



**By Email**

5 September 2023

Principal Representatives of Representative Offices

**Re: Outcomes of 2023 Representative Office Sectoral Review**

Dear Principal Representative,

In line with its regulatory objectives, the Dubai Financial Services Authority (DFSA) has carried out a Representative Office (Rep Office) Sectoral Review. The purpose of this letter is to update you on certain observations stemming from that Review. The scope of the Sectoral Review assessed whether Rep Offices:

- operate within the scope of their licence;
- have a sound understanding of their obligations under applicable DFSA Rules; and
- have implemented an appropriate control framework to monitor and ensure compliance with applicable DFSA Rules.

We would like to thank the Rep Offices who participated in the review. Your co-operation in providing documentation and access to relevant employees made this review more effective and efficient, and informed our observations summarised below.

Unless the context requires otherwise, capitalised terms used in this letter have the same meaning as set out in the Glossary Module (GLO) of the DFSA Rulebook.

**Background**

The Sectoral Review was conducted in 2023 and had a number of stages. The DFSA developed a survey to gather information from existing Rep Offices to measure their compliance with the Representative Office Module of the DFSA Rulebook (REP) and applicable AML Rules. The survey was dispatched to Principal Representatives of Rep Offices in the sample for completion. The DFSA analysed the survey responses via desk-based reviews. This was followed by an onsite visit to the Rep Offices to obtain further information and clarifications, which the DFSA considered together with the survey responses when formulating its internal risk assessment reports and findings letters.

This letter summarises the key findings from the review, which are set out in more detail in the Annex to this letter. The DFSA expects all Rep Offices to consider these key observations in the context of their specific activities and obligations under applicable AML Rules. It is the responsibility of each Rep Office to demonstrate compliance with applicable DFSA Rules, which includes enhancing systems and controls (where appropriate) to demonstrate such compliance.



## Key findings

The following is a summary of our key findings divided into two main subject areas. Please refer to the Annex to this letter for further details. Please keep in mind that these are thematic findings and are therefore common to multiple, but not all, Firms. Further, please find attached the previous [Dear Principal Representative letter](#) that resulted from the Thematic Review conducted in 2021/2022. We were disappointed to observe common findings across both reviews.

### Conduct Compliance:

1. Rep Offices were marketing open-ended property funds.
2. Rep Offices were marketing digital asset funds.
3. Rep Offices did not include the required regulatory disclosures.
4. Rep Offices' promotional materials do not comply with DFSA Rule requirements concerning marketing content.

### Financial Crime Compliance:

5. Rep Offices did not submit a Business AML Risk Assessment (BARA) or submitted an inadequate document which resulted in inaccurate AML policies and procedures. Rep Offices also relied on group AML policies and procedures without referencing applicable DFSA Rules and requirements.
6. Principal Representatives did not comprehend their responsibilities as an MLRO.
7. Rep Offices failed to provide evidence of screening against the UAE Sanctions List and/or the UN Sanctions List.

## Next steps

An outreach session for Rep Offices has been arranged for the afternoon of 3 October where we will elaborate on the key observations from our Review. An invitation to this event will be issued shortly and we encourage you and members of your team to attend and participate in this event.

Rep Offices should consider the findings of this Sectoral Review and should perform a self-review of their compliance against their obligations under applicable DFSA Rules. Where this self-review identifies any gaps, these should be reported, along with a related remediation programme to the DFSA, no later than 30 October 2023. Following this, we will conduct a further sample test to assess compliance in respect of the findings set out in the Annex.

If you have questions about the DFSA's regulatory expectations or how they may apply to your Rep Office, we encourage you to lodge an enquiry via the [Supervised Firm Contact Form](#) available on the DFSA's website.

We look forward to your support as we continue to examine Rep Office practices in the DIFC.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Justin Baldacchino', is written over a light blue horizontal line.

**Justin Baldacchino**  
**Managing Director, Supervision**



## Annex – Sectoral Review of Representative Offices: Observations

The following information addresses the key findings observed by the DFSA in connection with its recent review of Rep Offices.

### **Finding 1**

Rep Offices were marketing open-ended property funds.

A minority of Rep Offices were marketing the Head Office's open-ended property funds - a breach of REP Rule 4.7.4 (1)(a).

REP Rule 4.7.4 states:

- (1) *A Representative Office must ensure that it does not market a Unit of a Foreign Fund which is a Property Fund unless:
  - (a) the Fund is a closed-ended structure; and
  - (b) the Fund is listed and traded on an Authorised Market Institution or on an exchange regulated in a Recognised Jurisdiction, unless the Units are to be Offered, issued, or sold by means only of Private Placement.*
  
- (2) *For the purposes of (1), a "Property Fund" is a Foreign Fund in respect of which 60% or more of the Fund's assets comprise Real Property, Property Related Assets or Units in another Property Fund.*

*The DFSA expects all Rep Offices to understand and fully comply with the requirements, including but not limited to the rules on marketing of foreign funds in REP Chapter 4.7.*

### **Finding 2**

Rep Offices were marketing digital asset funds.

We observed a minority of Rep Offices were marketing digital asset funds despite this being prohibited, as a Rep Office must not market a financial service relating to a crypto token.

Rule 2.26.1(4) in the GEN Module of the DFSA Rulebook (GEN) requires that:

*A Person must not Operate a Representative Office that markets a Crypto Token or a Financial Service relating to a Crypto Token.*

*The DFSA expects all the Rep Offices to understand and fully comply with the requirements, including but not limited to GEN Rule 2.26.1 (4) which prohibits a Rep Office from marketing a Crypto Token or a Financial Service relating to a Crypto Token.*



**Finding 3**

Rep Offices did not include the required regulatory disclosures.

A number of Rep Offices did not comply with REP Rule 4.5.2 as their business documents did not contain relevant regulatory disclosures, including marketing materials (physical and digital) and the email signatures of Principal Representatives. Additionally, when Rep Offices did include regulatory disclosures, they sometimes were not sufficiently visible, as they were included towards the end of the marketing material.

REP Rule 4.5.2 requires that:

- (1) *A Representative Office must take reasonable care to ensure that every key business document which is in connection with the Representative Office carrying on the Financial Service of Operating a Representative Office in or from the DIFC includes one of the disclosures under this Rule.*
- (2) *A key business document includes letterhead whether issued by post, fax, or electronic means, written promotional materials, business cards, and websites but does not include compliment slips, or text messages.*
- (3) *The disclosure required under (1) is:*
  - (a) *'Regulated by the Dubai Financial Services Authority as a Representative Office';*  
*or*
  - (b) *'Regulated by the DFSA as a Representative Office'.*

*The DFSA expects all the Rep Offices to comply with the above requirements and update their key business documents to represent their regulatory status before commencing any communications. All key business documents should provide a clear disclosure of the Rep Office's regulatory status as being regulated by the DFSA as a Representative Office. Rep Offices should not use Head Office key business documents when operating in or from the DIFC. There should be a clear distinction between the Rep Office and Head Office materials.*

**Finding 4**

Rep Offices' promotional materials do not reflect DFSA Rule requirements concerning marketing content.

We observed that some firms did not include the name of the Rep Office communicating the marketing material, and on whose behalf the marketing material was being communicated. We also noted that letterheads, email templates and email signatures did not disclose the name of the



Rep Office and instead referred to the Head Office. Therefore, no distinction can be made between the Rep Office and the group entities.

We also noted from the marketing materials that some Rep Offices included a disclosure that attempted to avoid any duty or liability it may have towards prospective clients. This is not appropriate as a Rep Office must not attempt to limit or avoid any duty or liability it may have in respect of communications to prospective clients (per REP Rule 4.6.3).

Rep Offices must ensure that their communications are clear, fair and not misleading and include a disclosure of their Representative Office status as required in REP Chapter 4.6.

*The DFSA expects all the Rep Offices to fully comply with the requirements, including but not limited to REP Chapter 4.6. The Principal Representative needs to understand the disclosure requirements and ensure that it is used adequately.*

#### **Finding 5**

Rep Offices did not submit a BARA, or submitted an inadequate BARA, which resulted in inaccurate AML policies and procedures.

We observed that some Rep Offices did not comply with Chapter 5 of the AML Module of the DFSA Rulebook (AML) as they did not have or conduct a BARA. Most of the Rep Offices which conducted a BARA did not assess the risks relevant to the DIFC entity - there was no consideration of Rep Office activities and the AML risks associated with those activities. Additionally, most of the Rep Offices which carried out a BARA did not reference the 2019 UAE National Risk Assessment.

Further, we note that due to not maintaining an appropriate BARA, Rep Offices were unable to effectively assess, maintain or improve the effectiveness of their AML framework. Our Review revealed that most Rep Offices rely solely on group AML policies and procedures which often fail to consider relevant DFSA and UAE Rules applicable to Rep Offices in the DIFC. AML manuals frequently included policies and procedures regarding customer due diligence, enhanced due diligence, client risk assessments, and other onboarding related material which are not applicable to Rep Offices. Additionally, some of the AML manuals we reviewed did not address EOCN or UAE Federal requirements (i.e., UAE Cabinet Decision No. 74 of 2020).

Rep Offices are required to take appropriate steps to identify and assess money laundering risks to which its business is exposed by taking into consideration the nature, size, and complexity of its activities (per AML Rule 5.1.1(a)). This is to be accomplished through a BARA.

*The DFSA expects all Authorised Firms, including Rep Offices, to comply with the requirements under AML Chapter 5 and take appropriate steps to identify and assess the money laundering and terrorist*



*financing risks relevant to the Rep Office's activities and implement appropriate systems and controls to mitigate those risks. The BARA should also take into consideration recent UAE National Risk Assessment results and be updated as and when the Rep Office considers new products or services, business practices or the use of new technologies, as applicable.*

*Rep Offices are expected to comply with "Applicable Chapters" specified in the "Application Table" in AML Chapter 1.3 (i.e., AML Chapters 1-5 and AML Chapters 10-14). This includes but is not limited to maintaining effective policies, procedures, systems and controls to prevent opportunities for money laundering and terrorist financing in relation to the Rep Office (including its Group) and activities.*

### **Finding 6**

Principal Representatives did not comprehend their responsibilities as an MLRO.

It was observed that most of the designated MLROs (Principal Representatives) were unfamiliar with applicable DFSA and UAE Federal requirements, displaying limited knowledge overall of AML Rules relevant to a Rep Office. Most Principal Representatives displayed minimal awareness regarding their role as MLRO and were unable to clearly articulate their MLRO responsibilities, as they would often defer responsibility to the Head Office or Group Compliance function. Most Principal Representatives were either partially or entirely unaware of the Suspicious Activity Reports (SARs) process. Additionally, most of the Principal Representatives were unable to effectively articulate their Head Office screening process or which lists clients are screened against. In some instances, MLROs did not provide proof of registration on GoAML and subscription to the EOCN notification system.

Principal Representatives must take on the role of MLRO of a Rep Office in accordance with AML.

AML Rule 11.4.1 requires that:

*A Relevant Person must ensure that its MLRO implements and has oversight of and is responsible for the following matters:*

- (a) the day-to-day operations for compliance by the Relevant Person with its AML policies, procedures, systems, and controls;*
- (b) acting as the point of contact to receive notifications from the Relevant Person's Employees under Rule 13.2.2;*
- (c) taking appropriate action under Rule 13.3.1 following the receipt of a notification from an Employee;*
- (d) making Suspicious Activity Reports in accordance with UAE Federal AML legislation;*
- (e) acting as the point of contact within the Relevant Person for competent U.A.E. authorities and the DFSA regarding money laundering issues;*
- (f) responding promptly to any request for information made by competent U.A.E. authorities or the DFSA;*



- (g) receiving and acting upon any relevant findings, recommendations, guidance, directives, resolutions, sanctions, notices, or other conclusions described in chapter 10; and
- (h) establishing and maintaining an appropriate money laundering training programme and adequate awareness arrangements under chapter 12.

*Rep Offices are required to comply with the requirements under AML Rule 11.2.2 with ultimate responsibility of its implementation resting with the Principal Representative. A Rep Office may choose to have its Head Office screen prospective Clients. However, the Principal Representative must still have some high-level knowledge of the Rep Office or Group's screening procedures, and which lists clients are screened against. The Principal Representative must be sufficiently versed in their responsibilities as MLRO and while Head Office support is acceptable, there is no exception to AML Rule 11.4.1. Even if a Rep Office outsources its MLRO function, the Principal Representative remains solely accountable.*

### **Finding 7**

Rep Offices failed to provide evidence of screening against the UAE Sanctions List and/or the UN Sanctions List.

UAE Federal requirements (per Cabinet Decision No. 74 of 2020) and DFSA Rules (AML Chapter 10) require Rep Offices to screen against the UAE Sanctions List and the UN Sanctions List.

We observed that some of the Rep Offices could not provide evidence of screening against the UAE Sanctions List and/or the UN Sanctions List. Principal Representatives were unable to identify relevant lists, or which lists their Head Office screened against. Additionally, the Rep Offices failed to clearly identify the lists they screen prospective clients against in their AML manuals. As these AML manuals belonged to the Rep Office's Head Office, it seems that these Head Offices do not screen against UAE and UN lists either.

*All Relevant Persons should be aware of their obligations under Cabinet Decision No. 74 of 2020, which includes the obligation to check the sanctions lists issued by the UAE and United Nations Security Council. Rep Offices must ensure that screening is conducted regularly, and also immediately upon any updates to the Local Terrorist List or UN Consolidated List. Freezing measures must also be implemented without delay<sup>1</sup> should matches be found during screening.*

<sup>1</sup> 'Without delay' means applying freezing measures immediately upon identifying a match to the Sanctions Lists or in any case within 24 hours upon designation of an individual, entity, or group on the Sanctions Lists. <https://www.uaieec.gov.ae/en-us/un-page?p=7>