



ABU DHABI GLOBAL MARKET
سوق أبوظبي العالمي

FINAL NOTICE

**ISSUED UNDER SECTION 251
OF THE FINANCIAL SERVICES AND MARKETS REGULATIONS 2015**

To: **AT Capital Markets Limited**
Floor 8, Al Maqam Tower
Abu Dhabi Global Market Square
Al Maryah Island
Abu Dhabi
UNITED ARAB EMIRATES

Date: 16 December 2019

1. DECISION

- 1.1. For the reasons given in this Final Notice, the Financial Services Regulatory Authority (the “Regulator”) has decided to:
- a. Suspend the Financial Services Permission (“FSP”) of AT Capital Markets Limited (“ATCM”) under section 233(1) of the *Financial Services and Markets Regulations 2015* (the “Regulations”), until such time that ATCM completes certain regulatory requirements agreed between ATCM and the Regulator; and
 - b. Impose on ATCM a financial penalty of \$320,000 under section 232 of the Regulations for the contraventions of the Regulations and Rules made under the Regulations, as set out in this Final Notice.
- 1.2. ATCM agreed to settle this matter at an early stage following the conclusion of the Regulator’s investigation. The Regulator has therefore exercised its discretion to apply a 20% discount under the Regulator’s policies for early settlement. Were it not for this discount, the Regulator would have imposed a financial penalty of \$400,000 on ATCM.



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2. DEFINED TERMS

- 2.1. Defined terms are identified in the Final Notice in parentheses, using the capitalisation of the initial letter of a word or of each word in a phrase, and are either defined in the Regulations, the Rulebook, Glossary (“GLO”) or in the body of this Final Notice at the first instance the term is used. Unless the context otherwise requires, where capitalisation of the initial word is not used, an expression has its natural meaning.
- 2.2. **Annexure A** to this Final Notice sets out the Regulations and Rules relevant to this Final Notice.

3. SUMMARY OF REASONS FOR THE DECISION

- 3.1. The Regulator has decided to take this action following an investigation (the “Investigation”) which found that between 26 February 2018 to 6 August 2018 (the “Relevant Period”), ATCM:
- a. Carried on Regulated Activities in the Abu Dhabi Global Market (“ADGM”) on an unauthorised basis prior to it being granted a Financial Services Permission (“FSP”), in contravention of section 16 of the Regulations) in the period from 26 February 2018 to 27 March 2018;
 - b. Carried on Regulated Activities with Retail Clients without a Retail Endorsement authorising it to do so and in circumstances where its FSP included a specific condition that it would not deal with Retail Clients, in contravention of section 17 of the Regulations in the period from 28 March 2018 to 6 August 2018;
 - c. Breached certain Conduct of Business Rulebook (“COBS”) requirements and Anti-Money Laundering and Sanctions Rules and Guidance (“AML”) requirements as specified below in the period from 28 March 2018 to 6 August 2018;
 - d. Knowingly or recklessly gave the Regulator information that was false or misleading in contravention of section 221 of the Regulations; and



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- e. Failed to immediately notify the Regulator of allegations of fraudulent conduct by certain of its employees, in contravention of Rule 8.10.7(e) of the General Rulebook (“GEN”).
- 3.2. Given the above, the Regulator considers that ATCM has contravened the following Principles for Authorised Persons:
- a. **Principle 2 – Due skill, care and diligence:** by failing to act with due skill care and diligence in conducting its business activities;
 - b. **Principle 3 – Management, systems and controls:** by failing to ensure that its affairs are managed effectively and responsibly by its senior management and to have in place adequate systems and controls to ensure, as far as is reasonably practical, that it complies with the Regulations and Rules; and
 - c. **Principle 10 – Relations with Regulators:** by failing to deal with the Regulator in an open and co-operative manner and keep the Regulator promptly informed of significant events of which the Regulator would reasonably expect to be notified.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. ATCM was incorporated in the ADGM on 29 November 2017 and was granted an FSP by the Regulator on 28 March 2018, under which it was:
- a. Permitted to undertake the Regulated Activities of:
 - i. Dealing in Investments as Principal (only as Matched Principal); and
 - ii. Arranging Deals in Investments; and
 - b. Prohibited from dealing with Retail Clients.
- 4.2. ATCM was granted "in-principle approval" to obtain an FSP on 13 August 2017 subject to which, once it completed certain conditions to the satisfaction of the Regulator, it would



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be granted a FSP. ATCM was prohibited from carrying on Regulated Activities by way of business in the ADGM (or from purporting to do so) in the period prior to the grant of its FSP on 28 March 2018.

- 4.3. Over the Relevant Period, ATCM traded as “ATFX”.
- 4.4. ATCM was part of a group of related firms operating in a number of jurisdictions. This included two Related Entities that operated online trading firms outside of the ADGM. One ATCM Related Entity held a regulatory license to operate in the jurisdiction in which it was based (outside the ADGM) (“ATCM Related Entity A”), while the other entity (ATCM Related Entity B”) operated in another jurisdiction (also outside the ADGM). ATCM Related Entity A and ATCM Related Entity B are collectively referred to as the “ATCM Related Entities”.

Unauthorised Activities

- 4.5. The Investigation found that over the period from around 26 February 2018 to 27 March 2018, ATCM carried on the Regulated Activities of:
 - a. Arranging Deals in Investments, by:
 - i. Facilitating the on-boarding of 25 Clients to the ATCM Related Entities; and
 - ii. Conducting ongoing activities with these Clients once they had been on-boarded by the relevant ATCM Related Entity, including, arranging for the deposit of money into the Client accounts of the relevant ATCM Related Entity; and
 - b. Operating a Representative Office, by marketing the financial services and investments offered by the ATCM Related Entities outside of the ADGM;without an FSP permitting it to undertake those activities in the ADGM.
- 4.6. In February 2018, ATCM established two “Sales Teams” in the ADGM, which were referred to within the Firm as the “Arabic Sales Team” and the “Indian Sales Team”, and a “Customer Service/Account Opening Team”. “Sales Managers” and “Sales Representatives” were hired for each Sales Team, a number of which commenced work for ATCM in mid-February 2018.



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- 4.7. The activities of ATCM (including the Sales Representatives of both Sales Teams) over the period from 26 February 2018 to 27 March 2018 included:
- a. Assigning lists of prospective Clients to ATCM Sales Teams, directing ATCM Sales Representatives to contact prospective Clients and setting targets for the number of Clients to be on-boarded by the ATCM Related Entities;
 - b. Contacting prospective Clients directly to induce the opening of accounts by such Clients with the ATCM Related Entities;
 - c. Assisting Clients in completing ATCM Related Entity account opening applications;
 - d. Obtaining and translating customer identification documents and submitting such documents to the ATCM Related Entities;
 - e. ATCM Employees having direct access to the customer service email accounts and the customer relationship management system used by the ATCM Related Entities;
 - f. ATCM Employees having direct contact with the compliance and customer service functions of the ATCM Related Entities to facilitate the opening of accounts;
 - g. Newly opened Client accounts with the ATCM Related Entities being assigned to ATCM (and then to specific ATCM Sales Representatives); and
 - h. ATCM Sales Representatives contacting Clients directly to facilitate the funding of the ATCM Related Entity accounts and assist Clients in the operation of their ATCM Related Entity accounts.
- 4.8. Over the period from 26 February 2018 to 27 March 2018, ATCM arranged the on-boarding of 25 Clients to the ATCM Related Entities.
- 4.9. The Investigation found that ATCM's Senior Management had determined, from at least early January 2018, that ATCM would conduct activities to facilitate the on-boarding of Clients to the ATCM Related Entities prior to the grant of ATCM's FSP. In particular, ATCM's Senior Management decided that, because ATCM would not have systems in place to on-board Clients locally in the ADGM by the time of the grant of its FSP, ATCM would undertake activities to facilitate the on-boarding of Clients and funding of Client accounts to the ATCM Related Entities until such time that its systems were in place.



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- 4.10. In the period from 26 February 2018 to the grant of ATCM's FSP on 28 March 2018, ATCM's Senior Management directed and were actively involved in the activities of ATCM's Sales Teams, Sales Managers and Sales Representatives. This included:
- a. Instructing the activities of ATCM Sales Representatives;
 - b. Engaging in communications related to the opening of specific accounts with ATCM Related Entities;
 - c. Approving preferential rates of commissions for Introducing Broker accounts opened by ATCM Sales Representatives;
 - d. Receiving periodic reports confirming the number of Clients that each Sales Team and Sales Representatives assisted in on-boarding to the ATCM Related Entity and the amount of deposits made into those accounts;
 - e. Contacting ATCM Related Entities to request that they:
 - i. Speed up the process of on-boarding Clients; and
 - ii. Amend their Client on-boarding processes to ease the process of opening accounts; and
 - f. Being directly involved in arranging for Clients to deposit funds into their accounts with ATCM Related Entities.
- 4.11. Concerns were raised internally with ATCM's Senior Management about ATCM's activities prior to the grant of ATCM's FSP on 28 March 2018. This should have caused ATCM to take immediate steps to obtain appropriate advice and stop its activities. However, ATCM continued to carry on its unauthorised activities.
- 4.12. Whilst there was some evidence to suggest that ATCM's Senior Management relied on incorrect advice provided by compliance consultants in deciding not to stop its activities, the Regulator considers that ATCM's Senior Management did not take adequate steps to ensure that it obtained accurate and informed advice so that it understood what activities ATCM could legitimately undertake in the ADGM.



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4.13. Further, the Investigation found that ATCM and its Senior Management provided false and misleading information to the Regulator in relation to ATCM's activities, as described in this Final Notice.

Unauthorised Dealings with Retail Clients

4.14. The Investigation found that ATCM conducted the Regulated Activity of Arranging Deals in Investments with up to 138 Clients, many of whom were Retail Clients, over the period from 28 March 2018 to the end of the Relevant Period. This activity was undertaken in circumstances where ATCM's FSP included a specific condition that it would not deal with Retail Clients.

4.15. The Investigation found that from 28 March 2018 to the end of the Relevant Period ATCM arranged the on-boarding of up to 138 Clients, including Retail Clients, to the ATCM Related Entities.

4.16. For all Clients, including Retail Clients, once their account was opened with the ATCM Related Entity, the Client relationship was assigned to specific ATCM Sales Representatives, who were directed to contact the Client in order to facilitate the Client to fund their ATCM Related Entity account.

4.17. The Client accounts that ATCM arranged the ATCM Related Entities open, were classified by the relevant ATCM Related Entity as Retail Client accounts. ATCM applied the procedures of the relevant ATCM Related Entity for the opening of Retail Client accounts. ATCM provided its Sales Managers and Sales Representatives with training on those procedures.

4.18. ATCM's Senior Management understood that ATCM was conducting activities with Retail Clients. ATCM did not take steps to ensure that the clients with whom it carried on Regulated Activities were Professional Clients and not Retail Clients.

Conduct of Business and Anti-Money Laundering Failings

4.19. From the date ATCM was granted its FSP (28 March 2018), it was required to comply with the Regulator's Rules, including the COBS and AML Rules. As ATCM undertook Regulated Activities with the Clients when they arranged onboarding them to the ATCM Related Entities during this period, it should have treated these persons as Clients of ATCM. ATCM did not treat the persons as its own Clients, as it was operating under the mistaken belief



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that its unauthorised activities did not amount to the carrying on of Regulated Activities. However, ATCM's Senior Management knew the full extent of activity carried on by ATCM and did not take adequate steps to understand what activities it could legitimately undertake. The ATCM Related Entities did, however, treat these persons as Clients of their own.

4.20. As a result, up to 138 Clients with whom ATCM carried on Regulated Activities from the date it was granted its FSP to the end of the Relevant Period were not:

- a. Documented as Clients of ATCM;
- b. Classified by ATCM in accordance with Rule 2.2.1 of COBS (as a Retail Client, Professional Client or Market Counterparty);
- c. Provided with a Client Agreement and Key Information (as required under Rule 3.3.2 of COBS) by ATCM; or
- d. Subject to suitability assessments by ATCM in accordance with Rule 3.4.2 of COBS.

4.21. In addition, in respect of each of the Clients with whom ATCM carried on Regulated Activities, as ATCM did not treat these Clients as Clients of ATCM, it failed to comply with key AML requirements, including in particular:

- a. Undertaking a customer risk assessment in accordance with Rule 7.1.1 of AML; and
- b. Undertaking adequate Customer Due Diligence in accordance with Rule 8.1.1 of AML.

Failure to Immediately Notify the Regulator of Alleged Fraudulent Conduct of ATCM Employees

4.22. In or around early June 2018, ATCM received a complaint from a person representing four individuals who had been contacted by a member of ATCM's Indian Sales Team. The complaint alleged that an ATCM employee in that team had engaged in fraudulent conduct by soliciting payments from clients to arrange transfers of funds through third party entities.



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- 4.23. Over the period from early June 2018 to around 18 June 2018, ATCM and its Senior Management undertook further enquiries into the allegations. This process identified further information, some of which raised concerns in relation to the conduct of other ATCM employees within the same team.
- 4.24. On 18 June 2018, ATCM dismissed the Indian Sales Team. The termination letters issued to each employee made reference to the complaint about the alleged fraudulent conduct but did not cite this as the reason for the dismissal of the employees.
- 4.25. After seeking legal advice and conducting an investigation into the complaint, ATCM arranged for the employee to sign an undertaking, which stated in part:
- "It is now discovered by the Company that the Employee has been acting against the interest of the Company and has been engaged in some fraudulent activities including fraud, misappropriation, financial gains for personal benefits ..."*
- 4.26. As a result of concerns that some members of the Indian Sales Team may have engaged in fraudulent conduct, ATCM took steps to initiate the closure all Client accounts with ATCM Related Entities that were opened with the assistance of the Indian Sales Team.
- 4.27. While ATCM eventually notified the Authority about the complaint regarding the alleged fraudulent activities of a member of its Indian Sales Team, as an Authorised Person, ATCM was required under Rule 8.10.7 of GEN, to immediately notify the Regulator if, amongst other things, and in relation to its activities in or from the ADGM:
- "It suspects that one of its employees who is connected with its Regulated Activities may be guilty of serious misconduct concerning his honesty or integrity."*
- 4.28. ATCM was therefore required to immediately notify the Regulator of the matters raised in the complaint it had received and the concerns that had been identified in relation to the conduct of its Indian Sales Team.
- 4.29. ATCM, however, did not notify the Regulator until 12 July 2018, some five weeks after becoming aware of the complaint. As noted below, at a meeting held on 9 July 2018, ATCM provided false and misleading information to the Regulator in relation to this issue.



Provision of False and Misleading Information

Provision of False and Misleading Information concerning the activities of ATCM and ATCM's termination of employment of the Indian Sales Team

4.30. On 9 July 2018, the Regulator conducted a meeting with ATCM. At the meeting, ATCM provided false and misleading information to the Regulator concerning:

- a. The activities of ATCM Sales Representatives (both prior to, and following, the grant of ATCM's FSP) in that ATCM stated that:
 - i. ATCM had not conducted any activities that involved contacting potential Clients;
 - ii. ATCM had not undertaken arranging activities and that Clients would be provided with a telephone number to ATCM Related Entity A and were asked to contact that entity directly; and
 - iii. Employees of the ATCM Sales Teams had only been involved in preparatory work in anticipation of the commencement of business by ATCM (including, for example, translating marketing material and contacting Introducing Brokers to advise that ATCM would be commencing business in the future);

whereas ATCM Sales Representatives had conducted activities that involved contacting prospective Clients and assisting ATCM Related Entities to on-board Clients and had ongoing contact with Clients once on-boarded by the relevant ATCM Related Entity.

- b. The start date and the reason for the termination of employment of the Indian Sales Team, in that ATCM stated that:
 - i. The Sales Representatives of the Indian Sales Team were hired on 26 February but did not commence work for ATCM until April 2018; and
 - ii. The employment of the Indian sales team was terminated on 18 June 2018 for "non-performance" (which was explained as issues relating to their attendance at the office of ATCM);



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whereas the Indian Sales Team did in fact commence work for ATCM in February 2018 and some of the members of the Indian Sales Team's employment was terminated, in part, as a result of the complaint alleging fraudulent misconduct (which ATCM did not immediately notify the Regulator of, despite being required to).

4.31. The Regulator further notes that:

- a. In late February and early March 2018, the Regulator had previously made an enquiry with ATCM as to the nature of its relationship with ATCM Related Entity A and ATCM did not at that time disclose the full nature and extent of ATCM's activities in relation to ATCM Related Entity A; and
- b. On 4 July 2018, ATCM sent a communication to the Regulator in which it provided:
 - i. A description of ATCM's activities to date without disclosing ATCM's activities in arranging to on-board clients to ATCM Related Entities and having ongoing contact with Clients once on-boarded; and
 - ii. An explanation for the termination of employment of the Indian Sales Team without disclosing the allegations of fraudulent conduct it had received concerning certain members of that team.

4.32. On 29 August 2018, ATCM sent a communication to the Regulator in which it stated in part that:

"As previously advised, [ATCM] ADGM has not taken on any clients till date. We have simply passed on details of all prospective clients to other [ATCM] Related Entities and have had limited involvement in collection of KYC documents on behalf of relevant [ATCM] Related Entities."

4.33. This statement was misleading, as evidence demonstrates that ATCM had more than "limited involvement" in the collection of KYC documentation. Further, the statement did not disclose ATCM's other involvement with clients, which included having ongoing contact with clients to induce and facilitate the funding of accounts and ATCM's employees being assigned as the point of contact for client accounts.



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Provision of an Altered Document to the Regulator

- 4.34. On 29 and 30 August 2018, ATCM produced to the Regulator, in response to a notice issued by the Regulator, a copy of a Service Level Agreement, dated 22 March 2018, between ATCM and ATCM Related Entity A.
- 4.35. This version of the document was different to the actual Service Level Agreement (which was dated 22 March 2018 and executed around 21 May 2018) that was in place during the period specified as being relevant for the notice issued by the Regulator.
- 4.36. In particular, the version of the document produced by ATCM omitted the following services that appeared in the version actually in place:
- “Follow up calling on leads generated through online and offline marketing”;*
- “Rating of leads”;* and
- “Active sales services to identify and close self-generated Introducing Broker and Introducing Agent relationships”.*
- 4.37. The version of the document produced by ATCM also omitted a reference to an agreed payment to be made in the amount of US \$50 per *“client assisted”*.
- 4.38. As a result, the Investigation found that ATCM altered the document it produced to the Regulator such that it omitted references to ATCM having provided services to ATCM Related Entity A that included *“active sales services”* in an attempt to conceal the nature and scope of ATCM’s activities.

5. CONTRAVENTIONS

- 5.1 The Regulator considers that ATCM contravened the following Regulations and Rules:

Perimeter Breaches

- a. Section 16 of the Regulations – The General Prohibition - by carrying on unauthorised Regulated Activities in the ADGM in the period prior to the grant of its FSP in the period from 26 February 2018 to 27 March 2018;



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- b. Section 17 of the Regulations – Authorised Person acting without an FSP – by carrying on Regulated Activities with Retail Clients without permission in the period from 28 March 2018 to 6 August 2018;

Principle Breaches

- c. Rule 2.2.2 of GEN - The Principles for Authorised Persons, Principle 2 – Due skill, care and diligence - by failing to act with due skill care and diligence in conducting its business activities in the period from 28 March 2018 to 6 August 2018;
- d. Rule 2.2.3 of GEN - The Principles for Authorised Persons, Principle 3 – Management Systems and Controls - by failing to ensure that its affairs are managed effectively and responsibly by its senior management and to have in place adequate systems and controls to ensure, as far as is reasonably practical, that it complies with Regulations and Rules in the period from 28 March 2018 to 6 August 2018;
- e. Rule 2.2.10 of GEN – The Principles for Authorised Persons, Principle 10 – Relations with Regulators - by failing to deal with the Regulator in an open and co-operative manner and keep the Regulator promptly informed of significant events of which the Regulator would reasonably expect to be notified in the period from 28 March 2018 to 6 August 2018;

Provision of False or Misleading Information

- f. Section 221 of the Regulations – Misleading the Regulator – by knowingly or recklessly giving information to the Regulator which is false or misleading in a material particular;

Notification Failings

- g. Rule 8.10.7(e) of GEN – by failing to notify the Regulator immediately once it became aware that an Employee may have been guilty of serious misconduct concerning his honesty or integrity;

Conduct of Business Failings

- h. Rule 2.2.1 of COBS - Client Classification – by failing to undertake a Client classification to ensure that each of its Clients with whom it carried on Regulated Activities were Professional Clients;



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- i. Rule 3.3.2 of COBS – Client Agreement and Key Information – by failing to enter into a Client Agreement containing required Key Information with each of the Clients with whom it carried on Regulated Activities;
- j. Rule 3.4.2 of COBS – Suitability - by failing to undertake an appropriate assessment to ensure that the Specified Investments it recommended were suitable for each of the Clients with whom it carried on Regulated Activities;

Anti-Money Laundering Failings

- k. Rule 7.1.1 of AML – Customer anti-money laundering risk assessment – by failing to undertake risk based assessment prior to establishing a business relationship with each of its customers; and
- l. Rule 8.1.1 of AML – Customer due diligence - by failing to undertake customer due diligence prior to establishing a business relationship with each of its customers.

6. REGULATORY ACTION

Suspension of Financial Services Permission

- 6.1. Under section 233 of the Regulations, the Regulator may suspend an FSP, for such period that it considers appropriate, if it considers that an Authorised Person has committed a contravention of the Regulations.
- 6.2. In reaching its decision to suspend the FSP of ATCM, the Regulator has taken into account the Regulator’s objectives set out in section 1(3) of the Regulations and the factors and considerations set out the Regulator’s Guidance and Policy Manual (“GPM”).

Determination to Suspend Financial Services Permission

- 6.3. The Regulator considers the following matters to be of particular relevance in deciding to suspend the FSP of ATCM:
 - a. ATCM has committed contraventions of the Regulations; and



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- b. The exercise of the power is necessary and desirable in the pursuit of one or more of its objectives set out in section 1(3) of the Regulations, including:
 - i. To foster and maintain confidence in the ADGM;
 - ii. To promote and enhance the integrity of the ADGM financial system;
 - iii. To prevent, detect and restrain conduct that causes or may cause damage to the reputation of the ADGM through appropriate means;
 - iv. To secure an appropriate degree of protection for users and prospective users of the Abu Dhabi Global Market; and
 - v. To promote safety and soundness of Authorised Persons.

6.4. The Regulator has considered the following circumstances in deciding to suspend the FSP of ATCM:

- a. The manner in which the business of ATCM has been conducted; and
- b. ATCM has repeatedly contravened the Regulations and the Rules.

7. SANCTION

The Financial Penalty

7.1. In reaching its decision to impose a financial penalty on ATCM, the Regulator has taken into account the factors and considerations set out in paragraphs 6.2 to 6.4 of the GPM.

Determination to impose a financial penalty

7.2. With reference to paragraph 6.2 of the GPM (“Deciding to take action”), the Regulator considers the following factors to be of particular relevance in deciding to impose the proposed financial penalty on ATCM:



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- a. 6.2.1(a) - the furtherance of the Regulator’s regulatory objectives under section 1(3) of the Regulations to:
 - i. Prevent, detect and restrain conduct that causes or may cause damage to the reputation of the ADGM through appropriate means including the imposition of sanctions; and
 - ii. Promote public understanding of the regulation of the ADGM;
 - b. 6.2.1(b) - the deterrent effect of a financial penalty and the importance of deterring other Authorised Persons from committing similar contraventions;
 - c. 6.2.1(c) - the nature, seriousness, duration and impact of the contraventions; and
 - d. 6.2.1(f) - ATCM’s conduct after the alleged contraventions.
- 7.3. With reference to paragraph 6.3 of the GPM (“Financial penalty, public censure or other enforcement action”), the Regulator has decided to impose a financial penalty, rather than a public censure or other enforcement action, given the number and seriousness of the contraventions. Where contraventions are more serious in nature or degree, on the basis that the sanction should reflect the seriousness of the contravention, other things being equal, the more likely it is that the Regulator will impose a financial penalty: GPM, paragraph 6.3.3(b).

Determination of the level of financial penalty

- 7.4. With reference to paragraph 6.4 of the GPM, the Regulator has taken into account the factors and considerations set out in the five-step framework in paragraph 6.5 of the GPM (“Financial penalties imposed on a firm”) in determining the level of the financial penalty it has decided to impose.

Step 1: Disgorgement

- 7.5. This step was not considered to be relevant.

Step 2 – The seriousness of the contravention

- 7.6. The Regulator considers ATCM’s failings to be serious because:



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- a. ATCM conducted unauthorised Regulated Activities and did not recognise its Client relationships and comply with important conduct of business requirements. This meant that the Clients with whom ATCM carried on Regulated Activities were not afforded certain regulatory protections in the ADGM;
 - b. The contraventions created regulatory risk, in particular:
 - i. The risk that ATCM carried on Regulated Activities with customers who may not have qualified as Professional Clients; and
 - ii. The risk that ATCM may have arranged access to Investments that were unsuitable to Retail Clients.
- 7.7. In considering the impact of ATCM's contraventions, the Regulator has had regard to the factors set out in paragraph 6.5.3 of the GPM, including that ATCM's contraventions of certain COBS Rules adversely affected Clients in that they were denied certain regulatory protections in the ADGM.
- 7.8. In considering the nature of ATCM's contraventions, the Regulator has had regard to the factors set out in paragraph 6.5.4 of the GPM, including that:
- a. ATCM's contraventions included the provision of false and misleading information to the Regulator. The Regulator considers this contravention to be serious in nature; and
 - b. ATCM's Senior Management were aware of the facts giving rise to ATCM's contraventions.
- 7.9. The Regulator has had regard to the factors set out in paragraphs 6.5.5 and 6.5.6 of the GPM and concluded that:
- a. ATCM's conduct in giving the Regulator information that was false or misleading was deliberate; and
 - b. ATCM's conduct in carrying on unauthorised Regulated Activities was reckless.
- 7.10. Taking the above factors into account, the Regulator considers that a financial penalty of \$400,000 appropriately reflects the seriousness of the contraventions.



Step 3 – Mitigating and aggravating factors

- 7.11. The Regulator considers that the following factors have a mitigating effect on ATCM's contraventions:
- a. ATCM was operating under the assumption, albeit an incorrect one, that ATCM's activities were permissible referral activities;
 - b. ATCM ceased material business on 13 August 2018;
 - c. ATCM cooperated with the Regulator by voluntarily undertaking to cease undertaking Regulated Activities on 19 February 2019;
 - d. ATCM commissioned an external compliance consultant to conduct an internal investigation into ATCM's activities during the Relevant Period; and
 - e. The Regulator has not previously made any adverse disciplinary or compliance findings against ATCM.
- 7.12. The Regulator considers that the following factors had an aggravating effect on ATCM's contraventions:
- a. ATCM did not disclose to the Regulator the nature and extent of its activities at an early stage, in circumstances where doing so would have avoided ATCM's contraventions from continuing;
 - b. ATCM's Senior Management were aware of the facts giving rise to ATCM's contraventions, and failed to take steps to obtain appropriate advice and stop ATCM's unauthorised activities from continuing;
 - c. ATCM's contraventions involved dealing with Retail Clients, in circumstances where ATCM's FSP contained a condition that ATCM could not deal with Retail Clients; and
 - d. ATCM did not fully cooperate with its enquiries, in that ATCM provided false and misleading information to the Regulator during the course of its enquiries.
- 7.13. Having taken the above factors into account, the Regulator considers that the aggravating factors and mitigating factors balance each other.



7.14. Accordingly, the figure after step 3 is \$400,000.

Step 4 – Adjustment for deterrence

7.15. Under paragraph 6.5.9 of the GPM, 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 it. Paragraph 6.5.9 of the GPM sets out the circumstances where the Regulator may do this.

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

7.17. Accordingly, the figure after step 4 is \$400,000.

Step 5 – Adjustment for cooperation/early settlement

7.18. 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, paragraph 6.5.10 of the 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.

7.19. The Regulator and ATCM have reached an agreement on the relevant facts and matters relied on, the regulatory action to be taken and the financial penalty to be imposed. Having regard to the stage at which this agreement has been reached and in recognition of the benefit of this agreement, the Regulator has applied a 20% discount to the level of the financial penalty which it would have otherwise imposed.

7.20. Accordingly, the figure after step 5 is \$320,000.



8. PROCEDURAL MATTERS

Settlement

8.1. The Regulator and ATCM have reached an agreement on the relevant facts and matters relied on, the regulatory action to be taken and the financial penalty to be imposed. In agreeing to the action set out in this Final Notice and deciding to settle this matter, ATCM has agreed to waive its right to receive a Warning Notice pursuant to section 246 of the Regulations and a Decision Notice pursuant to section 248 of the Regulations and agreed to not refer this matter to the Regulatory Committee.

Payment of Financial Penalty

8.2. The financial penalty imposed by this Final Notice is to be paid by ATCM on or before 15 January 2020.

8.3. 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 details	[REDACTED]
Swift Code	[REDACTED]
Reference	[REDACTED]

8.4. In the event that 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 as a debt by the Regulator.



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Publicity

- 8.5. As this Final Notice has now been issued, pursuant to section 252(3) of the Regulations the Regulator may publish the details about the matter 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).
- 8.6. The Regulator proposes to 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:



Richard Teng
Chief Executive Officer
Financial Services Regulatory Authority