

18 January 2024

Sarwa Digital Wealth (Capital) Limited
16-115, WeWork Hub 71
Al Khatem Tower
ADGM Square
Al Maryah Island
Abu Dhabi
United Arab Emirates

Attention: [REDACTED]

Sent by e-mail: [REDACTED]

Dear [REDACTED]

CONFIRMATION OF DECISION IN RELATION TO PENALTY IMPOSED FOR CONTRAVENTIONS OF THE COMMON REPORTING STANDARD REGULATIONS 2017

1. The Financial Services Regulatory Authority ("FSRA") of the Abu Dhabi Global Market ("ADGM") hereby confirms its decision to impose a penalty on Sarwa Digital Wealth (Capital) Limited ("Sarwa") pursuant to subsection 9(1) of the *Common Reporting Standard Regulations 2017* (the "Regulations"). This notice is issued pursuant to Article 7(5) of Cabinet Resolution No. 93 of 2021 ("Cabinet Resolution"), which applies pursuant to the Regulations, following due consideration of an appeal submitted by Sarwa on 18 October 2023 in response to a notice from the FSRA dated 28 September 2023.

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 considers that Sarwa has classified itself as a Reporting Financial Institution ("RFI") for the purposes of the Regulations and failed to:
 - a. apply due diligence procedures as required by the Regulations by not conducting reviews to confirm the reasonableness of self-certifications received in contravention of Schedule 1,

FINANCIAL SERVICES REGULATORY AUTHORITY
سلطة تنظيم الخدمات المالية

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Part 4 paragraph A and Schedule 1, Part 6, paragraph A(1)(a) of the Regulations in force at the time of the contraventions (“2021 Regulations”)¹;

- b. report information as required by the Regulations in a complete and accurate manner by failing to accurately report the TINs of 137 Reportable Accounts, in contravention of subsection 3(1) and Schedule 1, Part 1, paragraph A(1) of the Regulations in force at the time of the contraventions (“2022 Regulations”)²,

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

4. Following due consideration of Sarwa’s appeal, submitted pursuant to subsection 9(2) of the Regulations, the FSRA has decided to impose a total penalty of AED 50,000 on Sarwa.

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 the ratification of various conventions and declarations by the UAE, and publication of Federal Law No. 54 of 2018.
6. The CRS 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 RFIs.
7. Appropriate legislation to support the implementation of the CRS in the UAE has been issued at both a federal level in the UAE and in the ADGM. This includes the enactment of the Regulations by the Board of Directors of ADGM in 2017. The Regulations apply the Cabinet Resolution in the ADGM pursuant to subsection 2(1) of the Regulations, and the CRS and any explanatory material and commentary published by the OECD in relation to the CRS pursuant to subsection 3(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 (“MOF”), setting out the requirements for implementation of the CRS across all jurisdictions within the UAE.

¹ See:
[https://en.adgm.thomsonreuters.com/sites/default/files/net_file_store/CRS_Regulations_2017_\(Consolidated_2020\)_v3.pdf](https://en.adgm.thomsonreuters.com/sites/default/files/net_file_store/CRS_Regulations_2017_(Consolidated_2020)_v3.pdf)

² See:
[https://en.adgm.thomsonreuters.com/sites/default/files/net_file_store/CRS_Regulations_2017_\(Consolidated_January_2022\)_v4.pdf](https://en.adgm.thomsonreuters.com/sites/default/files/net_file_store/CRS_Regulations_2017_(Consolidated_January_2022)_v4.pdf)

9. On 20 February 2020, Sarwa was granted a Financial Services Permission by the FSRA under which it was permitted to undertake the Regulated Activities of “*Advising on Investments or Credit*”, “*Arranging Deals in Investments*” and “*Managing Assets*”.
10. On 17 May 2022, MOF announced the go-live of the Automatic Exchange of Information (“AEOI”) reporting portal for submission of returns relating to CRS (“CRS Return”) for the 2021 calendar year by 20 June 2022. MOF subsequently extended the deadline for submission of CRS Returns for the 2021 calendar year to 15 August 2022.
11. On or around 15 August 2022, Sarwa registered on the AEOI portal as a RFI and filed its CRS Return for the 2021 calendar year.
12. On 14 July 2023, the FSRA sent an email to Sarwa informing Sarwa that it was required to collect information on certain Account Holders (and Controlling Persons, as applicable) for the purposes of reporting to MOF in response to an enquiry received. The email attached a report from MOF identifying accounts which were reported with invalid/incorrect TINs (Annexure A to this notice) and requested Sarwa to provide the FSRA with comments and/or correct information in relation to each incorrect/invalid TIN by 21 July 2023. The email also stated that Sarwa should meet all the requirements of the applicable CRS legislation to submit accurate information in respect of applicable TINs prescribed by the jurisdiction in which the Account Holder and/or Controlling Person is resident, with a link to the OECD website. Sarwa was informed that it may be subject to penalties for any failure to comply with the email request and/or applicable CRS legislative requirements.
13. On 14 July 2023, Sarwa sent an email to the FSRA requesting an extension of time until the end of July 2023 to provide the requested data due to the number of clients it needed to contact.
14. On 17 July 2023, the FSRA sent an email to Sarwa confirming grant of an extension of time until 28 July 2023.
15. On 28 July 2023, Sarwa sent an email to the FSRA with its response to the information request from the FSRA referred to in paragraph 12. The response included information relating to the TINs of 340 accounts, as set out in Annexure B to this notice. Sarwa advised the FSRA that it was able to update 236 of those 340 accounts with a new validated TIN(s) or change of residency information, but had not been able to contact the remainder of the account holders to undertake the necessary updates.
16. On 10 August 2023, the FSRA requested from Sarwa various documentation relating to the list of customer accounts referred to in paragraph 15 by 31 August 2023.
17. On 21 August 2023, the FSRA sent an email to Sarwa stating that no documentation had been uploaded to the secure drive as requested.

18. On 30 August 2023, Sarwa confirmed that the requested documents had been uploaded onto the secure drive.
19. On 31 August 2023, the FSRA sent an email to Sarwa to request confirmation that 293 files were uploaded. On the same day, Sarwa confirmed that the number of files uploaded was correct.
20. The FSRA reviewed the information provided by Sarwa and has identified 137 Reportable Accounts that were inaccurately reported in Sarwa's CRS Return for the 2021 calendar year, as set out in Annexure C to this notice.

FAILURE TO CONDUCT DUE DILIGENCE PROCEDURES

21. The 2021 Regulations apply to the conduct of due diligence because that was the version of the Regulations that was in force during the 2021 calendar year when Sarwa was (or ought to have been) undertaking the relevant due diligence in respect of various account holders.
22. Subsection 6(1) of the 2021 Regulations required every RFI to keep records of the 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 obtained or created for the purpose of complying with the 2021 Regulations.
23. Schedule 1, Part 4, paragraph A and Schedule 1, Part 6, subparagraph A(1)(a) of the 2021 Regulations set out the procedures that RFIs must apply for New Individual Accounts and New Entity Accounts (respectively) to determine the residence of the Account Holder and, where applicable, its Controlling Persons³. This included obtaining a self-certification that allowed the RFI to determine the Account Holder's residence(s) for tax purposes and the RFI confirming the reasonableness of such self-certification based on the information obtained by the RFI in connection with the opening of the account.
24. As mentioned in paragraph 20 above, Sarwa failed to accurately report the TINs for 137 Reportable Accounts by providing TINs which were inaccurate. This demonstrated a failure by Sarwa to apply due diligence procedures resulting in the reporting of inaccurate TINs to the UAE Competent Authority.
25. The FSRA therefore considers that Sarwa has contravened Schedule 1, Part 4, paragraph A and Schedule 1, Part 6, subparagraph A(1)(a) of the 2021 Regulations.

³ Where the Entity is a Passive NFE.

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

26. The 2022 Regulations apply to the reporting of information because this was the version of the Regulations in force in 2022 when Sarwa reported the required information for the 2021 calendar year to the UAE Competent Authority in its CRS Return.
27. Schedule 1, Part 1, paragraph A of the 2022 Regulations provided that each RFI must collect and report to the UAE Competent Authority (whether directly or indirectly via the Regulatory Authority) information with respect to each Reportable Account. Pursuant to Schedule 1, Part 1, subparagraph A(1) of the 2022 Regulations, the required information to be reported for each Reportable Account is the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder. The same information also needs to be reported for each Reportable Person that is a Controlling Person of an Entity that is an Account Holder.
28. Schedule 1, Part 8, subparagraph E(5) of the 2022 Regulations defines a TIN as a Taxpayer Identification Number or functional equivalent in the absence of a TIN.
29. The “*OECD Common Reporting Standard XMI Schema*” published by the OECD as guidance to the application of the CRS sets out that, in a submission, the RFI should provide as an entity identification number a US GIIN, a TIN, company registration number, Global Entity Identification Number (EIN) or other similar identifying number specified by the tax administration. That requirement applied as part of the CRS in the ADGM pursuant to subsection 2(1) of the 2022 Regulations.
30. On 21 September 2021, the FSRA published ‘Notice No. 25 of 2021 – CRS Compliance Programme’ to assist RFIs in understanding the requirements of the UAE’s CRS compliance programme that they would need to adopt and implement, with a link to training materials.
31. As mentioned in paragraph 20 above, the FSRA has identified that Sarwa failed to report information in a complete and accurate manner in its CRS Return for the 2021 calendar year, by failing to accurately report the TINs of 137 Reportable Accounts.
32. Accordingly, the FSRA considers that Sarwa has contravened subsection 3(1) and Schedule 1, Part 1, subparagraph A(1) of the 2022 Regulations by failing to report the information required to be reported under the 2022 Regulations in a complete and accurate manner.

PENALTY

33. The FSRA considers Sarwa to have contravened the 2021 and 2022 Regulations as set out above. In particular, Sarwa failed to:

- a. apply due diligence procedures as required by the 2021 Regulations, by not conducting reviews to confirm the reasonableness of self-certifications received in contravention of Schedule 1, Part 4, paragraph A and Schedule 1, Part 6, subparagraph A(1)(a) of the 2021 Regulations;
- b. report information as required by the Regulations in a complete and accurate manner by failing to accurately report the TINs of 137 Reportable Accounts in contravention of subsection 3(1) and Schedule 1, Part 1, paragraph A of the 2022 Regulations.

The Penalty

34. The penalty for a failure to apply and record due diligence procedures was set out in Schedule 2, paragraph 1.3 of the 2021 Regulations. The penalty for a failure to report information as required by the Regulations in a complete and accurate manner was set out in Schedule 2, Part A, paragraph 1.5 of the 2022 Regulations.
35. The total penalty imposed by the FSRA on Sarwa is AED 50,000, pursuant to subsection 9(1) of the Regulations.
36. The breakdown of the penalty imposed by the FSRA on Sarwa pursuant to the Regulations in force at the time of the relevant contravention is as follows:

Reference	Contravention	Penalty (AED)
Paragraph 1.3 of Schedule 2 of the 2021 Regulations	A Reporting Financial Institution fails to apply the due diligence procedures specified in Schedule 1, Part 2 through to Part 7 of the 2021 Regulations	25,000
Paragraph 1.5 of Part A of Schedule 2 of the 2022 Regulations	A Reporting Financial Institution fails to report the information required to be reported under these Regulations in a complete and accurate manner.	25,000

CONSIDERATION OF APPEAL

37. On 28 September 2023, the FSRA issued Sarwa with a notice in which it imposed on Sarwa a penalty of AED 50,000.
38. Under subsection 9(2) of the Regulations and Article 7(1) of the Cabinet Resolution, Sarwa had the opportunity to appeal against the FSRA's decision set out in the notice dated 28 September 2023.
39. On 18 October 2023, Sarwa submitted its appeal on the grounds that it did not commit the contraventions under the Regulations as set out in the notice dated 28 September 2023.

40. Sarwa's appeal was acknowledged by the FSRA on 28 October 2023.
41. In its appeal Sarwa asked the FSRA to take the following matters into consideration.
- a. That Sarwa has maintained meticulous records of due diligence procedures and collected the self-certification for CRS from clients at onboarding prior to commencement of a customer relationship.
 - b. That no new Individual or Entity accounts were opened without the required information provided by the client and that Sarwa's practice was to perform validity checks of self-certification received including ensuring that the name, residential address, date of birth, tax residency country, TIN confirmation and date of self-certification fields were completed.
 - c. That Sarwa has diligently reported TINs for Reportable Accounts. Any inaccuracies in reported information were inadvertent and not indicative of a failure in due diligence procedures. TINs reported were sourced from data provided by the client and reliance was based on the self-certification made by the client. Sarwa's due diligence procedures are stated in the firm's CRS/FATCA policy and procedures.
 - d. That out of the 5228 accounts reported by Sarwa in 2022, 137 had been identified by the FSRA as having discrepancies in reporting, which amounts to an accuracy rate of 97.4%.
 - e. That in a training event provided by the FSRA and MOF ("Training Event"), it was stated that the validation of TINs according to OECD guidance is a recommended practice and not a requirement.
 - f. Out of the 137 accounts that the FSRA identified as having incorrect TINs reported, 32 accounts had provided either their passport numbers or identity numbers or TINs that comply with OECD guidance for functional equivalents of valid TINs or have a valid format for TINs.
42. In relation to Sarwa's failure to apply due diligence procedures as required by the 2021 Regulations, Sarwa appealed on the grounds that it did not commit the contraventions under the Regulations as reasonableness assessments were part of the due diligence it undertook when receiving self-certifications from its clients. The due diligence was reviewed by an independent service provider engaged by Sarwa to review its systems, controls, policies, procedures and reporting requirements that are relevant to CRS and was determined to be compliant at the time.
43. In relation to Sarwa's failure to report information as required by the Regulations in a complete and accurate manner, Sarwa stated that it reported complete data as held in its possession. At no time was it construed to be incomplete or inaccurate based on the firm's due diligence or from any indication from the client. Sarwa submitted the 2021 CRS return in good faith based on the self-certification without any malafide intent or negligence on the firm's part.

44. In addition, Sarwa stated that the penalty of AED 50,000 levied on the firm will irreparably damage its reputational profile, and that it acted in good faith and provided the 2021 CRS report based on the training and information from the FSRA and it had no reason to inaccurately report 137 Account Holders.
45. Sarwa further submitted that it has a history of collaborating with, and responding to, all requests made by the FSRA for clarification in relation to individual country TIN requests and audit requirements in a timely manner.
46. The FSRA has considered the grounds and documentation submitted in support of Sarwa's appeal.
47. In relation to Sarwa's representations in paragraphs 41 to 42 above, whilst the information submitted by Sarwa was sourced from the client, it was Sarwa's responsibility to conduct adequate due diligence to ensure that the TINs submitted by its clients were reasonable and had been validated against the OECD's guidance on TIN formats. The FSRA notes that the written material presented at the Training Event on behalf of MOF states that TINs should be validated against the OECD's guidance on TIN formats.
48. The FSRA does not accept Sarwa's submission that it had conducted sufficient validity checks on the TINs that it received from its clients during the relevant period. The FSRA notes that Sarwa implemented software for TIN validation in its onboarding process from August 2023. The FSRA has considered the matters raised by Sarwa in its appeal on the basis that it did not commit the relevant contraventions, however the nature of the inaccuracies in the reported data in relation to the 137 Reportable Accounts demonstrates that adequate due diligence cannot have been undertaken to seek to ensure that the TINs submitted by clients were valid.
49. In relation to Sarwa's representations at paragraph 43 above, the FSRA notes that, notwithstanding Sarwa's intent in submitting the relevant information in its CRS Return for the 2021 calendar year, the TINs for 137 Reportable Accounts were not accurately reported and accordingly the CRS Return was not entirely complete or accurate.
50. In relation to Sarwa's representations at paragraph 44 above, reputational damage is not one of the specified grounds for appeal pursuant to the Cabinet Resolution. Sarwa's representation in paragraph 45 is noted.
51. Given the facts and matters set out above, and having given due consideration to Sarwa's appeal, the FSRA has decided to confirm its decision in this matter to impose a penalty of AED 50,000 on Sarwa.

PROCEDURAL MATTERS

Manner and time for payment of penalty

52. Pursuant to Article 6(4) of the Cabinet Resolution, the penalty imposed pursuant to this notice is to be paid by Sarwa within fifteen (15) business days from the date of this notice, i.e. on or before **8 February 2024**.
53. Payment of the penalty can be made by electronic funds transfer into the following account:

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

54. If the penalty 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. Accordingly, the FSRA will publish relevant information about the decision in this notice, including the notice itself, as the FSRA considers appropriate. The publication of enforcement outcomes is consistent with the FSRA's commitment to open and transparent processes and our objectives.

Yours sincerely,



Mr. Adrian Bock
Director – Enforcement
Abu Dhabi Global Market Financial Services Regulatory Authority

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