



19 July 2022

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 THE PENALTY & ADMINISTRATIVE FEE 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 gives written notice, pursuant to subsection 10(4) of the *Common Reporting Standard Regulations 2017* (the "Regulations"), regarding its decision to impose a penalty / Administrative Fee and direction on Sarwa Digital Wealth (Capital) Limited ("Sarwa"). The notice follows due consideration of an appeal submitted by Sarwa on 13 and 28 June 2022 in response to the notice issued by the FSRA on 9 June 2022 pursuant to subsection 9(1) of 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. Following due consideration of Sarwa's appeal, the FSRA has decided to:
 - a. impose on Sarwa a penalty and Administrative Fee(s) of AED 36,000; and
 - b. direct Sarwa to undertake and complete remedial actions, to be approved by the FSRA, to ensure that it is in compliance with the Regulations.
4. This is because the FSRA considers that Sarwa has failed to:

FINANCIAL SERVICES REGULATORY AUTHORITY
سلطة تنظيم الخدمات المالية

- 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 Schedule 1, Part 4, paragraph A of the Regulations;
- b. document its due diligence procedures and keep records of the due diligence procedures performed, including any evidence relied upon for performance of the 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 as required by the Regulations in a complete and accurate manner by failing to report at least two hundred and nineteen (219) Reportable Accounts, in contravention of subsection 3(1) and Schedule 1, Part 1, paragraph A 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 20 February 2020, Sarwa was granted a Financial Services Permission (“FSP”) by the FSRA under which it was permitted to undertake the Regulated Activity of “*Managing Assets*”. Sarwa was also permitted to undertake the Regulated Activities of “*Advising on Investments or Credit*” and “*Arranging Deals in Investments*” from 16 August 2020.
10. Sarwa is classified as 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 23 June 2021, Sarwa 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 7 October 2021, Sarwa submitted its completed ‘UAE FATCA and CRS Entity Self-Certification Form’ to the FSRA.
16. On 8 November 2021, Sarwa provided the FSRA with its response to the ‘CRS Survey for FSRA Reporting Financial Institutions’ (the “Survey”).
17. On 18 November 2021, the FSRA sent a letter to Sarwa informing Sarwa of its proposed review of Sarwa’s activities and operations conducted in relation to CRS (the “Review”), which included an on-site inspection (the “Inspection”) at Sarwa’s offices scheduled on 8 December 2021. The FSRA requested that Sarwa 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 29 November 2021.
18. On 29 November 2021, Sarwa submitted its response to the CRS Questionnaire.
19. On 8 December 2021, the FSRA conducted the Inspection on Sarwa, as part of the Review, to assess its compliance with the Regulations.
20. During the Review and Inspection, the FSRA conducted a review of Sarwa’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 submitted in its 2020 CRS return.

FAILURE TO CONDUCT DUE DILIGENCE PROCEDURES & FAILURE TO KEEP RECORDS

21. As an RFI, Sarwa is required to comply with Schedule 1, Part 4, paragraph A of the Regulations, which set out the procedures that RFIs must apply for New Individual Accounts to determine the Account Holder's tax residence(s). This includes obtaining a self-certification that allows the RFI to determine the Account Holders 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, including any documentation collected pursuant to AML/KYC procedures.
22. 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.
23. In the Survey, Sarwa confirmed that its "...*self-certification questions and declarations have been inbuilt into online onboarding process for all new retail clients (first retail clients will begin onboarding in November 2020). existing [sic] corporate clients (2) have been requested to submit manual self-certifications.*"
24. Further, Sarwa was asked to explain its due diligence procedures for reviewing each self-certification form. Sarwa responded that "*Self-certification forms are included in the ongoing client review process carried out by our Compliance Officer*".
25. The Inspection found through a review of the files provided by Sarwa and interviews with relevant Sarwa staff, that Sarwa had failed both to undertake and to document any form of assessment of the reasonableness of any of the self-certifications it had received for the New Accounts it held. Sarwa did not have available for review any documents demonstrating the steps undertaken to ascertain the reasonableness of the self-certifications received.
26. Therefore, the FSRA considers that Sarwa has contravened subsection 6(1) and Schedule 1, Part 4, paragraph A of the Regulations.

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

27. The 2020 CRS return submitted by Sarwa recorded that it had zero (0) Reportable Accounts for the year ended 31 December 2020.
28. Schedule 1, Part 1, subparagraph A(1) of the Regulations sets out the information that each RFI must collect and report to the UAE Competent Authority with respect to each Reportable Account.

29. 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 or by a Passive NFE with one or more Controlling Persons that is a Reportable Person, provided it has been identified as such pursuant to the due diligence procedures described in Part 2 through 7."
30. Schedule 1, Part 8, subparagraph C(1) of the Regulations defines a "Financial Account" as "...an account maintained by a Financial Institution, and includes a Depository Account, a Custodial Account and:
 - (a) in the case of an Investment Entity, any Equity Interest or debt interest in the Financial Institution. Notwithstanding the foregoing, the term "Financial Account" does not include any Equity Interest or debt interest in an Entity that is an Investment Entity solely because it (i) renders investment advice to, and acts on behalf of, or (ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity;.."
31. As set out at paragraph 10 above, Sarwa is an RFI, and is therefore required to report all Reportable Accounts.
32. On 8 December 2021, as a follow up to the Inspection, the FSRA requested that Sarwa explain its rationale for filing a CRS return for 2020 showing zero (0) Reportable Accounts.
33. On 12 December 2021, Sarwa provided the FSRA with its response setting out that, whilst it understood that it was an RFI, it considered that it was an Investment Entity and, as a result, the term "Financial Account" for the purposes of assessing reportability pursuant to the Regulations meant only an equity or debt interest in Sarwa itself.
34. The position expressed by Sarwa is incorrect. Sarwa is an RFI and may constitute an Investment Entity as defined in the Regulations (which is one form of Financial Institution under the Regulations). However, Sarwa has incorrectly applied that categorisation to the definition of Financial Account under the Regulations.
35. Sarwa appears to have considered that Schedule 1, Part 8, subparagraph C(1)(a) of the Regulations applies to Sarwa as an Investment Entity when identifying Financial Accounts for application of the relevant procedures under the Regulations. However, it has failed to properly take into account the explicit inclusion of Depository Accounts and Custodial Accounts as Financial Accounts (regardless of whether an RFI is an Investment Entity or otherwise) as is clearly set out in the second line of subparagraph C(1).
36. Schedule 1, Part 8, subparagraph C(3) defines a Custodial Account as "...an account (other than an Insurance Contract or Annuity Contract) which holds one or more Financial Assets for the

benefit of another person.” Sarwa holds an account for each of its clients that holds Financial Assets for the benefit of that client (i.e. another person). In addition, Sarwa’s FSP expressly permits activities that would render its clients’ accounts as Custodial Accounts for the purposes of the Regulations.

37. Therefore, the Financial Accounts that should have the relevant procedures set out under the Regulations applied to identify Reportable Accounts are all the client accounts maintained by Sarwa, not the equity or debt interest in Sarwa itself. Sarwa has failed to consider those accounts as Financial Accounts, and accordingly has failed to apply the due diligence procedures and to report any Reportable Accounts as required by the Regulations.
38. In addition, Sarwa has:
- a. interpreted the term ‘Financial Account’ to mean only equity or debt interest held in Sarwa; and
 - b. incorrectly concluded that this single Financial Account is not reportable because:
 - i. its parent company is a Passive NFE;
 - ii. two of the three Controlling Persons of that Passive NFE are tax residents of the UAE and as such are not Reportable Persons; and
 - iii. the self-certification provided by the third Controlling Person incorrectly categorised itself as an ‘International Organisation’ for the purposes of the Regulations and thus not a Reportable Person.
39. The Inspection found, from a review of Sarwa’s client register, that there are at least two hundred and nineteen (219) Account Holders which have been onboarded by Sarwa in the Relevant Period whose tax residency falls within a Reportable Jurisdiction and therefore are likely to constitute Reportable Accounts that should have been reported by Sarwa in accordance with the Regulations.
40. Therefore, the FSRA considers that Sarwa has contravened subsection 3(1) and Schedule 1, Part 1, subparagraph A(1) of the Regulations for failing to report information required to be reported in a complete and accurate manner.

PENALTIES, FEES AND DIRECTIONS

41. The FSRA considers that Sarwa has contravened the Regulations as set out in paragraph 4 above. The penalties/Administrative Fees for contraventions of the Regulations are set out in Schedule 2 of the Regulations.

42. The total penalty/Administrative Fees imposed by the FSRA on Sarwa is AED 36,000.
43. The breakdown of the penalties/Administrative Fees imposed by the FSRA on Sarwa pursuant to the Regulations in effect as at 30 June 2021 is as follows:

No	Contravention	Penalty/Late Reporting Fee	Penalty/Administrative Fee imposed by the FSRA on Sarwa
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	AED 10,000
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	AED 25,000
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 failure continues up to of AED 25,000 in Administrative Fees <u>Significant non-compliance</u> AED 250,000 penalty	AED 1,000
Total penalty/Administrative Fee			AED 36,000

The Direction

44. The FSRA directs that Sarwa 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.
45. The directions under paragraph 44 above shall cease to have effect when Sarwa can demonstrate to the satisfaction of the FSRA that it has complied with the direction.

CONSIDERATION OF APPEAL

46. On 9 June 2022, the FSRA issued Sarwa with a notice in which it imposed on Sarwa a penalty/Administrative Fee of AED 254,000 and directed Sarwa to undertake certain action to ensure compliance with the Regulations.
47. Under subsection 10(1) of the Regulations, Sarwa had the opportunity to appeal against the FSRA's decision set out in the notice dated 9 June 2022. On 13 and 28 June 2022, Sarwa submitted its appeal to the FSRA.
48. In its appeal, Sarwa acknowledged the contraventions set out in the notice dated 9 June 2022. However, it asked the FSRA to take the following matters into consideration and reconsider its decision to impose the penalty and Administrative Fee(s):
- a. That, prior to submitting its 2020 CRS return, Sarwa appointed a specialist tax advisory firm to advise Sarwa in relation to its reporting obligations under the Regulations;
 - b. It relied on advice which subsequently transpired to be incorrect and its 2020 CRS Return failed to include all relevant information required under the Regulations, despite that information being readily available to Sarwa. In particular, all the information regarding the 219 Account Holders was in place at the time of submission and would have been submitted to the FSRA if it had received correct advice from its tax advisor;
 - c. Sarwa offered to immediately provide the missing information and documents (including the relevant details of the 219 Account Holders) on the instructions of the FSRA; and
 - d. Sarwa's commitment to ensure compliance with the Regulations as demonstrated by the remedial measures already undertaken as well as a course of proposed corrective

measures, including an in-depth review of Sarwa's systems, controls, policies and procedures and appointment of an independent advisor to avoid any non-compliance in the future.

49. In addition, Sarwa asked the FSRA to waive the penalty / Administrative Fee of AED 219,000 imposed in respect of Sarwa's failure to report the information required to be reported under the Regulations in a complete and accurate manner. In doing so Sarwa asked the FSRA to take a number of factors into consideration, including that:
 - a. it submitted its 2020 CRS return in good faith, based on the incorrect advice of its tax advisor;
 - b. it has a good history of compliance and this is the first instance of non-compliance;
 - c. it is willing to re-submit the correct information required to be reported; and
 - d. it will within a scope and timeframe to be approved by the FSRA undertake a review and remediate its systems, controls, policies and procedures to ensure compliance with the Regulations.
50. The FSRA noted that Sarwa's appeal primarily concerns the Administrative Fee of AED 219,000 imposed on Sarwa for failing to report information required to be reported by the Regulations in a complete and accurate manner.
51. In relation to Sarwa's representations that it sought advice from specialist tax advisors in relation to its obligation to identify and report Reportable Accounts, and the advice it received transpired to be incorrect, the FSRA acknowledges that Sarwa has taken further advice from external legal counsel which has confirmed the original advice received from its tax advisors which was incorrect. Although Sarwa is ultimately responsible for its compliance with the Regulations, the FSRA recognises that Sarwa did obtain and relied on specialist advice (which transpired to be incorrect), to assist its understanding of its obligations under the Regulations. The FSRA has therefore taken this into consideration in arriving at the decision set out in this notice.
52. In relation to Sarwa's representations regarding the remedial actions that Sarwa has undertaken, and the further steps Sarwa proposes to undertake, the FSRA does not consider these to be persuasive. All RFIs must comply with the Regulations, and the FSRA will take appropriate action in circumstances where an entity has been found to contravene the Regulations.
53. In relation to Sarwa's request for a waiver of the Administrative Fee for its failure to report information required to be reported in a complete and accurate manner, the FSRA does not consider it appropriate in the circumstances to waive the Administrative Fee entirely. There were at least two hundred and nineteen (219) Account Holders onboarded by Sarwa in the Relevant Period which were likely to have constituted Reportable Accounts which were not reported as a

result of Sarwa's incorrect interpretation of its reporting obligations (which was based on its reliance on incorrect advice).

54. Having considered Sarwa's appeal, the fact remains that Sarwa failed to report information required to be reported in terms of the Regulations in a complete and accurate manner. However, the FSRA has decided to impose a single Administrative Fee of AED 1,000 in respect of this contravention rather than for each Reportable Account. This is because the FSRA considers that Sarwa's incomplete and inaccurate reporting resulted from a single interpretative error by Sarwa, and that was based on Sarwa's reasonable reliance on incorrect advice. Had that not been the case, the FSRA would have imposed a significantly higher Administrative Fee in respect of this particular contravention.
55. The FSRA has also considered whether Sarwa's grounds of appeal provide any basis to change or cancel any other aspects of its decision or vary the amount of the penalty/Administrative Fee(s) for the other contraventions. The FSRA has concluded they do not. Accordingly, the FSRA has decided to confirm its decision in this matter and impose a penalty/Administrative Fee of AED 35,000 for the other contraventions.
56. Further, nothing in Sarwa's grounds of appeal provides any basis for the FSRA to change or cancel the direction set out in paragraph 44 above.

PROCEDURAL MATTERS

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

57. Pursuant to subsection 10(5) of the Regulations, the penalty/Administrative Fee(s) imposed pursuant to this notice is to be paid by Sarwa within twenty (20) days after the date of this notice, i.e. on or before **8 August 2022**.
58. Payment of the penalty/Administrative Fee(s) can be made by electronic funds transfer into the following account:

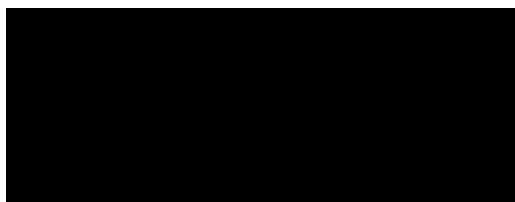
Account Name	[REDACTED]
Account Number	[REDACTED]
IBAN Number	[REDACTED]
Account Type	[REDACTED]
Bank Name	[REDACTED]
Swift Code	[REDACTED]
Reference	[REDACTED]

59. 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

60. 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