



ABU DHABI GLOBAL MARKET
سوق أبوظبي العالمي

FINAL NOTICE

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

To: **Mr Alexander David Guy**



Date: 14 April 2019

1. DECISION

1.1 For the reasons given in this Notice, the Financial Services Regulatory Authority (the “Regulator”) has decided to impose on Mr Alexander David Guy (“Mr Guy” or “you”) a financial penalty of USD 10,000 under section 232 of the Financial Services and Markets Regulations 2015 (the “Regulations”) for the contravention set out below.

2. DEFINED TERMS

2.1 Defined terms are identified in the 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 a Rulebook, Glossary Module (“GLO”), or in the body of this Notice at the first instance the term is used. Unless the context otherwise requires, where capitalization of the initial word is not used, an expression has its natural meaning.

2.2 Annexure A to this Final Notice sets out regulations and rules relevant to this Final Notice.



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3. SUMMARY OF REASONS FOR THE DECISION

- 3.1 In the period from 16 May 2016 to 15 January 2019, Mr Guy was the Senior Executive Officer (“SEO”) and a Licensed Director (“LD”) of Eshara Capital Limited (“Eshara”).
- 3.2 As an Authorised Person under the Regulations and Rules, Eshara failed, without reasonable excuse, to ensure that required audit reports and regulatory returns were submitted to the Regulator within the required timeframe, and in doing so contravened relevant Rules in General Rulebook (“GEN”) and Prudential – Investment, Insurance Intermediation and Banking Rules (“PRU”).
- 3.3 As the SEO and LD of Eshara, Mr Guy was an Approved Person for the purposes of the Regulations and Rules with significant responsibility for ensuring that Eshara complied with its requirements under the Regulations and Rules, including the relevant reporting requirements. He also took on personal responsibility for all interactions between Eshara and the Regulator in relation to Eshara’s non-compliance with reporting requirements and to address the matter without the assistance of a CO (as at 30 June 2018).
- 3.4 The Regulator considers that Mr Guy failed to take reasonable care to ensure that Eshara complied with relevant reporting requirements. Accordingly, Mr Guy contravened Principle 6 of the Regulator’s Principles for Approved Persons and Recognised Persons GEN Rule 2.4.6, Principle 6 – *Compliance*, which requires each Approved Person “*who has significant responsibility must take reasonable care to ensure that the business of the Authorised Person for which he is responsible complies with any Regulations and Rules.*”
- 3.5 The Regulator considers Mr Guy’s contravention of GEN Rule 2.4.6 to be serious in that his conduct resulted in Eshara breaching fundamental financial and regulatory reporting requirements for an extended period of time, during which the Regulator did not have access to important information concerning the activities and financial resources of Eshara.
- 3.6 The Regulator has decided to impose on Mr Guy a financial penalty of USD 10,000.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1 On 12 May 2016, Eshara was granted a Financial Services Permission (“FSP”) by the Regulator to carry on the Regulated Activity of Managing a Collective Investment Fund in the ADGM. On 15 January 2019, the FSP of Eshara was withdrawn at Eshara’s request.



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- 4.2 In the period from 16 May 2016 to 15 January 2019, Mr Guy was the SEO and a LD of Eshara.
- 4.3 As the SEO of Eshara, Mr Guy had significant responsibility to ensure that Eshara complied with its requirements under the Regulations and Rules.

Eshara's Failure to submit required audit reports and regulatory returns

- 4.4 Authorised Persons are required under various Rules to submit, amongst other things, audit reports and regulatory returns (respectively) to the Regulator within specific timeframes.
- 4.5 The Regulator places considerable importance on the timely submission by Authorised Persons of these reports. The information contained in these reports are essential to the Regulator's assessment of whether the Authorised Person is complying with the requirements and standards of the regulatory system and to the Regulator's understanding of Eshara's Regulated Activities.
- 4.6 As an Authorised Person, Eshara was required to submit, or arrange for and ensure the submission of, the following reports and returns to the Regulator during the course of 2018:
- a. annual Financial Statements Auditor's Report for the 2017 Financial Year, which was required to be submitted by 30 April 2018;
 - b. annual Regulatory Returns Auditor's Report for the 2017 Financial Year, which was required to be submitted by 30 April 2018;
 - c. annual Prudential Return for the 2017 Financial Year, which was required to be submitted through the Electronic Prudential Returns System ("EPRS") and is also referred to as the Expenditure Based Capital Required Filing (EBC Required Filing), by 30 April 2018; and
 - d. the following quarterly returns, which were required to be submitted to the Regulator through EPRS one month after the end of the relevant quarter:
 - i. quarterly return for the first quarter of 2018 ("1Q 2018"), which was required to be submitted by 30 April 2018;
 - ii. quarterly return for the second quarter of 2018 ("2Q 2018"), which was required to be submitted by 31 July 2018; and
 - iii. quarterly return for the third quarter of 2018 ("3Q 2018"), which was required to be submitted by 31 October 2018.



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Chronology of events

4.7 The following table sets out a chronology of key events relevant to this Final Notice:

Date	Event
30 April 2018	<p>Eshara, due to Mr Guy's direct action or inaction, failed to submit the following audit reports and regulatory returns to the Regulator:</p> <ul style="list-style-type: none">a. Annual Financial Statements Auditors Report for the 2017 Financial Year;b. Annual Regulatory Returns Auditors Report for the 2017 Financial Year;c. Annual Prudential Return for the 2017 Financial Year (i.e. the EBC Required Filing); andd. Quarterly returns for Q1 2018.
2 May 2018	<p>The Regulator sent an email to Mr Guy and the Compliance Officer ("CO") of Eshara seeking information on the outstanding audit reports and regulatory returns.</p>
On or about 5 May 2018	<p>Eshara engaged an audit firm to prepare its annual Financial Statements Auditor's Report for the 2017 Financial Year.</p> <p>This was after the relevant audit report was due to be submitted to the FSRA on 30 April 2018. Eshara should have engaged an auditor for the purpose of preparing this audit report well before 30 April 2018.</p>
13 May 2018	<p>The Regulator sent an email to Mr Guy and the CO of Eshara following up on its earlier email of 2 May and noting Eshara's continued non-compliance with reporting requirements.</p>
14 May 2018	<p>Mr Guy sent an email to the Regulator referencing a telephone call with the Regulator and requested an extension to complete all the outstanding matters, stating, "...I understand the urgency and we will ensure everything is completed by the 24th May if not before."</p>
15 May 2018	<p>The Regulator sent an email to Mr Guy and the CO of Eshara agreeing to the extension request until 24 May 2018.</p>



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24 May 2018	The Regulator sent an email to Mr Guy stating <i>“we will await your submission of the remaining regulatory returns by today...”</i> and that an extension date request is required in the portal for the late submission of the 1Q 2018 returns.
7 June 2018	The Regulator sent an email to the CO of Eshara to follow-up with Eshara on the outstanding audit reports and regulatory returns, noting, <i>“They are severely overdue and it is quite unacceptable.”</i>
7 June 2018	The CO of Eshara sent an email to the Regulator in response confirming follow up with Eshara on their outstanding audit reports and regulatory returns.
10 June 2018	The Regulator sent an email to Mr Guy to (among other things) remind Eshara of its outstanding regulatory requirements.
11 June 2018	Mr Guy sent an email to Regulator in response, stating in part <i>“Yes I know the critical outstanding’s. They will be with you asap, I have cancelled all other meetings today to ensure this is finally brought to a head.”</i>
11 June 2018	The Regulator received an email from the CO of Eshara advising that the outsourced compliance consultants engaged by Eshara will terminate services with Eshara from 30 June 2018.
12 June 2018	The Regulator sent an email to Mr Guy and the CO of Eshara seeking an update on the outstanding (among other things) audit reports and regulatory returns.
12 June 2018	Mr Guy sent an email to the Regulator in response, which stated in part, <i>“The responsibility for this sits entirely with me... I will respond to this in full and upload the returns this evening.”</i>
24 June 2018	Mr Guy sent an email to the Regulator confirming that it will apply to withdraw its’ FSP, citing the reason that it had not commenced any Regulated Activities since receiving its FSP.
2 July 2018	The Regulator met with Mr Guy to discuss, among other things, the outstanding audit reports and regulatory returns.



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	<p>At the meeting, the Regulator advised Mr Guy that he was still required to submit the outstanding financial reports and and regulatory returns despite Eshara’s application to withdraw its FSP.</p> <p>The Regulator further advised the Mr Guy that Eshara’s failure to comply with FSRA requirements to submit audit reports and regulatory returns constituted contraventions of FSRA Rules, and that continued failure to comply with these requirements may lead to regulatory action.</p> <p>Mr Guy agreed to revert the following day with a timeline for submission of the outstanding audit reports and regulatory returns.</p>
2 July 2018	<p>Mr Guy sent an email to the Regulator acknowledging the meeting and “6 outstanding points Eshara need to address with urgency.”</p>
5 July 2018	<p>Mr Guy sent an email to the Regulator advising that the auditors had informed him that it was going to be “5 working days before we are in a position to submit everything”.</p>
26 July 2018	<p>Mr Guy sent an email to the Regulator advising “...we have received the draft audit which we are now reviewing in short order and will have signed off by the directors”.</p>
29 July 2018	<p>Mr Guy sent an email to the Regulator advising “we have just finalized the changes to the draft audit which we have now accepted”</p>
2 August 2018	<p>Mr Guy sent an email to the Regulator advising that he was “just waiting on [a Licensed Director of Eshara] to return the signed accounts”.</p>
5 September 2018	<p>Mr Guy sent an email to the Regulator advising that “I am sorry but it is unlikely we will be able to submit the audited accounts by close of business today, we will likely need another day or so. Is that ok?”</p>
7 October 2018	<p>Mr Guy sent an email to the Regulator which stated “I can categorically tell you we will submit the returns this week and we can hopefully then complete the withdrawal.”</p>
4 November 2018	<p>Eshara submitted its annual Financial Statements Auditor’s Report for the 2017 Financial Year to the Regulator by email. The report is dated 25 October 2018.</p> <p>The submitted annual Financial Statements Auditor’s Report for the 2017 Financial Year raised concerns as to:</p>



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	<p>a. whether or not Eshara had maintained adequate capital resources and met its base minimum capital requirements (of USD 50,000) under PRU Rules through 2017 and as at 31 December 2017; and</p> <p>b. the accuracy of Eshara's previously filed quarterly returns for Q1, Q2, Q3 and Q4 2017 which, amongst other things, provided information in relation to Eshara's capital resources and compliance with minimum capital requirements under PRU Rules.</p>
15 January 2019	Eshara's FSP is withdrawn.

4.8 The Regulator issued a Decision Notice to Mr Guy on 12 March 2019. As at the date of the Decision Notice and this Final Notice, Eshara has not submitted the following outstanding audit reports and regulatory returns:

- a. annual Regulatory Returns Auditor's Report for the 2017 Financial Year;
- b. annual Prudential Return for the 2017 Financial Year;
- c. quarterly return for 1Q 2018;
- d. quarterly return for 2Q 2018; and
- e. quarterly return for 3Q 2018.

4.9 Accordingly, Eshara contravened the following Rules:

- a. General Rulebook ("GEN") Rules 6.6.1(1) and 6.6.2, by failing to submit its annual Financial Statement Auditors Report for the financial year 2017 by 30 April 2018;
- b. GEN Rule 6.6.1(2) and 6.6.2, by failing to submit its annual Regulatory Returns Auditors Report, due by 30 April 2018;
- c. Prudential – Investment, Insurance Intermediation and Banking Rules ("PRU") Rulebook Rule 2.3.7(1), by failing to submit its annual return for the financial year 2017, as required under Chapter 2 of PRU, by 30 April 2018; and
- d. PRU Rule 2.3.7(2), by failing to file its quarterly prudential returns for the periods 1Q 2018, 2Q 2018 and 3Q 2018, each due within one month from the end of the relevant quarter.



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4.10 During the course of the events described in paragraph 4.7 above, Mr Guy advised that the reason, or part of the reason, for Eshara’s non-submission of its audit reports and regulatory returns was because an outsourced accountant engaged by Eshara had been required to travel unexpectedly for a period of time in the first half of 2018, causing the preparation of Eshara’s financial statements to be delayed.

5 CONTRAVENTION

- 5.1 Under GEN Rule 5.3.1(1), the SEO and LD functions are Controlled Functions for the purposes of the Regulations and Rules. Under section 43(2) of the Regulations, approval is required for a person to perform a Controlled Function in the business of an Authorised Person, thereby making them an “Approved Person” for the purposes of the Regulations and Rules. Mr Guy received his approval from the Regulator as an Approved Person on 16 May 2016 when Eshara received its’ FSP.
- 5.2 In performing the function of SEO, Mr Guy had ultimate responsibility for the day-to-day management of Eshara and held significant responsibility for ensuring that Eshara complied the Regulations and Rules that apply to it as an Authorised Person in the ADGM.
- 5.3 As an Approved Person, Mr Guy is also bound to comply with the Regulator’s Principles for Approved Persons and Recognised Persons set out in GEN Rule 2.4.
- 5.4 On the basis of the facts and matters set out above and the specific role and responsibility he took in ensuring that Eshara complied with its financial and regulatory reporting requirements, the Regulator considers that Mr Guy’s conduct fell short of the standards reasonably expected of him as an Approved Person performing the Controlled Function of SEO for Eshara.
- 5.5 Given the extent of Eshara’s failure to comply with its reporting requirements, and the extended period of time over which Eshara remained in breach of those requirements, the Regulator considers that Mr Guy failed to take reasonable care to ensure that Eshara complied with the Regulations and Rules applicable to it.
- 5.6 As a result, the Regulator considers that Mr Guy contravened Principle 6 (*Compliance*), of the Principles for Approved Persons and Recognised Persons (GEN Rule 2.4.6).



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6 SANCTION

6.1 In reaching its decision to impose a financial penalty on Mr Guy, the Regulator has taken into account:

- a. the factors and considerations set out in sections 6.2 to 6.4 of the Regulator’s Guidance and Policy Manual (“GPM”); and
- b. Mr Guy’s written representations of 14 February 2019 and 3 March 2019.

Determination to impose a financial penalty

6.2 With reference to GPM Section 6.2, the Regulator considers the following factors to be of particular relevance in deciding to impose the proposed financial penalty on Mr Guy:

- a. 6.2.1(a) - the Regulator’s regulatory objective 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. to promote public understanding of the regulation of the ADGM.
- b. 6.2.1(b) - The deterrent effect of the Proposed Action and the importance of deterring other Approved Persons from committing similar contraventions.
- c. 6.2.2(b) - The seniority of Mr Guy’s position as the CEO of Eshara and the level of his responsibility and specific involvement in relation to ensuring Eshara’s compliance with its financial and regulatory reporting obligations under the Regulations and Rules.
- d. 6.2.1(f) - Mr Guy’s conduct after he was put on notice of Eshara’s alleged contraventions:
 - i. while Mr Guy appeared to be cooperating with the Regulator, the remedial action he took in respect of the contraventions was not timely or complete, as only one of the outstanding financial reports has been submitted to the Regulator to date and it was over six months late; and
 - ii. Mr Guy’s repeated assurances to the Regulator of the imminence of the submission of the reports, which actually did not transpire for some time later and only for one report.



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- 6.3 With reference to section 6.3 of the GPM, the Regulator has decided to impose a financial penalty, rather than a public censure or other enforcement action, given the seriousness of the contravention. 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 Rule 6.3.3(b).

Determination of the level of financial penalty

- 6.4 With reference to section 6.4 of the GPM, the Regulator has taken into account the factors and considerations set out in the five-step framework in section 6.6 of the GPM 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, as the Regulator understands that Mr Guy did not derive any financial benefit from the contravention.

Step 2 – The seriousness of the contravention

- 6.6 The Regulator considers Mr Guy's conduct in failing to take reasonable care to ensure that Eshara complied with its regulatory reporting requirements to be serious because:

- a. Eshara's ongoing failure to comply with its reporting requirements posed regulatory risk to the Regulator since it meant that the Regulator did not have access to important information concerning Eshara's Regulated Activities and its financial resources for an extended period of time. In particular:
 - i. as stated in the entry dated 4 November 2018 in paragraph 4.7 above, once Eshara submitted its outstanding annual Financial Statements Auditor's Report for the 2017 Financial Year, the information recorded in that report raised concerns in relation to Eshara's capital resources during 2017, and in relation to the accuracy to previously submitted quarterly prudential returns covering the 2017 Financial Year;
 - ii. Eshara's failure to submit its annual Financial Statements Auditor's Report for the 2017 Financial Year on time, or to submit its annual Regulatory Returns Auditor's Report for the 2017 Financial Year and annual Prudential Return for the 2017 Financial Year at all denied the Regulator access to important information concerning the capital resources of Eshara in 2017; and



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- iii. Eshara's failure to submit its required quarterly returns for Q1, Q2 and Q3 of 2018 meant that the Regulator was denied important information regarding Eshara's capital resources in 2018.
 - b. Mr Guy held a senior position with Eshara;
 - c. Mr Guy's conduct allowed Eshara to breach and remain in breach of its reporting requirements for a considerable period of time, and despite repeated reminders from the Regulator; and
 - d. Mr Guy's conduct was reckless, in that he was advised by the Regulator from shortly after 30 April 2018 that Eshara was in breach of its reporting requirements and therefore Mr Guy should have appreciated that continued inaction would mean that Eshara would remain in breach of those obligations. Despite this Mr Guy did not take adequate steps to ensure that Eshara's breaches were rectified within a reasonable time.
- 6.7 Taking the above factors into account, the Regulator considers that a proposed financial penalty of USD 10,000 appropriately reflects the seriousness of the contravention.

Step 3 – Mitigating and aggravating factors

- 6.8 The Regulator considers that the following factor had a mitigating effect on the contravention:
- a. Eshara did not appear to undertake any Regulated Activities over the period in which it was in contravention of the relevant reporting requirements.
- 6.9 The Regulator considers that the following factors have an aggravating effect on the contravention:
- a. Mr Guy was made aware of Eshara's breaches of its audit and regulatory reporting requirements but failed to take adequate steps to address the failures and to bring Eshara back into compliance within a reasonable period of time; and
 - b. Mr Guy should have appointed and engaged an auditor well before the 30 April 2018 deadline for the auditor's reports to be submitted. Instead, he only engaged an auditor on or about 5 May 2018 after the Regulator alerted him to their contravention.
- 6.10 Having taken the above factors into account, the Regulator considers the mitigating and aggravating factors to balance each other out and does not consider it necessary to adjust the proposed financial penalty.



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Step 4 – Adjustment for deterrence

- 6.11 Under GPM 6.6.9, 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 contravention, or others, from committing further or similar contraventions, then the Regulator may increase it. GPM 6.6.9 sets out the circumstances where the Regulator may do this.
- 6.12 The Regulator considers that the figure arrived at after Step 3 is sufficient for the purposes of deterring Mr Guy and others from committing further or similar contraventions. Accordingly, the Regulator does not consider it appropriate to adjust the amount of the fine arrived at after Step 3 for the purposes of deterrence.
- 6.13 Accordingly, the figure after step 4 is USD 10,000.

Step 5 – Adjustment for cooperation/early settlement

- 6.14 Where the Regulator and the individual or firm on whom the financial penalty is to be imposed agree on the amount and other terms, GPM 6.6.10 provides that the amount of the financial penalty which might have otherwise been payable will be reduced to reflect the stage at which agreement is reached.
- 6.15 As no agreement was reached, the Regulator does not consider it necessary to adjust the amount of the financial penalty arrived at after Step 4.

Mr Guy's representations

- 6.16 On 4 February 2019, the Regulator issued Mr Guy with a Warning Notice in which it stated that it proposed to impose on Mr Guy a financial penalty of USD 10,000.
- 6.17 Mr Guy was provided with an opportunity to make written representations and representations in person regarding the Regulator's concerns and the action proposed.
- 6.18 On 14 February 2019 and 3 March 2019 Mr Guy provided written submissions to the Regulator. The Regulator provided Mr Guy with opportunities to make representations in person. However, Mr Guy did not attend the Regulator to do so.
- 6.19 In his written representations Mr Guy acknowledged that the delays in submitting regulatory returns were unacceptable, and regrets not keeping the Regulator more closely informed of the situation Mr Guy faced and the work Eshara was undertaking.
- 6.20 The matters which Mr Guy asks that the Regulator take into in determining whether or not to impose a financial penalty include the following:



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- a. the significant commercial challenges Eshara faced with a depleted management team;
- b. Eshara's interactions with other institutions;
- c. substantial losses accrued by Eshara said to have been borne by the Eshara shareholders and directors; and
- d. delays in the establishment of ADGM leading to a claimed lost commercial opportunity in 2014.

6.21 The Regulator sees no substance in these representations. While the Regulator accepts that Eshara has not had any direct clients or been involved in any Regulated Activities, and accepts for the purpose of this Final Notice that substantial losses accrued by Eshara were borne by its shareholders and directors, the representations made by Mr Guy do not recognize:

- a. his obligations to ensure that Eshara complies with applicable rules and regulations at all times, the number of contraventions committed by Eshara and the seriousness of its underlying conduct;
- b. his own contravention of GEN Rule 2.4.6; and
- c. that his own conduct resulted in Eshara breaching fundamental audit and regulatory reporting requirements for an extended period of time, during which the Regulator did not have access to important information concerning the activities and financial resources of Eshara.

6.22 In addition, the Regulator sees no relevance in a further representation that Mr Guy has been asked by financial institutions in the UK as to which jurisdiction to seek financial regulation.

6.23 In the representations dated 14 February 2019, it was stated that Eshara would complete its regulatory returns to June 2018. The Regulator facilitated the submission of these returns. On 25 March 2019, Eshara submitted what it purported was a quarterly return for 1Q 2018. However, the document was not the EBC Required Filing that was required to be filed for that quarter. On 22 March 2019, Eshara also submitted a quarterly return for the fourth quarter of 2017, but that return was not relevant to the issuing of either the Decision Notice or this Final Notice. In any event, both these documents were submitted well beyond the time that they were required to be lodged, and at a time when Eshara's FFSP had lapsed.



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- 6.22 Having taken into account the facts, matters and circumstances of the contraventions and Mr Guy's written representations, the Regulator has decided to impose on Mr Guy a financial penalty of USD 10,000.

7 PROCEDURAL MATTERS

Issuance of a Decision Notice

- 7.1 On 12 March 2019, the Regulator issued a Decision Notice dated 12 March 2019 to Mr Guy pursuant to section 248 of the Regulations.
- 7.2 Under section 225(1) of the Regulations, Mr Guy had the opportunity to refer the Decision Notice to the Regulatory Committee for a full merits review.
- 7.3 A reference under subsection 225(1) shall be commenced –
- a. within 30 days of the decision of the Regulator; or
 - b. within such further period not exceeding 30 days as may be approved by the Regulatory Committee where it is satisfied that such approval is appropriate in the circumstances.
- 7.4 As a referral was not made to the Regulatory Committee for a review of the Decision Notice within 30 days, the Regulator proceeded to issue this Final Notice pursuant to section 251(1) of the Regulations.

Payment of the financial penalty

- 7.5 The financial penalty imposed by this Decision Notice is to be paid by Mr Guy on or before 14 May 2019.
- 7.6 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

- 7.7 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



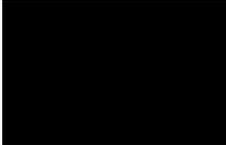
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any details concerning it unless the Regulator has published the notice or those details in accordance with section 252(3).

7.8 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:



Wai Lum Kwok
Capital Market Executive Director
Delegate of the Financial Services Regulatory Authority