



9 June 2022

Ava Trade Middle East Limited  
16-117, 16th Floor  
Al Khatem Tower  
ADGM Square  
Al Maryah Island  
Abu Dhabi  
United Arab Emirates

Attention: [REDACTED]

Sent by e-mail: [REDACTED]

Dear [REDACTED]

**PENALTIES & ADMINISTRATIVE FEE(S) IMPOSED FOR CONTRAVENTIONS OF THE COMMON REPORTING STANDARD REGULATIONS 2017**

1. This notice is issued by the Financial Services Regulatory Authority ("FSRA") of the Abu Dhabi Global Market ("ADGM") on Ava Trade Middle East Limited ("ATME") pursuant to subsection 9(1) of the *Common Reporting Standard Regulations 2017* (the "Regulations").

**Defined Terms**

2. Terms defined in the notice are defined at the first instance the term is used in parentheses. Other capitalised terms are defined in the Regulations and shall bear the same meaning in this notice, unless the context otherwise requires.

**SUMMARY**

3. The FSRA has decided to:
  - a. impose the penalty and Administrative Fee(s) of AED 119,000; and
  - b. direct ATME to undertake and complete remedial actions, as approved by the FSRA, to ensure compliance with the Regulations.
4. This is because the FSRA considers that ATME has failed to:
  - a. apply due diligence procedures as required by the Regulations, by not conducting reviews to confirm reasonableness of self-certifications received with respect to New Individual Accounts, in contravention of the requirements set out at Schedule 1, Part 4, paragraph A of the Regulations;

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- b. document its due diligence procedures and keep records of the due diligence procedures performed, including the evidence relied upon as part of due diligence and the measures undertaken to obtain those records, in contravention of subsection 6(1) and Schedule 1, Part 2, paragraph A of the Regulations;
- c. report information required to be reported by the Regulations in a complete and accurate manner, by failing to accurately report the jurisdictions of residence of four (4) of its Clients, in contravention of subsection 3(1) and Schedule 1, Part 1, paragraph A of the Regulations; and
- d. obtain from its Clients self-certification forms, in contravention of subsection 7B(1) of the Regulations,

and accordingly, subsection 7(1) of the Regulations applies.

## **BACKGROUND**

- 5. The Organisation for Economic Co-operation and Development (“OECD”) developed the Common Reporting Standard (“CRS”), which came into force in October 2014. The CRS was established in the United Arab Emirates (“UAE”) with effect from 1 January 2017 pursuant to ratification of various conventions and declarations by the UAE, and publication of Federal Law No. 54 of 2018.
- 6. The OECD Standard sets out the required information to be exchanged, the types of entities required to report, the different types of financial accounts and account holders in scope and the common due diligence procedures to be followed by Reporting Financial Institutions (“RFIs”).
- 7. Appropriate legislation to support implementation of CRS in the UAE has been issued in both the UAE and in the ADGM. This includes the enactment of the Regulations by the Board of Directors of ADGM in 2017. The Regulations include the CRS and any explanatory material and commentary published by the OECD in relation to CRS pursuant to subsection 2(1) of the Regulations.
- 8. On 27 January 2017, the ADGM published the ‘*Notification of collection of information under the Common Reporting Standards*’ prepared by the UAE’s Ministry of Finance, setting out the requirement for implementation of CRS across all jurisdictions within the UAE.
- 9. On 6 February 2020, ATME was granted a Financial Services Permission (“FSP”) by the FSRA under which it was permitted to undertake the Regulated Activities of “*Arranging Deals in Investments*” and “*Dealing in Investments as Principal*” limited to acting only as a Matched Principal, as described in the FSRA Prudential – Investment, Insurance Intermediation and Banking Rules module of the FSRA Rulebook; and conditions attached to its FSP concerning OTC Derivatives being offered to Retail Clients.
- 10. ATME is an RFI pursuant to Schedule 1, Part 8, subparagraph A(1) of the Regulations.
- 11. On 25 June 2020, the FSRA published Notice No. 8 of 2020 addressed to Senior Executive Officers (“SEOs”) and Compliance Officers of RFIs to inform them of amendments to the Regulations which included two new sanctions and various miscellaneous amendments to the Regulations. The Notice also stated that, to ensure that all Account Holders and Controlling Persons have current self-certifications as required by the amendments, the FSRA required all RFIs to obtain new self-certifications from all Account Holders and Controlling Persons within six months from the date of the notice and maintain records of the same on file.

12. On 25 June 2021, ATME submitted its 2020 CRS return.
13. On 21 September 2021, the FSRA published Notice No. 25 of 2021, informing SEOs and Money Laundering Reporting Officers (“MLROs”) of the UAE’s CRS Compliance Programme designed by the Ministry of Finance and communicated to the relevant UAE Regulatory Authorities (including the FSRA) at the end of August 2021 for implementation by those Regulatory Authorities, enclosing links to training materials. The FSRA stated that it would shortly be in contact to provide a “Self-Certification” form that would need to be completed by each entity licensed by ADGM.
14. On 28 September 2021, the FSRA sent Notice No. 26 of 2021 to SEOs and MLROs regarding the UAE’s CRS Compliance Programme, which required RFIs to complete and submit to the FSRA their Self-Certification form by 7 October 2021.
15. On 8 October 2021 ATME submitted its completed ‘UAE FATCA and CRS Entity Self-Certification Form’ to the FSRA.
16. On 10 October 2021, the FSRA sent a letter to ATME informing ATME of its proposed review of ATME’s activities and operations conducted in relation to CRS (the “Review”), including an on-site inspection (the “Inspection”) to be conducted at ATME’s offices on 9 November 2021. The FSRA requested that ATME complete the ‘CRS Compliance Programme Questionnaire’ (“CRS Questionnaire”) and submit it together with the additional information set out in the Appendix by no later than 21 October 2021.
17. On 21 October 2021 ATME submitted its response to the CRS Questionnaire.
18. On 9 November 2021 the FSRA conducted the Inspection as part of the Review to assess ATME’s compliance with the Regulations.
19. During the Review and Inspection, the FSRA assessed ATME’s compliance with the Regulations in relation to Reportable Accounts for the period from 1 January 2020 to 31 December 2020 (the “Relevant Period”) and as submitted in its 2020 CRS return.

#### **FAILURE TO APPLY DUE DILIGENCE PROCEDURES & FAILURE TO KEEP RECORDS**

20. As an RFI, ATME is required to comply with Schedule 1, Part 4, paragraph A of the Regulations, which sets out the review procedures that RFIs must apply for New Individual Accounts to determine the residence of the Account Holder for tax purposes. This includes obtaining a self-certification that allows the RFI to determine the Account Holder’s residence(s) for tax purposes and a requirement to confirm the reasonableness of such self-certification based on the information obtained by the RFI in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.
21. Subsection 6(1) of the Regulations requires every RFI to keep records of steps undertaken and any evidence relied upon for the performance of the due diligence procedures and the measures to obtain those records that the RFI obtains or creates for the purpose of complying with these Regulations. Furthermore, Schedule 1, Part 2 of the Regulations sets out that an RFI must establish, maintain and document the due diligences procedures set out in Parts 2 through 7 of Schedule 1 of the Regulations that are designed to identify Reportable Accounts.
22. According to ATME, it receives applications to open accounts from prospective Clients through its website with the URL: [www.avatrade.ae](http://www.avatrade.ae) (the “Website”), where applicants submit via a portal their application and related information, declarations and supporting documents.

23. Pursuant to ATME's Client onboarding process, applicants are required to make declarations in relation to CRS obligations. In practice, this requires ATME's Clients to tick a checkbox to agree to the following tax residency declaration:

*"I declare that I am a resident of the United Arab Emirates and that I have not been issued a Tax Identification Number ("TIN") or pay taxes in any other country".*

24. The Review and Inspection found, based on a review of the files provided by ATME and interviews with relevant ATME staff, that:
- a. the declaration referred to in paragraph 23 above ("UAE Resident Declaration") is used by ATME as the Client's self-certification form for CRS purposes;
  - b. if the UAE Resident Declaration is not ticked, potential Clients will not be able to proceed to open their account;
  - c. there is no other CRS self-certification template available for completion and submission on the portal available on the Website;
  - d. there is no facility for existing or prospective Clients to declare that they are a tax resident anywhere outside of the UAE and specify their jurisdiction(s) of tax residency;
  - e. the UAE Resident Declaration does not prompt or lead its prospective Clients to answer any other standard OECD-recommended fields for completion as part of a suitable self-certification forms, for example, any countries of tax residence other than the UAE, or Taxpayer Identification Numbers ("TINs"); and
  - f. ATME's application and on-boarding process on its Website does not have the facility for Clients to upload Documentary Evidence that confirms the Account Holder's tax residence.
25. An Account Holder may be resident for tax purposes in two or more jurisdictions. ATME's onboarding facility does not allow its potential Clients to declare any tax residency outside of the UAE.
26. During the Inspection, ATME advised the FSRA that it considered the UAE Resident Declaration to be sufficient to comply with the Regulations' self-certification requirements because all its customer accounts are based in the UAE. However, based on the documents obtained from ATME and reviewed by FSRA during the Review, sixty-five (65) ATME Clients held passports from jurisdictions outside of the UAE, and accordingly may also hold tax residences outside of the UAE.
27. Later, ATME acknowledged that the UAE Resident Declaration did not adequately address the requirements of the Regulations and CRS more generally as specified by the OECD. In November 2021, ATME commenced a remediation exercise under which it has requested each of its Clients to complete and submit self-certification forms in a standardised template by email, and included ex-UAE tax residence information including TINs within its online registration process.
28. As part of its remediation exercise, ATME provided the FSRA with a sample of remediated self-certifications following the Inspection. The FSRA found that at least four (4) ATME Clients who were onboarded during the Relevant Period had declared in their self-certification form their tax residence in Reportable Jurisdictions outside of the UAE.

29. In addition to the UAE Resident Declaration being inadequate, the Inspection found that ATME had failed to undertake and document any form of assessment of reasonableness of the UAE Resident Declaration for any of the Client accounts held with ATME. Prior to the Inspection, ATME had not required its Clients to complete and submit to ATME their self-certification form. In the absence of these self-certification forms, ATME did not and could not undertake any due diligence on its Clients to verify their jurisdictions of tax residence(s). During the Inspection, the FSRA found that ATME did not have available for review any documents recording the steps undertaken to ascertain the reasonableness of self-certifications.
30. Further, the Inspection found that ATME's onboarding system did not enable it to register information related to compliance with the Regulations and that ATME did not have available for review other documentation necessary for it to use to confirm the reasonableness of self-certifications.
31. Therefore, the FSRA considers that ATME has contravened subsection 6(1) and Schedule 1, Part 4, paragraph A of the Regulations.

#### **NEW ACCOUNT OPENING CONTRAVENTION**

32. As mentioned in paragraph 24 above, ATME did not obtain self-certification forms from any of the eighty (80) Clients that were onboarded during the Relevant Period.
33. ATME only started collecting this information in or around October 2021 following receipt of the letter from the FSRA regarding the Inspection.
34. By virtue of opening New Accounts without obtaining a valid self-certification and/or failing to validate such self-certification, ATME had contravened subsection 7B of the Regulations.

#### **FAILURE TO REPORT INFORMATION REQUIRED TO BE REPORTED IN A COMPLETE AND ACCURATE MANNER**

35. Schedule 1, Part 1, paragraph A of the Regulations provides that each RFI must collect and report to the UAE Competent Authority (whether directly or indirectly via the Regulatory Authority) certain information with respect to each Reportable Account.
36. Schedule 1, Part 8, subparagraph D(1) of the Regulations defines a 'Reportable Account' as "...a *Financial Account that is maintained by a Reporting Financial Institution and is held by one or more Reportable Persons...*"
37. Schedule 1, Part 8, subparagraph D(2) of the Regulations defines a 'Reportable Person' as "...a *Reportable Jurisdiction Person...*" and subparagraph D(3) of the Regulations defines a Reportable Jurisdiction as (broadly speaking) a jurisdiction other than the United States of America or the UAE.
38. As mentioned in paragraph 28 above, as part of the remediation exercise conducted by ATME following the Inspection, the FSRA reviewed a sample of remediated self-certifications of thirty-eight (38) ATME Clients provided by ATME.
39. Based on that review, the FSRA identified at least four (4) Clients who had declared that they are tax resident in countries other than the UAE. The relevant Clients are identified as Clients 1 to 4 in Annexure A to this notice.

40. ATME submitted its 2020 CRS return reporting sixty-seven (67) Individual Accounts and three (3) Entity Accounts for the year ended 31 December 2020. According to ATME, all Account Holders reported were resident in the UAE only. The UAE is not a Reportable Jurisdiction under the Regulations. Therefore, ATME reported accounts that if the information they held as to tax residence was correct, were not Reportable Accounts.
41. The four (4) Clients referred to in paragraph 39 above, however, were inaccurately reported by ATME as tax residents of the UAE only, as ATME held information indicating they were also tax resident in other jurisdictions which were Reportable Jurisdictions pursuant to the Regulations. Accordingly ATME reported incomplete and/or inaccurate information in relation to the accounts of Clients 1 to 4 which were in fact Reportable Accounts.
42. Therefore, the FSRA considers that ATME has contravened Schedule 1, Part 1, subparagraph A(1) of the Regulations, by failing to collect and report information that is required to be reported under the Regulations in a complete and accurate manner.

### **PENALTIES, FEES AND DIRECTIONS**

43. The FSRA consider ATME to have contravened the Regulations as set out in paragraph 4 above. The penalties/Administrative Fees for contravention of the Regulations are set out in Schedule 2 of the Regulations.
44. The total penalty/Administrative Fees imposed by the FSRA on ATME is AED 119,000.
45. The breakdown of the penalties/Administrative Fees imposed by the FSRA on ATME pursuant to the Regulations in effect as at 30 June 2021 is as follows:

<b>No</b>	<b>Contravention</b>	<b>Penalty/Late Reporting Fee</b>	<b>Penalty/Administrative Fee imposed by the FSRA on ATME</b>
1.2	A Reporting Financial Institution fails to keep records of the due diligence procedures performed under the Regulations, or fails to keep them for a period of six (6) years pursuant to the requirements of the Regulations.	AED 10,000 penalty	<b>AED 10,000</b>
1.3	A Reporting Financial Institution fails to apply the due diligence procedures specified in Schedule 1, Part 2 through to Part 7 in Schedule 1.	AED 25,000 penalty	<b>AED 25,000</b>
1.5	A Reporting Financial Institution fails to report the information required to be reported in terms of these Regulation in a complete and accurate manner.	<u>Minor non-compliance:</u> AED 1,000 Administrative Fee  and  AED 100 Administration Fee for every day the	<b>AED 1,000 x 4 = AED4,000</b>

		failure continues up to of AED 25,000 in Administrative Fees  <u>Significant non-compliance</u> AED 250,000 penalty	
1.8	A Reporting Financial Institution who opens a New Account for an Account Holder without receiving from the Account Holder within ninety (90) days from opening such account the personal information of the Account Holder and the required supporting documents.	AED 1,000 penalty	<b>AED 1,000 x 80 = AED 80,000</b>
<b>Total penalty/Administrative Fee</b>			<b>AED 119,000</b>

#### The Direction

46. The FSRA directs that ATME must, within a scope and timeframe to be approved by the FSRA:
- a. undertake a review of its systems, controls, policies and procedures relevant to compliance with the Regulations;
  - b. submit to the FSRA for its approval a plan of remedial actions required to ensure compliance with the Regulations; and
  - c. undertake and complete the remedial actions, as approved by the FSRA under b. above.
47. The directions under paragraph 46 above shall cease to have effect when ATME can demonstrate to the satisfaction of the FSRA that it has complied with the direction.

#### PROCEDURAL MATTERS

##### Appeal in relation to the penalty/Administrative Fee(s) imposed

48. Under subsection 10(2), Part 1 of the Regulations, ATME has until **5:00p.m.** on **29 June 2022** to make an appeal **in writing** to the FSRA, setting out the grounds of appeal, in relation to the penalty or Administrative fee, or both, imposed.
49. In accordance with subsection 10(1) of the Regulations, ATME may appeal against any penalty or Administrative Fee, or both, on the following grounds:
- a. it disputes the grounds or reasons for the penalty or Administrative Fee, or both, provided by the FSRA;
  - b. it disputes the amount of the penalty or Administrative Fee, or both, imposed; or
  - c. it disputes the validity of any action ordered by the FSRA.

50. Any appeal made should be addressed to:

[REDACTED]  
Financial Services Regulatory Authority  
Abu Dhabi Global Market Square  
Al Maryah Island  
Abu Dhabi  
United Arab Emirates

Email: [REDACTED]

51. If an appeal within time is made to the FSRA, the FSRA will consider the appeal and provide a written notice of its decision to ATME within forty (40) days of the appeal.

**Manner and time for payment of penalty/Administrative Fee(s)**

52. In the event that an appeal is not made to the FSRA, then AED 39,000 of the penalty/Administrative Fee(s) imposed pursuant to this notice is to be paid by ATME within twenty (20) days after the date of this notice, i.e. on or before **29 June 2022**, and the remaining AED 80,000 is to be paid by ATME within thirty (30) days after the date of this notice i.e. on or before **9 July 2022**.

53. Payment of the penalty/Administrative Fee(s) 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]

54. If the penalty/Administrative Fee(s) or any part of it remains outstanding on the date by which it must be paid, the obligation to make the payment is enforceable as a debt by the FSRA.

**Publicity**

55. The FSRA will generally publish, in a manner we consider appropriate and proportionate, information and statements relating to enforcement action. The publication of enforcement outcomes is consistent with the FSRA's commitment to open and transparent processes and our objectives.



Yours sincerely



Abu Dhabi Global Market Financial Services Regulatory Authority

## ANNEXURE A – CLIENT DETAILS

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]