



ABU DHABI GLOBAL MARKET
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FINAL NOTICE

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

To: **Mr. Man Chung TSUI**
C/- 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 impose on Mr. Tsui a financial penalty of \$40,000 under section 232 of the *Financial Services and Markets Regulations 2015* (the "Regulations") for the contraventions of the Regulations and Rules made under the Regulations, as set out in this Final Notice.
- 1.2. Mr. Tsui 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 \$50,000 on Mr. Tsui.
- 1.3. Mr. Tsui has voluntarily agreed to withdraw from his roles as the Senior Executive Officer ("SEO") and an Licensed Director ("LD") of AT Capital Markets Limited ("ATCM") and has voluntarily agreed not to perform any Controlled Function in relation to any Regulated Activity in the Abu Dhabi Global Market ("ADGM") for a period of 3 years from the date of this Final Notice.



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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 impose a financial penalty on Mr. Tsui following an investigation (the “Investigation”) which found that between 26 February 2018 to 6 August 2018 (the “Relevant Period”), Mr. Tsui contravened Regulations and Rules, as described below.
- 3.2. Over the period from 28 March 2018 to the date of this Final Notice, Mr. Tsui was the SEO and a LD of ATCM. Mr. Tsui was a director of ATCM from the date of its incorporation on 29 November 2017 to the date of this Final Notice.
- 3.3. ATCM is an online brokerage company licensed to provide trading services in foreign exchange and CFDs in indices, precious metals and energies.
- 3.4. On 28 March 2018, the Regulator granted ATCM a Financial Services Permission (“FSP”), which:
 - a. Permitted ATCM to undertake the Regulated Activities of:
 - i. Dealing in Investments as Principal (only as Matched Principal); and
 - ii. Arranging Deals in Investments;
 - b. Included a condition that ATCM was not permitted to deal with Retail Clients.



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- 3.5. As the SEO and a LD of ATCM, Mr. Tsui was an Approved Person for the purposes of the Regulations and Rules. Mr. Tsui was responsible for the day-to-day activities of ATCM and had significant responsibility for ensuring that ATCM complied with its requirements under the Regulations and Rules.
- 3.6. The Investigation found, amongst other things, that at various points in the Relevant Period, Mr. Tsui:
- a. Knowingly or recklessly gave the Regulator information that was false or misleading, in contravention of section 221 of the Regulations;
 - b. Was knowingly concerned in ATCM's contravention of section 16 of the Regulations whereby it carried on Regulated Activities in the ADGM prior to it being granted an FSP, in the period from 26 February 2018 to 27 March 2018;
 - c. Was knowingly concerned in ATCM's contravention of section 17 of the Regulations whereby it carried on Regulated Activities with Retail Clients without a Retail Endorsement and in circumstances where ATCM's FSP included a specific condition that it would not deal with Retail Clients in the period from 28 March 2018 to 6 August 2018;
 - d. Was knowingly concerned in ATCM's contraventions of certain Conduct of Business Rulebook ("COBS") 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; and
 - e. Was knowingly concerned in ATCM's contravention of Rule 8.10.7(e) of GEN in that he failed to immediately notify the Regulator of allegations of fraudulent conduct by certain of its employees.
- 3.7. The Regulator considers that Mr. Tsui, as the SEO and a LD of ATCM, contravened the following Principles for Approved Persons and Recognised Persons:
- a. **Principle 2 – Due skill, care and diligence:** by failing to act with due skill care and diligence in carrying out the Controlled Functions of SEO and LD of ATCM;
 - b. **Principle 4– Relations with Regulators:** by failing to deal with the Regulator in an open and co-operative manner and to disclose appropriately any information of which the Regulator would reasonably expect to be notified; and



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- c. **Principle 6 – Compliance:** by failing, as the SEO and a LD of ATCM, to ensure that the business of ATCM for which he was responsible complies with any Regulations and Rules.

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 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 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".



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- 4.5. Mr. Tsui was the SEO and a LD of ATCM from 28 March 2018 to the date of this Notice and a director of ATCM from 29 November 2017 to the date of this Notice.
- 4.6. As the SEO and a LD of ATCM, Mr. Tsui was an Approved Person for the purposes of the Regulations and Rules, and was responsible for the day-to-day activities of ATCM, with significant responsibility for ensuring that ATCM complied with its requirements under the Regulations and Rules.

ATCM's Unauthorised Activities

- 4.7. The Investigation found that over the period from 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.

- 4.8. 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.
- 4.9. The activities of ATCM (including the Sales Representatives of both Sales Teams) over the period from 26 February 2018 to 27 March 2018 included:



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- 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 Entity;
 - e. ATCM Employees having direct access to the customer service email accounts and 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 ATCM Related Entity accounts and assist Clients in the operation of their ATCM Related Entity accounts.
- 4.10. Over the period from 26 February 2018 to 27 March 2018, ATCM arranged the on-boarding of 25 Clients to the ATCM Related Entities.
- 4.11. The Investigation found that Mr. Tsui was actively involved in ATCM having 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, Mr. Tsui 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 ATCM's 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.
- 4.12. In the period between 26 February 2018 and the grant of ATCM's FSP on 28 March 2018, Mr. Tsui directed and was actively involved in the activities of ATCM's Sales Teams, Sales Managers and Sales Representatives. This included:



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- 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 Representative 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.
- 4.13. Over the period from around early January 2018 to 27 March 2018, communications involving Mr. Tsui demonstrate that:
- a. He knew of and was actively involved in ATCM assisting the ATCM Related Entities to on board clients prior to the grant of its FSP; and
 - b. Concerns were raised with Mr. Tsui about ATCM's activities prior to the grant of ATCM's FSP on 28 March 2018. This should have caused him to take immediate steps to obtain appropriate advice and stop ATCM's activities. However, Mr. Tsui did not take such steps. Whilst there was some evidence to suggest that Mr. Tsui relied on incorrect advice provided by compliance consultants in deciding not to stop its activities, the Regulator considers that Mr. Tsui did not take adequate steps to ensure that he obtained accurate and informed advice so that he understood what activities ATCM could legitimately undertake in the ADGM.
- 4.14. Further, the Investigation found that Mr. Tsui provided false and misleading information to the Regulator in relation to ATCM's activities, as described in this Final Notice.



ATCM's Unauthorised Dealings with Retail Clients

- 4.15. The Investigation found that ATCM conducted the Regulated Activities of Arranging Deals in Investments with up to 138 Clients, including 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.
- 4.16. 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.
- 4.17. 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.
- 4.18. 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.
- 4.19. Mr. Tsui understood that ATCM was carrying out activities with Retail Clients. Mr. Tsui has maintained that he did not understand that ATCM's activities amounted to Regulated Activities. However, Mr. Tsui, as the CEO of ATCM with significant responsibility for ensuring that ATCM complied with its requirements under the Regulations and Rules, should have taken steps to ensure that ATCM's activities were compliant.

ATCM's Conduct of Business and Anti-Money Laundering Failings

- 4.20. 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 that its unauthorised activities did not amount to the carrying on of Regulated Activities. However, ATCM's Senior Management, including Mr. Tsui, knew the full extent of activity



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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 as Clients of their own.

- 4.21. As a result, up to 138 Clients with whom ATCM carried on Regulated Activities from the date it was granted to 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.
- 4.22. In addition, in respect of each of the Clients ATCM 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.
- 4.23. As the SEO of ATCM, Mr. Tsui had ultimate responsibility for the day-to-day activities of ATCM and should have taken reasonable steps to ensure that ATCM complied with applicable COBS and AML requirements. The Investigation found that Mr. Tsui was aware that ATCM engaged with Retail Clients, but failed to take reasonable steps to ensure that ATCM recognised its Client relationships and, accordingly, complied with the applicable COBS and AML requirements.

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

- 4.24. In or around early June 2018, Mr. Tsui, on behalf of ATCM, received a complaint from a person representing four individuals who had been contacted by a member of ATCM's



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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.

- 4.25. Over the period from early June 2018 to around 18 June 2018, ATCM and its Senior Management, including Mr. Tsui, 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.
- 4.26. On 18 June, 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.
- 4.27. After seeking legal advice and conducting an investigation into the complaint, ATCM arranged for the relevant 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 ..."

- 4.28. As a result of ATCM's concerns that some members of the Indian Sales Teams may have engaged in fraudulent conduct, ATCM took steps to initiate the closure of all Client accounts with ATCM Related Entities that were opened with the assistance of the Indian Sales Team.
- 4.29. 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."

- 4.30. ATCM was therefore required to notify the Regulator immediately 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.



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4.31. 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, Mr. Tsui 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

4.32. On 9 July 2018, the Regulator conducted a meeting with ATCM, represented by Mr. Tsui and others. At the meeting, Mr. Tsui 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 Mr. Tsui stated that:
 - i. ATCM had not conducted any activities that involved contacting potential Clients or Clients; and
 - ii. 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. Mr. Tsui knew this. Therefore Mr. Tsui's description of ATCM's activities at the meeting was misleading.

- b. The start date and the reason for the termination of employment of the Indian Sales Team, in that Mr. Tsui 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



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- 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);

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). Mr. Tsui knew this. Therefore the information he provided at the meeting was misleading.

4.33. 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. Mr. Tsui 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, Mr. Tsui sent a communication to the Regulator in which he 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 ATCM had received concerning certain members of that team.

4.34. On 29 August 2018, Mr. Tsui sent a communication to the Regulator in which he 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.”



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4.35. This statement was misleading, as evidence demonstrates that Mr. Tsui knew that ATCM had more than “*limited involvement*” in the collection of KYC documentation. Further, Mr. Tsui did not disclose ATCM’s other involvement with clients, which included ongoing contact between ATCM employees and clients to induce and facilitate the funding of accounts and ATCM’s employees being assigned as the point of contact for client accounts.

5. CONTRAVENTIONS

5.1 The Regulator considers that Mr. Tsui contravened the following Regulations and Rules:

Principle Breaches

- a. Rule 2.4.2 of GEN - The Principles for Approved Persons and Recognised Persons Principle 2 – Due skill, care and diligence – by failing to act with due skill, care and diligence in carrying out the Controlled Functions of SEO and LD;
- b. Rule 2.4.4 of GEN - The Principles for Approved Persons and Recognised Persons Principle 4 – Relations with Regulators – by failing to deal with the Regulator in an open and co-operative manner and failing to disclose appropriately information of which the Regulator reasonably expected to be notified;
- c. Rule 2.4.6 of GEN - The Principles for Approved Persons and Recognised Persons Principle 6 – Compliance - by failing to take reasonable care to ensure that the business of ASTFX for which he was responsible complied with Regulations and Rules;

Knowingly Concerned in ATCM's Perimeter Breaches

- d. Section 16 of the Regulations – The General Prohibition – in that Mr. Tsui was knowingly concerned in ATCM carrying on unauthorised Regulated Activities in the ADGM in the period from 26 February 2018 to 27 March 2018;
- e. Section 17 of the Regulations – Authorised Person acting without a Financial Services Permission – in that Mr. Tsui was knowingly concerned in ATCM carrying on Regulated Activities with Retail Clients without permission in the period from 28 March 2018 to 13 August 2018;



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Provision of False or Misleading Information

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

Knowingly Concerned in ATCM's Notification Failings

- g. Rule 8.10.7(e) of GEN – in that Mr. Tsui was knowingly concerned in ATCM failing to notify the Regulatory immediately once it became aware that an Employees may have been guilty of serious misconduct concerning his honesty or integrity;

Knowing Concern in ATCM's Conduct of Business Failings

- h. Rule 2.2.1 of COBS - Client Classification – in that Mr. Tsui was knowingly concerned in ATCM failing to undertake a Client classification to ensure that each of its Clients with whom it carried on Regulated Activities were Professional Clients;
- i. Rule 3.3.2 of COBS – Client Agreement and Key Information – in that Mr. Tsui was knowingly concerned in ATCM 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 - in that Mr. Tsui was knowingly concerned in ATCM 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;

Knowingly Concerned in ATCM's Anti-Money Laundering Failings

- k. Rule 7.1.1 of AML – Customer anti-money laundering risk assessment – in that Mr. Tsui was knowingly concerned in ATCM 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 - in that Mr. Tsui was knowingly concerned in ATCM failing to undertake customer due diligence prior to establishing a business relationship with each of its customers.



6. SANCTION

The Financial Penalty

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

Determination to impose a financial penalty

6.2. 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 Mr. Tsui:

- 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 persons from committing similar contraventions; and
- c. 6.2.1(c) - the nature, seriousness, duration and impact of the contraventions, including that Mr. Tsui’s contraventions in respect of misleading the Regulator were deliberate.

6.3. 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

6.4. With reference to paragraph 6.4 of the GPM (“Determining the appropriate level of financial penalty”), the Regulator has taken into account the factors and considerations set out in the five-step framework paragraph 6.6 of the GPM (“Financial penalties imposed on an individual”) in determining the level of the financial penalty it has decided to impose.

Step 1: Disgorgement

6.5. This step was not considered to be relevant.

Step 2 – The seriousness of the contravention

6.6. The Regulator considers Mr. Tsui’s failings to be serious because:

- a. Mr. Tsui’s contraventions include misleading the Regulator;
- b. Mr. Tsui’s involvement in ATCM’s failure to recognise Client relationships and comply with important conduct of business requirements meant that the customers with whom ATCM carried on Regulated Activities were not afforded certain regulatory protections in the ADGM;
- c. Mr. Tsui’s conduct in misleading the Regulator was deliberate; and
- d. The contraventions created regulatory risk, in particular:
 - i. The risk that ATCM carried on Regulated Activities with customers who would not have qualified as Professional Clients; and
 - ii. The risk that ATCM arranged access to Investments that were unsuitable to Clients.

6.7. In considering the impact of Mr. Tsui’s contraventions, the Regulator has had regard to the factors set out in paragraph 6.6.3 of the GPM, including that Mr. Tsui’s involvement in ATCM’s breaches of certain COBS Rules adversely affected Clients in that they were denied certain regulatory protections in the ADGM.



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- 6.8. In considering the nature of Mr. Tsui's contraventions, the Regulator has had regard to the factors set out in paragraph 6.6.4 of the GPM, including that:
- a. Mr. Tsui'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. Mr. Tsui's contraventions also included being knowingly involved in ATCM's unauthorised carrying on of Regulated Activities in the ADGM. The Regulator also considers these contraventions to be serious in nature.
- 6.9. Taking the above factors into account, the Regulator considers that a financial penalty of \$50,000 appropriately reflects the seriousness of the contraventions.

Step 3 – Mitigating and aggravating factors

- 6.10. The Regulator considers that the following factors have a mitigating effect on Mr. Tsui's contraventions:
- a. Mr. Tsui was operating under the assumption, albeit an incorrect one, that ATCM's activities were permissible referral activities;
 - b. ATCM ceased material business activities on 13 August 2018;
 - c. ATCM cooperated with the Regulator by voluntarily agreed to ceased doing any regulated business 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 Mr. Tsui.
- 6.11. The Regulator considers that the following factors had an aggravating effect on Mr. Tsui's contraventions:



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- a. Mr. Tsui did not disclose to the Regulator the nature and extent of ATCM's activities at an early stage, in circumstances where doing so would have avoided ATCM's contraventions from continuing;
 - b. Mr. Tsui was 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, and ATCM's FSP contained a condition that ATCM could not deal with Retail Clients. In these circumstances, Mr. Tsui, as the CEO of ATCM, should have taken care to ensure that ATCM did not deal with Retail Clients; and
 - d. Mr. Tsui did not fully cooperate with the Regulator's enquiries in that he provided false and misleading information to the Regulator during the course of its enquiries.
- 6.12. Having taken the above factors into account, the Regulator considers that the aggravating factors and mitigating factors balance each other.
- 6.13. Accordingly, the figure after step 3 is \$50,000.

Step 4 – Adjustment for deterrence

- 6.14. Under paragraph 6.6.9 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 person that committed the contraventions, or others, from committing further or similar contraventions, then the Regulator may increase it. Paragraph 6.6.9 of the GPM sets out the circumstances where 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 Mr. Tsui 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.
- 6.16. Accordingly, the figure after step 4 is \$50,000.

Step 5 – Adjustment for cooperation/early settlement



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- 6.17. Where the Regulator and the person on which the financial penalty is to be imposed come to an agreement on the amount of the financial penalty, paragraph 6.6.10 of the GPM provides that the amount of the financial penalty which might have otherwise been payable may be reduced to reflect the stage at which the agreement is reached.
- 6.18. The Regulator and Mr. Tsui 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.
- 6.19. Accordingly, the figure after step 5 is \$40,000.
- 6.20. Having taken into account the facts, matters and circumstances of the contraventions, the Regulator has decided to impose on Mr. Tsui a financial penalty of \$40,000.

7. PROCEDURAL MATTERS

Settlement

- 7.1. The Regulator and Mr. Tsui 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, Mr. Tsui has agreed to waive his 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

- 7.2. The financial penalty imposed by this Final Notice is to be paid by Mr. Tsui on or before 15 January 2019.
- 7.3. Payment of the financial penalty can be made by electronic funds transfer into the following account:



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

7.4. 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.

Publicity

7.5. 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).

7.6. 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:

[REDACTED]

Richard Teng
Chief Executive Officer
Financial Services Regulatory Authority