



مركز دبي
المالي العالمي
Dubai International
Financial Centre

Ms. Kathleen Hutchinson
Acting Director
Office of International Affairs
U.S. Securities and Exchange Commission
100 F St, NE
Washington DC 20549

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Transfers of personal data from firms located in the Dubai International Financial Centre (DIFC) to the U.S. Securities and Exchange Commission (SEC)

Dear Ms. Hutchinson,

I refer to recent conversations on February and March 8, 2021 between staff from the SEC and DIFC, regarding application of [Data Protection Law, DIFC Law No 5 of 2020](#) (DP Law 2020) provisions to DIFC-located firms (DIFC Firms) seeking to comply with SEC-imposed regulatory obligations, have reference.

We have reviewed the UK Information Commissioner's Office letter ([the ICO Letter](#)) dated 11 September 2020. Due to the substantial similarities between the GDPR, the UK DPA 2018 and the DP Law 2020, I affirm that the DIFC Data Protection Commissioner's (the Commissioner) guidance on the application of DP Law 2020 aligns with the compliance requirements, expectations, three key areas of consideration, approach to complaints, and the resulting impact on transfers to the SEC, as set out in the ICO Letter. As such, in setting out the Commissioner's feedback on the same, the terms and conclusions set out in the ICO Letter should be incorporated by reference, noting the following corresponding statutory references:

- GDPR Articles 6, 9 and 10 correspond to DP Law 2020 Articles 10 and 11;
- GDPR Article 45 corresponds to DP Law 2020 Article 26;
- GDPR Article 46 corresponds to DP Law 2020 Article 27 (in the context of this discussion, Article 27(2) about appropriate safeguards has reference); and
- GDPR Article 49(1)(d) corresponds to DP Law Article 27(3)(d); please note, additional derogations that may add comfort are found in Article 27(3)(i) (permitting transfers of personal data where required by any law to which the DIFC-based firm is subject, including applicable U.S. securities laws) and Article 27(3)(k).

DP Law 2020 contains additional provisions in Article 28 requiring certain measures are taken with respect to government data sharing requests. Article 28's main purpose is to promote thoughtful, safe and ethical data sharing, even with government authorities, to the extent that it can be done both in such a manner and without obstructing the goals and objectives of the government authority. Under no circumstances is Article 28 meant to prohibit or prevent such

data sharing in an unredacted format where appropriate to do so, or if required by applicable law, regulation or other legitimate statutory or judicial order. Article 28 is caveated to assure the applicability of other provisions and obligations set out in DP Law 2020, including those regarding processing in cases of Substantial Public Interest (Article 11(l)) or to comply with an Applicable Law, as defined in DP Law 2020, in relation to anti-money laundering or counter-terrorist financing obligations or the prevention, detection or prosecution of any crime (Article 11(h)). Lastly, while Article 28(1)(c) suggests that data sharing entities obtain appropriate written and binding assurances from a Requesting Authority, as defined in DP Law 2020, it is on the condition that this is to be done where reasonably practicable. You have informed us that it is the SEC's practice to limit the type and amount of personal data it requests during examinations based on risk and related to specific clients, accounts, and employees. Based on this understanding, and to the extent possible without breaching any legitimate regulatory powers, objectives and functions of the SEC, then compliance with Article 28(1)(c) will be deemed as sufficient.

The Commissioner and the Dubai International Financial Centre Authority (DIFCA) only have oversight of the DIFC firms sending information to the SEC. In this regard, the Commissioner and the DIFCA have no direct extraterritorial oversight of the SEC and the DP Law 2020 does not impose personal liability on SEC staff.

You have informed us SEC examinations are non-public. Information, data and documents received by the SEC are maintained in a secure manner and, under strict US laws of confidentiality, information about individuals cannot be onward shared save for certain uses publicly disclosed by the SEC, including in an enforcement proceeding, pursuant to a lawful request of the US Congress or a properly issued subpoena, or to other regulators who have demonstrated a need for the information and provide assurances of confidentiality. Information from SEC examinations is also subject to the US Freedom of Information Act controls that protect confidential information. The SEC uses what it obtains solely for its own lawful, regulatory purpose. It is itself subject to audit by the US Government Accountability Office and other governmental oversight.

While we also take the position of the ICO, such that a discussion about implementing appropriate safeguards would be preferable, DIFC firms to which the DP Law 2020 applies would be able to rely on the derogations noted above, in Article 27(3)(d), 27(3)(i), and 27(3)(k) as well. The Commissioner reserves the right to amend or change this position or form a different view based on further findings or changes in circumstances.



Jacques Visser
DIFC Commissioner of Data Protection