



**FINAL NOTICE GIVEN UNDER SECTION 251 OF
THE FINANCIAL SERVICES AND MARKETS REGULATIONS 2015**

To: **Elia Investments Limited**



Date: 2 November 2022

1. DECISION

- 1.1. This final notice ("Notice") is given to Elia Investments Limited ("Elia") under section 251 of the *Financial Services and Markets Regulations 2015* ("FSMR").
- 1.2. For the reasons given in this Notice, the Financial Services Regulatory Authority (the "Regulator") has decided to impose on Elia a financial penalty of US\$ 2,381,798 under section 232 of FSMR ("Action"), for the contraventions set out below.

2. DEFINED TERMS

- 2.1. Terms defined in the Notice are defined at the first instance the term is used in parentheses. Other capitalised terms are defined in FSMR, the Glossary, or in a Rulebook published from time to time by the Regulator, and shall bear the meaning given therein. Unless the context otherwise requires, where capitalisation of the initial word is not used, an expression has its natural meaning.

3. SUMMARY OF REASONS FOR THE ACTION

- 3.1 The Regulator has decided to take the action set out in this Notice because it has found that Elia:
 - a) carried on, and purported to carry on a Regulated Activity by way of business in the Abu Dhabi Global Market ("ADGM");
 - b) described itself as an Authorised Person; and
 - c) behaved, or otherwise held itself out, in a manner which indicated (or which is reasonably likely to be understood as indicating) that it is an Authorised Person,

when it was not an Authorised Person. In doing so, Elia contravened sections 16 and 20 of FSMR.



4. FACTS AND MATTERS RELIED ON

Background

- 4.1. On 12 September 2017, Elia was incorporated and registered in ADGM as a private company limited by shares, and assigned the registration number 000000751. Elia held a commercial license to carry on non-financial business activities including “*professional, scientific and technical activities*” as a special purpose vehicle only. The commercial license of Elia expired on 11 September 2021.
- 4.2. Despite having held a commercial license, Elia has never been granted, or even applied for, a Financial Services Permission (“FSP”) by the Regulator. As such, Elia is not and has never been licensed or authorised by the Regulator to conduct any Regulated Activity in or from the ADGM.
- 4.3. Elia maintained a registered address in ADGM but at no time had physical premises in the ADGM from which it could operate.

Publication of False or Misleading Statements concerning Elia’s Activities

- 4.4. Over the period from around August 2020 to on or about 1 June 2021, Elia maintained and operated a website, at URL: <http://elia-group.com/> (the “Website”), on which it published representations about the services it purported to provide.

- 4.5. The Website stated:

- a) under the heading ‘About Us’ that:

*“Elia Investments Group is one of the world’s leading independent, pure-play asset managers. **We provide active investment solutions and products for institutions, financial intermediaries and private investors**”;*

[Emphasis added]

- b) under the heading ‘Chairman’s Message’, that:

*“Elia Group Limited is a global investments company dedicated to helping **its clients manage and service their financial assets** throughout the investment lifecycle”;*

*“**We manage \$ 2.8 billion in assets for institutional and individual investors. We are the trusted asset of choice for investors globally. We serve Corporations / Investors / Institutions Asset Managers, Banks, Broker-Dealers, Central Banks, Corporations, Family Offices, Financial Intermediaries, Governments, High-Net-Worth Individuals, Insurance Companies, Investment Advisors, Nonprofit Organizations, Pension Funds, Sovereign Institutions**”;*

*“Thank you for working with Elia Group Limited / **Elia Investments Limited**”;* and

[Emphasis added]

- c) under the heading ‘Our Services’, that it provides services in:

- i. “Project financing”:



“Our core expertise is found in project financing and in particular the financing of innovative ideas backed by strategic mindset and tactical planning”;

ii. “Private Placement Programs”:

“Elia Group realizes the needs of private equity investors and offers them to participate in the Private Placement Programmes (PPP) designed specifically for them”;

iii. Asset Management:

“Elia’s Asset Management offers all common services such as fund management, portfolio management, brokerage and portfolio advisory”;

iv. Corporate Finance:

“Elia Group structures and arranges corporate financing and capital market transactions for listed and private medium-sized enterprises and medium-sized corporations across industries and throughout all classes of capital”; and

“Depending on the level of a company’s capital market maturity, the types of financing comprise equity financing, equity-related forms of financing such as hybrid or mezzanine financing, as well as debt financing. The form of financing appropriate for the company is determined and realised through bank financing or instruments suitable for the capital market. Furthermore, Elia Group also supports its clients with its own sales activities and its own sales team”.

[Emphasis added]

4.6. Further, in 2020 and early 2021, a “LinkedIn” social media profile under the name of the sole director and shareholder of Elia was maintained and publicly available. The profile described the shareholder and director as the “CEO, *Elia Capital Investments Limited, ADGM, UAE*” (the “Profile”). The Profile had published several posts containing representations to the effect that Elia carried on Regulated Activities by way of business in ADGM. In particular:

- a) Around November 2020, the Profile published a post, with heading “INVESTMENTS” which stated that *“Elia Investment group An Asset Management company private equity and alternative asset manager is looking to invest \$1billion on property acquisitions in the United Arab Emirates and Europe over the next two years, according to a top executive of the firm”;* and
- b) Around March 2020, the Profile published a post, with heading “UAE SMART LOAN” which stated that *“Elia is focused on providing a suite of correspondent banking relationships, Trade finance, and Asset Management within capital markets and brokerage services to bring together our resources, and leverage our assets to offer the effective solutions that help our clients manage their risk, capital and liquidity needs to finance their projects”.* In or around October 2020, the Profile reposted this post with a further heading “UAE BEST LOAN”.

Elia Unauthorised Provision of Credit

4.7. Section 16 of FSMR states that no person may carry on a Regulated Activity by way of business in the ADGM, or purport to do so, unless he is an Authorised or Exempt Person.



- 4.8. Over the period from around July 2019 to around June 2021, Elia:
- a) marketed itself as a provider of Credit;
 - b) engaged in informal introducer relationships to obtain introductions to companies and individuals in the ADGM and the UAE that were seeking Credit;
 - c) represented itself as a Provider of Credit in the ADGM to at least four (4) entities and individuals; and
 - d) entered into loan agreements with at least four (4) entities and individuals.
- 4.9. Under the loan agreement it entered into, Elia purported to Provide Credit of a total amount of circa US\$ 37,000,000.
- 4.10. Under each loan agreement Elia entered into, Elia:
- a) purported to Provide Credit; and
 - b) solicited and obtained upfront payments (which it described as a “*Margin Deposit*” or, in one case, as a “*Processing Fee*”). In most cases, this involved payment of a “*Margin Deposit*” of an amount of ten percent of the amount of the purported loan.
- 4.11. However, with respect to each loan agreement it entered into, Elia:
- a) did not provide the Credit purported under the loan agreement and, in fact, did not hold or have access to funds of an amount sufficient to provide the Credit purported under the loan agreement; and
 - b) failed to return the total amount of upfront payments it had received.
- 4.12. Further, the Regulator considers that Elia did not genuinely intend to perform its obligations under the loan agreements it had entered into.
- 4.13. Elia obtained an amount totalling approximately US\$ 2,590,245 from four (4) entities and individuals, as “*margin deposit*” payments or “*processing fees*” associated with purported loan agreements it was not authorised or permitted to offer or provide. Of that amount, approximately US\$ 1,881,798 was not repaid.
- 4.14. Rather, the Regulator found, in respect of each loan agreement Elia entered into, that once Elia had obtained upfront payments, it quickly withdrew and dissipated the money it had received.
- 4.15. As stated in paragraph 4.2 above, Elia has at no time been granted, or even applied for, a FSP. As such, Elia is not and has never been licensed or authorised by the Regulator to conduct any Regulated Activity in the ADGM, including Providing Credit.
- 4.16. Elia’s conduct constituted the carrying on of the Regulated Activity of Providing Credit, as defined under Schedule 1, Part 2, Chapter 7, section 48 of FSMR. Elia entered into at least four (4) Credit Agreements and exercised its rights as the Lender under each agreement to solicit and receive payments of fees or deposits. Elia’s failure to perform under each Credit Agreement it entered into does not mean that it did not carry on the Regulated Activity.



- 4.17. Further, Elia's activities, which constitute the Regulated Activity of Providing Credit, were carried on "by way of business", as defined under Schedule 1, Part 1, section 3 of FSMR. In particular, Elia:
- a) enlisted other persons to engage in transactions constituting the provision of Credit;
 - b) held itself out as being willing and able to engage in the provision of Credit; and
 - c) conducted the activity in a manner which in itself constitutes the carrying on of a business (including by soliciting fees and publishing a website on which it marketed its activities).
- 4.18. The Regulator has therefore found that Elia carried on unauthorised Regulated Activities by way of business in the ADGM, in breach of section 16 of FSMR.

Purporting to Carry on a Regulated Activity by way of Business in the ADGM

- 4.19. The Regulator has also found that Elia purported to carry on activities which constituted a Regulated Activity.
- 4.20. Over the period from around August 2020 to on or about 1 June 2021, the statements described in paragraph 4.5 above were published on the Website.
- 4.21. The Website described Elia as being, amongst other things, a provider of corporate finance and project funding and described various activities which would constitute Regulated Activities if conducted in the ADGM, including the Provision of Credit.
- 4.22. By publishing these statements, the Regulator found that Elia purported to carry on Regulated Activities by way of business in ADGM, in breach of section 16 of FSMR.

False Claims to be Authorised

- 4.23. Section 20 of FSMR provides:

"A person who is neither an Authorised Person nor, in relation to the Regulated Activity in question, an Exempt Person must not-

- a) describe himself (in whatever terms) as an Authorised Person; or
- ...
- c) behave, or otherwise hold himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is an Authorised Person."

- 4.24. Elia was at no time an Authorised Person or an Exempt Person (in relation to any Regulated Activity, including the Provision of Credit). It was therefore prohibited from describing itself (in whatever terms) as an Authorised Person, or behaving or otherwise holding itself out, in a manner which indicated (or which is reasonably likely to be understood as indicating) that it was an Authorised Person.
- 4.25. As set out above, over the period from in and around July 2019, to in and around June 2021, Elia entered into loan agreements with at least four (4) entities or individuals and, in doing so, purported



to provide a total of US\$ 36,938,692 in Credit. On each occasion, Elia held itself out as a Provider of Credit.

- 4.26. In addition, over the period from around August 2020 to on or about 1 June 2021, Elia published statements on the Website describing itself as, amongst other things, a provider of corporate finance and project funding and described various activities which would constitute Regulated Activities if conducted in the ADGM.
- 4.27. The Regulator has therefore found that Elia described itself in such terms that would have led others to believe it was an Authorised Person; and behaved and held itself out in a manner which indicated, or which would reasonably be understood as indicating, that it was an Authorised Person, when it was not. Therefore, in doing so, Elia contravened subsections 20(a) and (c) of FSMR.

5. CONTRAVENTIONS

- 5.1. For the reasons set out above, the Regulator has found that Elia contravened the following provisions of FSMR:
- a) Section 16 - for carrying on, and purporting to carry on, a Regulated Activity by way of business in the ADGM; and
 - b) Subsection 20(a) - for describing itself (in whatever terms) as an Authorised Person; and
 - c) Subsection 20(c) - for behaving or otherwise holding itself out, in a manner which indicated (or which is reasonably likely to be understood as indicating) that it is an Authorised Person.

6. SANCTION

- 6.1. In deciding to impose a financial penalty on Elia, the Regulator has taken into account the factors and considerations set out in sections 6.2 to 6.4 of the Regulator's Guidance & Policies Manual ("GPM").
- 6.2. Annexure A sets out extracts from FSMR and Rules and guidance relevant to this Notice.

Decision to Impose a Financial Penalty

- 6.3. With reference to section 6.2 of GPM, the Regulator considered the following factors to be of particular relevance in deciding to impose the financial penalty on Elia:
- a) section 6.2.1(a) - the Regulator's objectives under section 1(3) of FSMR to:
 - i. prevent, detect and restrain conduct that causes or may cause damage to the reputation of ADGM through appropriate means including the imposition of sanctions; and
 - ii. promote public understanding of the regulation of ADGM;
 - b) section 6.2.1(b) - the deterrent effect of the Action and the importance of deterring other persons from committing similar contraventions;



- c) section 6.2.1(c) – the nature, seriousness, duration and impact of the contravention, in particular that:
 - i. Elia’s conduct appears to have been deliberate, or in the alternative reckless, in that it knew or reasonably ought to have known that it was not permitted to carry on, or purport to carry on any form of Regulated Activities in the ADGM;
 - ii. the impact of Elia’s misconduct was significant and caused at least four (4) entities and individuals to suffer harm. This included significant financial harm caused by the upfront payments Elia obtained and did not repay, and harm and inconvenience caused by the false commitments to provide Credit that Elia made;
 - iii. Elia’s conduct occurred over a period of approximately two (2) years;
- d) section 6.2.1(e) – the benefit gained (whether direct or indirect, pecuniary or non-pecuniary) or loss avoided as a result of the contravention, in that Elia received a significant direct pecuniary benefit from its misconduct, in the form of the payments it received totalling approximately US\$ 2,590,245 as “margin deposits” and “processing fees” for purported loans. Of that amount, approximately US\$ 1,881,798 was not repaid; and
- e) section 6.2.1(f)(iv) - The Regulator considers there is a high likelihood that the same type of contravention will recur if no action is taken.

Determination of the Level of Financial Penalty

6.4. The Regulator applies a five-step framework to determine the appropriate level of financial penalty. The Regulator has taken into account the factors and considerations set out in section 6.4 of GPM as follows:

Step 1: Disgorgement

- 6.5. Elia received approximately US\$ 2,590,245 in total from four (4) entities and individuals, as “*margin deposit*” payments or “*processing fees*” associated with purported loan arrangements which it was not authorised or permitted to offer or provide. Of that amount, approximately US\$ 1,881,798 has not been repaid.
- 6.6. The Regulator considers it appropriate for this entire amount to be disgorged from Elia. Accordingly, the figure after Step 1 is US\$ 1,881,798.

Step 2: The seriousness of the contraventions

- 6.7. The Regulator considers the contraventions to be serious because:
 - a) Elia’s conduct resulted in at least four (4) entities and individuals suffering harm, including the financial harm relating to the payments they made to Elia which were not repaid as well as the harm caused by relying upon the commitments made by Elia in loan agreements, which Elia could not and was not authorised to fulfil;
 - b) Elia’s conduct resulted in false and misleading representations being published on the Website for a period of around eleven (11) months;



- c) members of the public may have been put at risk when relying on the Website, or otherwise on Elia's representations; and
- d) Elia's conduct appears to be deliberate or reckless, in that it must have known or reasonably ought to have known that it was not permitted to carry on, or purport to carry on any form of Regulated Activities in the ADGM. Elia had no reasonable basis for assuming that it was permitted to carry on, or purport to carry on, Regulated Activities in the ADGM.

6.8. Taking the above factors into account, the Regulator considers that a penalty element of US\$ 300,000 appropriately reflects the seriousness of the contraventions.

6.9. Accordingly, including the disgorgement of US\$ 1,881,798 the figure after Step 2 is US\$ 2,181,798.

Step 3: Mitigating and aggravating factors

6.10. The Regulator does not consider there to be any factors which have a mitigating effect on Elia's contraventions.

6.11. The Regulator considers that the following factor has an aggravating effect on the contraventions:

- a) On each occasion in which Elia received payments in relation to the purported loan agreements it entered into, it then acted to withdraw these funds in cash or otherwise transfer the funds outside of the jurisdiction. The Regulator considers that this action was undertaken by Elia to avoid refunding these payments to the parties to whom it had purported to offer loans to.

6.12. Taking the above factors into account, the Regulator considers it appropriate to increase the figure after Step 2 by US\$ 200,000 given the aggravating features of Elia's contraventions.

6.13. Accordingly, the figure after Step 3 is US\$ 2,381,798.

Step 4: Adjustment for deterrence

6.14. Section 6.5.9 of GPM provides that if the Regulator considers the level of the financial penalty which it has arrived at after Step 3 is insufficient to deter the firm that committed the contravention, or others, from committing further or similar contraventions, then the Regulator may increase the financial penalty. Section 6.5.9 of GPM sets out the circumstances in which the Regulator may do this.

6.15. In this instance, the Regulator considers that the figure arrived at after Step 3 is sufficient for the purposes of deterring Elia and others from committing further or similar contraventions. Accordingly, the Regulator does not consider it necessary to adjust the figure arrived at after Step 3 for the purposes of deterrence.

6.16. Accordingly, the figure after Step 4 is US\$ 2,381,798.

Step 5: Adjustment for cooperation/early settlement

6.17. Where the Regulator and the firm on which the financial penalty is to be imposed come to an agreement on the amount of the financial penalty, section 6.5.10 of GPM provides that the amount of the financial penalty which might have otherwise been payable will be reduced to reflect the stage at which the agreement is reached.



6.18. The Regulator and Elia have not reached agreement on the relevant facts and matters relied on, contraventions, or the amount of fine to be imposed. Therefore, no discount for cooperation or early settlement has been applied.

The Level of the Financial Penalty

6.19. Given the factors and considerations set out above, and having regard to all the circumstances of this matter, the Regulator has determined that it is proportionate and appropriate to impose on Elia a financial penalty of US\$ 2,381,798 for the contraventions.

7. PROCEDURAL MATTERS

Issuance of Warning Notice and Decision Notice

- 7.1. On 25 August 2022, the Regulator gave Elia a Warning Notice, pursuant to sections 246 and 247 of FSMR. The Warning Notice set out the Regulator's findings and proposed action, and Elia was given the opportunity to make representations to the Regulator. Mr. Abbas did not make any representations.
- 7.2. On 26 September 2022, the Regulator gave Elia a Decision Notice pursuant to section 248 of FSMR. The Decision Notice set out the Regulator's decision and action, and Elia was given the opportunity to refer the matter to the Appeals Panel.
- 7.3. As Elia did not refer the matter to the Appeals Panel for a review of the Decision Notice within the specified period, the Regulator has proceeded to issue this Final Notice pursuant to section 251(1) of FSMR.

Payment of Financial Penalty

- 7.4. The financial penalty imposed by this Notice is to be paid by Elia on or before 2 December 2022.
- 7.5. Payment of the financial penalty can be made by electronic funds transfer into the following account:

Account Name	[REDACTED]
Account Number	[REDACTED]
IBAN Number	[REDACTED]
Account Type	[REDACTED]
Bank Name	[REDACTED]
Swift Code	[REDACTED]
Reference	[REDACTED]

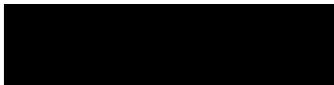


- 7.6. If all or any part of the financial penalty remains outstanding on the date by which it must be paid, the obligation to make the payment is enforceable by the Regulator as a debt owed by Elia.
- 7.7. In the event that some or all of the financial penalty applied in order to effect disgorgement is recovered from the shareholder of Elia by the Regulator, the amount recovered from such personnel will be offset against the financial penalty set out at paragraph 6.6 and the overall financial penalty to be paid by Elia will be reduced accordingly.

Publicity

- 7.8. Under section 252(3) of FSMR, the Regulator may publish this Notice at its discretion. Pursuant to section 252(4) of the Regulations, a person to whom a notice is given may not publish the notice or any details concerning it unless the Regulator has published the notice or those details in accordance with section 252(3).
- 7.9. The Regulator will publish on its website:
- a) this Final Notice (not including Annexure A); and
 - b) subject to section 252(5) of the Regulations, a press release in a form and manner the Regulator considers appropriate.

Signed:



Alan Burke
Executive Director - Supervision
Delegate of the Financial Services Regulatory Authority