect that the BCCS property was no longer tenanted.
67. Therefore, had both the net rental streams and the yield been revised to reflect that the property was no longer tenanted, this would have resulted in a larger impairment.
68. The impact of recognising the impairment and the provision would have been '*qualitatively material*' to EREIT's 2018 half year report. This is since the movement on the revaluation of investment property is a very important key performance indicator in a property investment entity, such as EREIT. Similarly, the recognition of a provision for non-recovery of rentals from a tenant is directly relevant to the core business of any Real Estate Investment Trust.
69. Despite that the recognition of an impairment and a provision would have been material to EREIT's 2018 half year report, no such recognition was made. Instead, EREIT's 2018

half year report stated that BCCS was still occupied at 100% as at 30 June 2018 without mentioning the issues with BCCS:

“On 28 September 2016, the REIT acquired the leasehold interest in a 25,000 square meter plot of land and subsequently commenced construction of a school building on the plot. Simultaneously, the REIT entered into a lease agreement with BCCS for the lease of the school building for a period of 28 years.”

70. Also on 28 August 2018, Equitativa published a video on EREIT’s website and YouTube on the 2018 half year results. No disclosure was made concerning the BCCS issues.

71. Preceding the publication of the video, an internal email from an Equitativa senior management member on 17 August 2018 discussed the deliberate silence on the BCCS issues, stating:

“The BCCS part is voluntary (sic) left out - but we will need to address this either in the Press Release or during the call”

72. The press release issued on 28 August 2018 and published on EREIT’s website did not refer to any of the BCCS issues.

73. An investor conference call on 28 August 2018 presenting the 2018 half year results was held. The following invitation was sent to more than 1,000 individuals:

“On Tuesday 28 August, Emirates REIT will be announcing their H1 Results and releasing a video presenting the results. Following the announcement and the presentation, the management will hold a conference call”.

74. At Interview, when asked whether any of the BCCS issues were disclosed, the CEO stated that:

“I don’t think it was presented in our discussions because...we didn’t have any facts. Whether it was part of the questions subsequently, I don’t know.”

75. Investors’ queries received after the conference call suggest that the BCCS issue was not discussed on the call either. After the conference call, one investor addressed some enquiries to Equitativa regarding BCCS issues:

“There are news circulating about one of your tenants, namely British Columbia Canadian School, having shut it’s doors this school year. Since there was no mention of this event in your public communications or conference call, can you

comment on this issue, its impact on the value of the relevant property, lease payments and overall impact on the company and its cash flow?"

76. The DFSA investigation found no evidence that a response was provided.

Termination of BCCS Leases and disclosure to Auditor

77. On 29 August 2018, EREIT issued BCCS with a formal Notice of Termination of the land lease, signed by the CEO. The Notice set out the reasons EREIT terminated the lease:

"The Tenant first defaulted on its payment obligations to the Landlord due on 15 September 2017. On 18 December 2017, the Landlord served notice on the Tenant of the Rent arrears outstanding at that time and demanded payment of the Rent arrears outstanding within 30 days. Following further failures to pay on 15 January 2018 and 15 May 2018, both the Landlord and Equitativa (Dubai) Limited, served further notices on 18 January 2018 and 27 May 2018 respectively, demanding payment of the outstanding Rent arrears which, as at May 2018, stood at AED 9,673,365.95. This amount remains unpaid."

78. On 30 August 2018, EREIT issued BCCS with a formal Notice of Termination of the rental agreement with immediate effect as at the date of the Notice, signed again by the CEO.
79. On 30 October 2018, the CFO forwarded the termination notices for the BCCS lease to the Auditor, in response to a request for those documents. There is no evidence that draft copies of these termination notices were previously forwarded or communicated to the Auditor during their review of the 2018 half year financial statements.

EREIT Q3 2018 results announcements

80. On 30 October 2018, a draft press release was shared internally with the CFO and others indicating that EREIT's portfolio occupancy decreased in Q3 2018 as a result of the BCCS closure:

"Occupancy levels dropped 10% from H1 due mainly to the change of operator of the DIP School property. We expect short-term recovery and are in the final stages of securing a new school operator",

81. The reference to a "change of operator" was not included in the final version of the press release on 11 November 2018 when announcing the Q3 results. The deletion had the effect of removing an indirect reference to the closure of the School.

82. On 11 November 2018, Equitativa published videos in English and Arabic highlighting EREIT's financial results for the third quarter of the year. Among the announcements made, Equitativa disclosed that BCCS had ceased its operations. It also announced that a new operator would be in place for the next academic year. In particular, in that video, the then CFO stated to investors that:

*"BCCS defaulted in August and that has resulted in a valuation loss and **we have been able to secure** a new operator for the commencement of the new academic year. This will support the recovery of this asset's valuation."*

83. The CEO stated to investors that:

"...unfortunately, in this market the operator [BCCS] wasn't able to continue operations.

*Since that we received significant number of offers from other operators to take over the school and **we have now selected a new operator** that will start operating from next academic year. This was an important test for us [...] and the fact that in less than a quarter we have received several offers from really serious operators and that we could select one, proves that this is a very attractive investment and fairly resilient investment."*

84. At interview, the CFO did not agree that the use of a past tense of "secure" had its common meaning in the context of the publication, rather he meant that:

"So secured is we're working on assessing whether we can put in a new operator in place for the next academic year. That's a one-year exercise. It should be reasonable. It's a reasonable determination."

85. There was an acceptance of a non-binding offer at the time of the video statement to investors. However, no binding agreements had been signed between EREIT and any potential operator for the School. The proposed new school operator referred to in the video was a prominent local business but was not at the time licensed by the KHDA.

86. The only formal document in place at the time of the announcement was a non-binding Letter of Intent from the potential school operator dated 5 November 2018. No lease agreement had been signed at that time.

87. The Letter of Intent contained a period of exclusivity that was conditional on the payment of AED 1 million deposit in advance. However, on 19 December 2018, EREIT withdrew their Offer Letter with the potential school operator due to non-payment of the deposit.

EREIT 2018 year-end audit

88. On 30 April 2019, EREIT published its annual report for the financial year ended 31 December 2018, which stated in respect of BCCS that “*Emirates REIT management is negotiating with potential new operators*”. This was the first public announcement regarding the need to secure another school operator, post the 11 November 2018 announcements.
89. Equitativa disclosed in the Q3 2018 results announcement that the school was vacant but did not correct the impression it had created that a new school operator was “secured” and would commence operations in September 2019, as previously stated in the public announcements on 11 November 2018. None of EREIT’s public announcements between 19 December 2018 and 30 April 2019 addressed the ongoing absence of a replacement for BCCS as tenant and operator of the School.
90. The EREIT 2018 annual report stated that BCCS “*defaulted in August 2018*”, leading to a drop in the School’s occupancy rate (from 100% in June 2018) to 0% since the start of the school year 2018-19, which resulted in a “*significant impact*” on EREIT’s financial results.
91. In particular, following the termination of the BCCS’ leases in August 2018, EREIT’s 2018 annual report included a value for the BCCS investment property which was approximately USD 6.2 million lower than it would have been had the School been tenanted.
92. EREIT’s 2018 annual report also recorded a full provision of the BCCS receivable of approximately USD 2 million.
93. As at the date of this Notice the School remains vacant.

CONTRAVENTIONS

Rule 9.2.1(2) of the Collective Investment Rules (CIR) - Financial statements and financial reporting standards

94. CIR Rule 9.2.1(2) requires Equitativa to prepare and maintain all financial statements in accordance with the International Financial Reporting Standards (**IFRS**). As the Reporting Entity for EREIT, Equitativa was responsible for EREIT's financial statements.
95. The audited financial statements of EREIT form the basis of the financial information that EREIT investors would rely on. Any omissions, or erroneous information, in EREIT's audited financial statements could impact investment decisions by EREIT investors. As such, it is important that the information recorded in EREIT's financial statements is accurate and complete.
96. Equitativa prepared and published EREIT's unaudited financial statements as at 30 June 2018, which failed to truly and fairly represent the impact on the collectability of the BCCS receivable, the valuation of the BCCS investment property and the net profits of EREIT, contrary to the IFRS rules. Equitativa therefore breached CIR Rule 9.2.1(2) (see paragraphs 62 to 75 and 88 to 93). As set out in paragraphs 65 to 67, the impact of not including the provision for the BCCS receivable and impairment of the asset meant that the net profit for the six months to 30 June 2018 was overstated.
97. The DFSA has concluded that the evidence set out in this Notice concerning BCCS' payment defaults necessitated a provision under IFRS 9B5.5. In particular:
 - a. the rental payments were past due (see paragraphs 31 to 45), creating the need to consider a provision;
 - b. the requests from BCCS to renegotiate the payment terms and retrieve their cheques (see paragraphs 39 to 40) were a clear admission of the inability to pay at that time; and
 - c. the admission by BCCS in October 2017 that the "*likelihood to pay anything this year is very low*" (see paragraph 35) represented an existing change in the tenant's financial condition, and therefore should have resulted in the creation of a provision under IFRS rules.
98. The DFSA notes that IFRS 9.B5 17(f) requires that, in assessing the need for an expected credit loss, the entity should take into account "*existing or forecast changes in*

business ... conditions that are expected to cause a significant change in the borrower's ability to meet its debt obligations." The closure of the BCCS business clearly falls within this requirement.

99. The issuance of formal notices of termination were being prepared from early July 2018. Since formal notices of termination would have begun the process of ending the tenancy of BCCS, the incentive for BCCS to pay off the outstanding debt to remain operational was greatly diminished. The termination of its lease was a serious change in BCCS's business, which would have necessitated further consideration by Equitativa of the need for a provision for doubtful lease rental receivables under IFRS 9.B5 17(f) (see paragraph 68).
100. The above facts and matters demonstrate that Equitativa failed to prepare and maintain its June 2018 financial statements in accordance with IFRS and it therefore breached CIR Rule 9.2.1(2).

Article 56(2) Collective Investment Law - General.

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

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

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

102. Article 57 of CIL provides:

57. *Defences to misconduct*

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

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

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

- (2) *A person does not commit a contravention of Article 56, if that person proves that reasonable reliance was placed on information given to that person by:
 - (a) *if the person is a body corporate, someone other than a director, employee or agent of that body corporate; or*
 - (b) *if the person is a natural person, someone other than an employee or agent of that individual.**
- (3) *For the purposes of Article 57(2), a person does not become an agent of another person simply because he performs a particular professional or advisory function for the person.*

103. EREIT is a Listed Fund. As set out in paragraphs 62 to 75, Equitativa contravened Article 56(2) of CIL by making misleading statements in relation to that Fund.

104. Article 57 of CIL contains defences to the misconduct prohibited in Article 56 of CIL, including a reasonable belief that the statement or omission was not misleading or deceptive following the making of reasonable enquiries (Article 57(1)); and reasonable reliance placed on information given by a non-related party (Article 57(2)).

105. Equitativa failed take reasonable steps to ensure that it or its employees reported information to the Auditor that was relevant to the BCCS receivables and the likelihood of BCCS continuing as a tenant of the School. The DFSA therefore considers that Equitativa could not reasonably place reliance on information provided by its Auditor in determining whether EREIT's 2018 half year report was misleading or deceptive in failing to recognise an impairment and provision relating to BCCS. The DFSA has not otherwise been presented with any evidence that any of the defences in Article 57 apply.

Article 56(2) Collective Investment Law - 2018 half year statements to investors

106. On 28 August 2018, Equitativa published EREIT's 2018 half year results, including a half year report, video, press release and investors call, which did not disclose or reflect any information about the closure of BCCS, despite the fact that:

- a. BCCS had made multiple appeals to Equitativa to postpone the payment of rent, and had not met either the original or renegotiated payment schedules;
- b. Rent cheques issued by BCCS had been presented to the bank and had been declined for insufficient funds, itself a potential criminal offence;

- c. The CEO of BCCS, was not present in the UAE at the time and was the subject of criminal proceedings instigated by Equitativa;
 - d. The School had closed, and parents of pupils at the School were being assisted by the KHDA to find places at other schools;
 - e. That it had prepared notices terminating the leases for the School which were sent after the announcements; and
 - f. The statement made in the video, in at least one case, had been scripted, and in both cases were delivered by individuals fully appraised of the relevant facts, and cognisant of the impact that their words would have on investors.
107. By publishing EREIT's 2018 half year results, without disclosing or reflecting the closure of BCCS and describing the School as 100% occupied in those results, Equitativa made misleading statements as to the collectability of the BCCS debt.
108. The 2018 half year report also contained a clear statement under the heading "*basis of preparation*" that the financial information it contained was prepared in accordance with International Accounting Standard 34 (**IAS 34**). IAS 34 requires the application of the same accounting policies in its interim financial information as in the immediately preceding financial statements. As EREIT's annual consolidated financial statements for the year ended 31 December 2017 were prepared in accordance with IFRS, this constituted a clear statement that the financial information contained in the 2018 half year report was also prepared in accordance with IFRS. For the reasons set out at paragraphs 94 to 100 above, that statement was misleading.
109. In the 2018 annual report, which included the audited financial statements for the year ended 31 December 2018 and when EREIT did include the impairment on the School and provisioned for the BCCS debt, it described the event as having 'significant impact' on the results and occupancy rates.

Article 56(2) Collective Investment Law - 2018 Q3 statements to investors

110. On 11 November 2018, Equitativa published EREIT's 2018 third quarter results. As with the half year results, publication was via a range of media, including in the video presentations.
111. The statements made by the CFO of Equitativa in its video presentations to investors were misleading in stating that:

- a. it had “*been able to secure*” a new operator, in the normal interpretation of that phrase;
- b. the School's operations would begin again at the beginning of the following academic year; and
- c. the new operator had been picked from a range of viable offers, when in fact no other offers had been made.

112. These statements were made by Equitativa at a time when it knew, via its senior management, that:

- a. whilst an offer was confirmed subject to a deposit being paid, no lease had yet been signed with a new school operator, and that the previous lease and the agreement for the ongoing construction at the School had been terminated by Equitativa.
- b. a potential operator who had expressed an interest in operating the School had not have any experience in the operation of schools, and had not secured the license from the KHDA to operate the School.
- c. the potential operator had only accepted a non-binding offer to lease which was subject to a number of conditions including a deposit of AED 1 million.

113. Notwithstanding these facts, the then CFO of Equitativa made misleading statements that a new operator had been “secured” for the School.

Rule 9.3.5(e) of the Collective Investment Rules (CIR) of the DFSA’s Rulebook

114. CIR Rule 9.3.5 provides that:

A Fund Manager must take reasonable steps to ensure that it and its Employees:

- (a) provide any information to its Registered Auditor that its Registered Auditor reasonably requires, or is entitled to receive as Registered Auditor;*
- (b) give the Registered Auditor right of access at all reasonable times to relevant records and information within its possession;*
- (c) allow the Registered Auditor to make copies of any records or information referred to in (b);*

- (d) *do not interfere with the Registered Auditor's ability to discharge its duties;*
- (e) *report to the Registered Auditor any matter which may significantly affect the financial position of the Fund; and*
- (f) *provide such other assistance as the Registered Auditor may reasonably request it to provide.*

115. The facts and matters set out in this Notice demonstrate that Equitativa did not take reasonable steps to ensure its employees reported to the Registered Auditor matters which may have significantly affected the financial position of the EREIT Fund.

116. Specifically, before the signing of the Auditor's review report on 27 August 2018, Equitativa failed take reasonable steps to ensure that it or its employees reported to the Auditor certain relevant information relating to the impairment of the debt owed by BCCS and the impact of revenue, including but not limited to:

- a. the failed negotiations between Equitativa and BCCS for payment of outstanding rent;
- b. the closure of the School's operations;
- c. the criminal proceedings initiated by Equitativa against the BCCS CEO; and
- d. the impending termination of lease agreements with BCCS in the days immediately following the announcement to investors and publication of the 2018 half year results.

117. Subsequent investor presentations published on 18 April 2019, 10 June 2019 and 29 August 2019, did not specifically disclose that Equitativa had failed to secure a new operator for the School.

Article 41 of the Markets Law 2012 – Continuous disclosures

118. Article 41 of the Markets Law provides that:

- (1) *A Reporting Entity shall, subject to Article 41(4), make disclosures to the market of information specified by the DFSA in the circumstances prescribed by the Rules.*
- (2) *Without limiting the generality of Article 41(1), the DFSA shall, by Rules, prescribe the type of information and the circumstances in which such information shall be*

disclosed including:

- (a) financial information;*
- (b) inside information as defined in Article 63(1)(a); and*
- (c) any other information or material change which occurs in relation to a Reporting Entity.*

(3) Where information is required to be disclosed pursuant to Article 41(1), the Reporting Entity shall:

(a) issue a release of information to the market disclosing the information;
and

(b) file a report with the DFSA,

in the manner prescribed by the Rules.

(4) Where a Reporting Entity has failed to publish information required to be published pursuant to Article 41(1) and the Rules made for the purposes of this Article, the DFSA may publish such information in a manner considered appropriate by the DFSA.

(5) The DFSA may, by Rules, prescribe the circumstances in which a Reporting Entity need not comply with the disclosure requirement in Article 41(1).

119. MKT Rule 6.9.2(1)(b) requires a Reporting Entity of a Listed Fund to disclose to the market its interim financial results, including the semi-annual financial report a Reporting Entity is required to prepare and file with the DFSA under Article 45(1)(a) of the Markets Law. MKT Rule 6.10 requires that market disclosure of information made pursuant to any provision in MKT chapter 6 to be made in accordance with the requirements of MKT section 4.7. MKT Rule 4.7.1(3) requires a Reporting Entity to take reasonable care to ensure that any information it is required to disclose is clear, fair and not misleading, false or deceptive.

120. For the reasons set out at paragraphs 62 to 75 of this Notice, Equitativa failed to take reasonable care to ensure that its disclosure of EREIT's half year results in August 2018 was clear, fair and not misleading.

The contravention period

121. The contravention period starts from 1 July 2018, being the period following the date of EREIT's 2018 half year results, and which includes the preparation for the 2018 half year review.
122. The contravention period ends on 30 April 2019, being the date on which EREIT published its 2018 year-end results and made its first public announcement, following its Q3 2018 results announcement, regarding the need to secure another operator for the School.

ACTION

Determination of the Fine

123. In determining the appropriate level of financial penalty in this matter, the DFSA has taken into account the factors and considerations set out in sections 6-4 and 6-5 of RPP as follows.

Step 1 – Disgorgement

124. There is no evidence to suggest that Equitativa received a direct economic benefit as a result of its contraventions. Accordingly, this step was not considered to be relevant.

Step 2 – The seriousness of the contraventions

125. The DFSA found Equitativa's contraventions to be serious for the reasons set out below.
126. EREIT is a listed company, owned by members of the public. Therefore, Equitativa had a duty to take care to ensure that all statements made in relation to EREIT, whether in its financial statements, reports, in investor calls or in mandatory disclosures are clear, fair and not misleading.
127. Equitativa has a high-profile public presence, and the misleading statements were made via highly public forums, combined with investor calls to large investor bases. Over 1,000 invitations were sent to potential attendees. Statements made in such a manner have the potential to undermine the confidence of investors in the DIFC and damage the reputation and integrity of the DIFC.
128. In addition to being targeted specifically at the Fund's investors, the misleading statements were made available on public forums, namely YouTube and EREIT's public website.

129. Whilst Equitativa's breaches in relation to the misleading statements appear not to have been intentional, they were serious. Misleading statements were made on more than one occasion; first in August 2018 and then again in November 2018, and through multiple channels.

130. In light of its duty to ensure that all statements made in relation to EREIT are clear, fair and not misleading, Equitativa should have taken greater care with respect to the contents of the presentations. This is particularly the case given the misleading presentations were pre-recorded.

131. Based on the above, the DFSA considers Equitativa's contraventions were serious and therefore it is applying a financial penalty of USD 300,000.

132. Accordingly, the figure after Step 2 is USD 300,000.

Step 3 – Mitigating and aggravating factors

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

134. However, the DFSA does not consider it appropriate to adjust the amount of the fine arrived at after Step 2 for the factors set out in RPP 6-5-8, as it does not consider any of these factors to be relevant for the purposes of this Notice.

135. Accordingly, the figure after Step 3 is USD 300,000.

Step 4 – Adjustment for deterrence

136. Pursuant to RPP 6-5-9, if the DFSA considers that the level of the financial penalty which it has arrived at after Step 3 is insufficient to deter the firm who committed the contravention, or others, from committing further or similar contraventions, then the DFSA may increase it.

137. The DFSA considers that the figure after Step 3 is sufficient for the purposes of deterring Equitativa and others from committing further or similar contraventions. Accordingly, the DFSA does not consider it appropriate to adjust the amount of the fine arrived at after Step 3 for the purposes of deterrence.

138. Accordingly, the figure after Step 4 is USD 300,000.

Step 5 – Settlement discount

139. Where the DFSA and the person on whom the financial penalty is to be imposed agree on the amount and other terms, RPP 6-5-10 provides that the amount of the financial penalty that might otherwise have been payable will be reduced to reflect the stage at which agreement is reached.
140. Equitativa agreed to settle this matter within the prescribed time limits, therefore the DFSA has applied a settlement discount of 30%, equal to USD 90,000 at Step 5.
141. Accordingly, the figure after Step 5 is USD 210,000.

The level of the Fine

142. Given the factors and considerations set out in paragraphs 123 to 141 and the circumstances of this matter, the DFSA has determined that it is proportionate and appropriate in the circumstances to impose on Equitativa a financial penalty of USD 210,000.

PROCEDURAL MATTERS

Decision Maker

143. The decision which gave rise to the obligation to give this Notice was made by a Settlement Decision Maker on behalf of the DFSA.

Manner and time for payment

144. The Fine must be paid no later than 28 days from the date on which this Notice is given to Equitativa.
145. If all or any part of the Fine remains outstanding on the date by which it must be paid, the DFSA may recover the outstanding amount as a debt owed by Equitativa.

Evidence and other material considered

146. Annex A sets out extracts from some statutory and regulatory provisions and guidance relevant to this Notice.
147. The DFSA made available a copy of the relevant materials that were considered in making the decision which gave rise to the obligation to give this Notice.

Right of review by the Financial Markets Tribunal (FMT)

148. Pursuant to Article 90(5) of the Regulatory Law, Equitativa has the right to refer this matter to the FMT for review. However, in deciding to settle this matter and in agreeing not to contest the action set out in this Decision Notice, Equitativa has agreed that it will not refer this matter to the FMT.

Publicity

149. Under Article 116(2) of the Regulatory Law, the DFSA may publish, in such form and manner as it regards appropriate, information and statements relating to decisions of the DFSA and of the Court, censures, and any other matters which the DFSA considers relevant to the conduct of affairs in the DIFC.

83. In accordance with Article 116(2), the DFSA will publicise the action taken in this Notice and the reasons for that action. This may include publishing the Notice itself, in whole or in part.

DFSA contacts.

150. For more information concerning this matter generally, please contact the Administrator to the DMC on +971 4 362 1500 or by email at DMC@dfsa.ae.

Signed:

.....

Eric Salomons
Settlement Decision Maker on behalf of the DFSA

ANNEX A – RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT LEGISLATION

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

8. The Powers, Functions and Objectives of the DFSA

(3) *In performing its functions and exercising its powers, the DFSA shall pursue the following objectives:*

...

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

...

(d) *to prevent, detect and restrain conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC, through appropriate means including the imposition of sanctions;*

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

90. Sanctions and directions

(1) *Where the DFSA considers that a person has contravened a provision of any legislation administered by the DFSA, other than in relation to Article 32, the DFSA may exercise one or more of the powers in Article 90(2) in respect of that person.*

(2) *For the purposes of Article 90(1) the DFSA may:*

(a) *fine the person such amount as it considers appropriate in respect of the contravention;*

...

(5) *If the DFSA decides to exercise its power under this Article in relation to a person, the person may refer the matter to the FMT for review.*

...

(10) *If the person who is subject to a fine under Article 90(2)(a) has not paid to the DFSA the full amount of the fine within the period specified in the notice, the Court*

may order, on application of the DFSA, the recovery as a debt so much of the fine as remains outstanding, together with costs.

116. Publication by the DFSA

- (2) *The DFSA may publish in such form and manner as it regards appropriate information and statements relating to decisions of the DFSA, the FMT and the Court, sanctions, and any other matters which the DFSA considers relevant to the conduct of affairs in the DIFC.*

Markets Law DIFC Law No. 1 of 2012 (The Markets Law)

PART 4: OBLIGATIONS OF REPORTING ENTITIES

CHAPTER 3 – MARKET DISCLOSURE

41. Continuous disclosures

- (1) *A Reporting Entity shall, subject to Article 41(4), make disclosures to the market of information specified by the DFSA in the circumstances prescribed by the Rules.*
- (2) *Without limiting the generality of Article 41(1), the DFSA shall, by Rules, prescribe the type of information and the circumstances in which such information shall be disclosed including:*
- (a) *financial information;*
 - (b) *inside information as defined in Article 63(1)(a); and*
 - (c) *any other information or material change which occurs in relation to a Reporting Entity.*
- (3) *Where information is required to be disclosed pursuant to Article 41(1), the Reporting Entity shall:*
- (a) *issue a release of information to the market disclosing the information; and*
 - (b) *file a report with the DFSA, in the manner prescribed by the Rules.*
- (4) *Where a Reporting Entity has failed to publish information required to be published pursuant to Article 41(1) and the Rules made for the purposes of this Article, the DFSA may publish such information in a manner considered appropriate by the DFSA.*

- (5) *The DFSA may, by Rules, prescribe the circumstances in which a Reporting Entity need not comply with the disclosure requirement in Article 41(1).*

CHAPTER 5 – FINANCIAL REPORTS

44. Annual financial report

A Reporting Entity shall prepare and file with the DFSA an annual financial report in accordance with the requirements prescribed in the Rules.

45. Interim financial report

- (1) *A Reporting Entity shall, subject to Article 45(2), prepare and file with the DFSA:*
- (a) *a semi-annual financial report; and*
 - (b) *any other financial statements required by the DFSA.*

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

PART 2: DEFINITIONS

Chapter 1: Collective Investment Funds

11. Arrangements constituting a Collective Investment Fund

- (1) *A Collective Investment Fund (“Fund”) is, subject to Article 12, any arrangements with respect to property of any description, including money, where:*
- (a) *the purpose or effect of the arrangements is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income;*
 - (b) *the arrangements must be such that the persons who are to participate (“Unitholders”) in the arrangements do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions; and*
 - (c) *the arrangements have either or both of the following characteristics:*

- (i) *the contributions of the Unitholders and the profits or income out of which payments are to be made to them are pooled; or*
 - (ii) *the property is managed as a whole by or on behalf of the Fund Manager.*
- (2) *If the arrangements provide for such pooling as is mentioned in Article 11(1)(c)(i) in relation to separate parts of the property, the arrangement is not to be regarded as constituting a single Fund unless the Unitholders are entitled to exchange rights in one part for rights in another.*

12. Arrangements not constituting a Collective Investment Fund

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

Chapter 2: Types of Funds and relevant criteria

13. Domestic and Foreign Funds

- (1) *A Fund is either a Domestic Fund or a Foreign Fund.*
- (2) *A Fund is a Domestic Fund if it is either:*
 - (a) *established or domiciled in the DIFC; or*
 - (b) *an External Fund as defined in Article 14(1).*
- (3) *A Fund that does not meet the Domestic Fund criteria in Article 13(2) is a Foreign Fund.*

14. An External Fund

- (1) *An External Fund is a Fund which is:*
 - (a) *established or domiciled in a jurisdiction other than the DIFC; and*
 - (b) *managed by a Fund Manager which is an Authorised Firm.*
- (2) *The requirements relating to Domestic Funds do not apply to an External Fund except to the extent otherwise provided in this Law or the Rules.*

PART 7: MARKETING OF DOMESTIC AND FOREIGN FUNDS

Chapter 4: Misconduct in Relation to Domestic and Foreign Funds

56. Misleading and Deceptive Statements

- (1) *A person shall not make an Offer of Units if there is:*
 - (a) *a misleading or deceptive statement in:*
 - (i) *the relevant Prospectus;*
 - (ii) *any application form that accompanies the relevant Prospectus; or*
 - (iii) *any other document that relates to the Offer, or the application form;*
 - (b) *an omission from any document specified in Article 56(1)(a) of information that is required to be stated or that is necessary to make the statement not misleading or deceptive; or*
 - (c) *a new circumstance that under the Law or the Rules requires a Supplementary or Replacement Prospectus to be published or issued and this has not been published or issued.*
- (2) *A person shall not, in or from the DIFC, make a misleading or deceptive statement in relation to a Fund or in connection with an Offer of Units, whether in the DIFC or elsewhere.*
- (3) *This Article does not apply to conduct which occurs outside the DIFC unless the conduct affects the DIFC markets or users of the DIFC markets.*

57. Defences to misconduct

- (1) *A person does not commit a contravention of Article 56, if that person proves that he:*
 - (a) *made all inquiries that were reasonable in the circumstances; and*
 - (b) *after doing so, believed on reasonable grounds that the statement or omission was not misleading or deceptive.*
- (2) *A person does not commit a contravention of Article 56, if that person proves that reasonable reliance was placed on information given to that person by:*

- (a) *if the person is a body corporate, someone other than a director, employee or agent of that body corporate; or*
 - (b) *if the person is a natural person, someone other than an employee or agent of that individual.*
- (3) *For the purposes of Article 57(2), a person does not become an agent of another person simply because he performs a particular professional or advisory function for the person.*

2. RELEVANT RULEBOOK PROVISIONS

Collective Investment Rules (CIR)

Financial statements and financial reporting standards

- 9.2.1 (1)** *A Fund Manager of a Fund must prepare financial statements for each financial year of the Fund.*
- 9.2.1 (2)** *A Fund Manager must, in respect of a Fund, prepare and maintain all financial statements in accordance with the International Financial Reporting Standards (IFRS) or USGAAP as supplemented by the Statement of Recommended Practice (SORP).*

Co-operation with auditors

9.3.5 *A Fund Manager must take reasonable steps to ensure that it and its employees:*

...

- (e) *report to the Registered Auditor any matter which may significantly affect the financial position of the Fund;*

Market Rules (MKT)

Manner of market disclosure

- 4.7.1 (1)** *When a Reporting Entity is required to make market disclosure of any information, such information must be released to the market by way of an announcement made:*
- (a) *to the Authorised Market Institution on which the Securities are admitted to trading;*

- (b) on the website of the Reporting Entity; and
 - (c) to any approved Regulatory Announcement Service.
- (2) The disclosure in (1) must also be concurrently provided to the DFSA.
- (3) Without prejudice to its obligations relating to market disclosure, a Reporting Entity must take reasonable care to ensure that any information it is required to disclose is clear, fair and not misleading, false or deceptive. (3) Without prejudice to its obligations relating to market disclosure, a Reporting Entity must take reasonable care to ensure that any information it is required to disclose is clear, fair and not misleading, false or deceptive.

6.9 Accounting periods and financial reports of listed funds

Market disclosure

6.9.2 (1) A Reporting Entity of a Listed Fund must disclose to the market the following:

- (a) its annual financial report;
- (b) its interim financial reports; and
- (c) its preliminary financial results.

6.10 Manner of market disclosure

6.10.1 Where a Reporting Entity of a Listed Fund is required to make market disclosure of information pursuant to a provision in this chapter, such information must be disclosed to the market in accordance with the requirements in Section 4.7.

6.10.2 A Reporting Entity of a Listed Fund must retain on its website all information that has been disclosed to the market for a period of one year following publication.

3. OTHER RELEVANT REGULATORY PROVISIONS

The DFSA's policy in relation to its approach to enforcement is set out in Chapter 5 of the DFSA's Regulatory Policy and Process Rulebook (RPP) (February 2020 Edition).

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

ANNEX B – DEFINITIONS

Authorised Firm	Has the same meaning provided in GLO, namely, a Person, other than an Authorised Market Institution, who holds a Licence.
Authorised Individual	Has the same meaning provided in GLO, namely, an individual who has been authorised by the DFSA to perform one or more Licensed Functions for an Authorised Firm.
BCCS	British Columbia Canadian School
CIL	Means: 1. the Collective Investment Law 2010 (DIFC Law No. 2 of 2010), as amended; or 2. for matters occurring or arising before that 2010 law was in force, the equivalent part of its predecessor, the Collective Investment Law 2006 (DIFC Law No. 1 of 2006) (as amended) which, unless otherwise indicated, was identical in all material respects.
CIR	The Collective Investment Rules module of the DFSA Rulebook, versions 4 to 22 inclusive, as in force from time to time during the relevant period.
Collective Investment Fund (CIF)	Has the same meaning provided in GLO, namely, an arrangement which amounts to a Fund under Article 11 of the CIL and which is not excluded under the Rules made under Article 12 set out under CIR section 2.1.
DFSA	Dubai Financial Services Authority.
DIFC	Dubai International Financial Centre.
DIFC Court OR Court	Has the same meaning in GLO, namely, the DIFC Court.
DMC	The DFSA's Decision Making Committee in this matter.
Equitativa	Equitativa (Dubai) Limited
EREIT	Emirates REIT (CEIC) PLC
Financial Markets Tribunal (FMT)	Has the same meaning provided in GLO, namely, the tribunal referred to in Article 26 of the Regulatory Law.
Financial Service	Has the same meaning provided in GLO and GEN Rule 2.2.1, namely, an activity that is specified in GEN Rule 2.2.2 and is carried on by way of business in the manner described in GEN section 2.3.
Fine	The fine imposed on Equitativa by the DFSA, as set out in this Notice.
Fund	Has the same meaning provided in GLO, namely, a Collective Investment Fund.

Fund Manager	Has the same meaning provided in GLO, namely, the Person, described under Article 20(4) of the Collective Investment Law 2010, who is responsible for the management of the property held for or within a Fund and who otherwise operates the Fund and, in relation to a Domestic Fund, is authorised under a Licence granted by the DFSA to operate the Fund.
GEN	The General Module of the DFSA Rulebook, versions 13 to 40 inclusive, as in force from time to time during the Relevant Period.
GLO	The Glossary Module of the DFSA Rulebook, versions 13 to 38 inclusive, as in force from time to time during the relevant period.
Licence	Has the same meaning provided in GLO, namely, a licence granted by the DFSA under Chapter 2 of Part 3 of the Regulatory Law, authorising a person to carry on one or more Financial Services in or from the DIFC.
Licensed Function	Has the same meaning provided in GLO and GEN section 7.4.
CFO	The former Group CFO of Equitativa and EREIT from November 2016 to January 2019
BCCS CEO	Chief Executive Officer of BCCS
CEO	The Co-founder, Group Chairman, and Chief Executive Officer of Equitativa
Notice	This notice.
Person	Has the same meaning provided in GLO, namely, including any natural person, Body Corporate or body unincorporated, including a legal person, company, Partnership, unincorporated association, government or state.
REIT	Real Estate Investment Trust