

Notice No: COMP-2020-078

Issue Date: 23 November 2020

Subject: Guidance on Disciplinary Actions

Notice to all Members,

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Pursuant to the DGCX By-Laws, Clearing Rules of the DCCC, and Notice No. COMP-2017-041 on Fixed Penalties for Non-Compliance, Members are hereby advised of the following.

DGCX and DCCC (“DGCX Group”) has produced the attached Guidance on Disciplinary Actions (“the Guidance”) that shall replace and revoke Notice No. COMP-2017-041.

The purpose of this Guidance is to provide safeguards to Members and investors and promote the fair and orderly operations of the market. The Guidance sets out the disciplinary powers of the DGCX Group, the disciplinary process, and the indicative financial penalties for breaches of the DGCX By-Laws and/or DCCC Clearing Rules.

All Members are requested to abide by the provisions of the Guidance that shall be effective on and from 1 January 2021.

DGCX Group reserves the right to amend the indicative financial penalties from time to time.

For Dubai Gold & Commodities Exchange

Maggie Mansour

Director Compliance & Membership

Guidance on Disciplinary Actions

1. Background

DGCX and DCCC (“DGCX Group”) as Self-Regulatory Organisations, have certain responsibilities including, amongst other things, to provide safeguards for investors and maintain and promote proper markets. In addition, DGCX Group is responsible for monitoring and regulating the market in a fair and orderly manner, and to ensure that all Members meet the required standards.

DGCX Group considers that it would be helpful to Members to provide guidance as to the process that would be followed for alleged breaches of the DGCX By-Laws (“the By-Laws”) and/or DCCC Clearing Rules (“the Clearing Rules”); the disciplinary powers that the DGCX Group has; and the indicative financial penalties that would be imposed for breaches of the By-Laws and/or Clearing Rules.

2. Disciplinary Process

- 2.1. The Compliance and Membership Department (“CMD”) shall investigate all alleged breaches of the By-Laws, the Clearing Rules, SCA regulations and any other applicable regulations.
- 2.2. The CMD shall investigate the alleged breach(es) and the investigation process may include, but not be limited to the following:
 - enquiries to the Member by email and/or phone call;
 - conduct personal interview; and
 - conduct an ad hoc inspection.
- 2.3. Following the conclusion of the investigation the CMD shall produce a Disciplinary Report which is a summary of the alleged breach(es), and the action proposed to be taken which may include, but not be limited to: no further action being taken; or disciplinary action against the relevant Member. The Disciplinary Report will be submitted to the Compliance and Membership Committee (“CMC”) for consideration.
- 2.4. The CMC has the power to impose the following disciplinary sanctions:
 - Financial Penalty up to \$15,000; and/or
 - Suspension of trading rights up to 5 business days.
- 2.5. The CMC may refer any disciplinary case to the BCC even if the financial penalty is less than \$15,000, where the CMC considers that it would be more appropriate for the BCC to review the disciplinary case.
- 2.6. All disciplinary actions undertaken by the CMC shall be reported to the BCC on monthly basis, and also to the SCA.

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- 2.7. Where disciplinary cases have been referred to the BCC, it may impose the following:
- Financial penalty without any limitation. In case the member is an SCA licensed Broker Member, the Financial penalty shall not exceed the maximum limit according to SCA Regulations; and/or
 - Suspension of trading rights for 21 days that may be extended. In case the member is an SCA licensed Broker Member, it is required to obtain SCA approval for a suspension period exceeds 5 business days; and/or
 - Termination of membership.
- 2.8. A decision to suspend or terminate a member by the BCC requires an approval rate of two thirds majority.
- 2.9. DGCX Group shall publish the results of all disciplinary actions on the DGCX and DCCC websites, and such publication will include the name of the relevant Member(s).
- 2.10. The indicative penalties stipulated under the provisions of this guidance should only be used as the starting point for the settling of penalties (either by the CMC, BCC or upon subsequent appeal by the Board). When evaluating the seriousness of a particular act of misconduct, the full circumstances of the act of misconduct must be taken into account. For example, the following general factors should also be considered:
- (a) The extent to which the act of misconduct was committed deliberately, recklessly or negligently;
 - (b) The extent of the Member's responsibility for the act of misconduct involved, and the systems and controls which the Member had in place to prevent such act of misconduct;
 - (c) The extent, if any, to which the Member benefitted from the act of misconduct;
 - (d) The prior conduct and disciplinary record of the Member (including any informal warnings issued by the DGCX Group); and
 - (e) The degree of cooperation and assistance provided by the Member.
- 2.11. In terms of aggravating factors, these would include in particular the presence of multiple acts of misconduct (e.g. a pattern or practice of behavior). Whilst the maximum penalties under the By-Laws and Clearing Rules may be imposed for each and every act of misconduct, the CMC, BCC or the Board should seek to ensure that an appropriate aggregate penalty for misconduct as a whole, particularly where multiple violations have been found as a part of a single course of misconduct. However, in considering such a potential situation, multiple breaches should not be categorised as a single course of misconduct. The penalty imposed must be proportionate to the breach(es) that have taken place and must be reasonable in all the circumstances according to the disciplinary powers gradually referred to in point no. 3 of the Guidance.

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- 2.9. In addition, where a Member has undertaken the same act of misconduct within a 24-month rolling period, this should be considered as a severe aggravating factor. As such, the sanction is likely to be significantly greater than the benchmark proposed for a single instance of an act of misconduct according to the disciplinary powers gradually referred to in point no. 3 of the Guidance.
- 2.10. Another example of an aggravating factor would be whether the conduct in question was part of a wider failure of compliance and lack of proper systems and controls. Clearly where a rule breach was the result of the misconduct of one rogue individual and the firm can otherwise demonstrate that it generally had effective systems and controls in place, the penalties will be lower than where a firm is unable to demonstrate that it had proper and effective systems and controls and the breach is symptomatic of a wider issue.

3. Disciplinary Powers

The disciplinary powers will be implemented gradually according to the seriousness and repetition of the violations.

3.1. Suspension of Trading Rights

The Business Conduct Committee (“BCC”) for both DGCX and DCCC has the power to suspend a Member for a period as determined by the BCC or the Board, as appropriate.

For Broker Members licensed by the Securities and Commodities Authority (“SCA”), the period of suspension shall not exceed 5 business days unless SCA otherwise approved such additional period.

3.2. Financial Penalty

A Member may be fined as determined by the BCC or the Board, as appropriate.

3.3. Termination of Membership

The Board has the power to terminate the membership status of any Member.

4. Referral to Regulators

DGCX Group reserves the right to refer the conduct of a Member and/or an employee of a Member to the SCA and any relevant regulator as required by relevant regulation without notice to such Member/employee.

5. Categories of Violations

This section sets out the non-exhaustive list of obligations and relevant disciplinary sanctions. In addition, the breaches might range from minor misconduct to major acts of misconduct, and for the latter a larger penalty and/or suspension of trading rights may be imposed.

5.1. Level of Net Current Tangible Assets (“NCTA”)

By-Laws (C.9.5) states that all Members are required to maintain the appropriate level of NCTA as prescribed by DGCX and DCCC from time to time. In case of any reduction in a Member’s level of NCTA, DGCX and DCCC should be informed within 24 hours. Members are also required to provide an NCTA Certificate from an external auditor within three months of the end of the financial year.

If the value of the NCTA of the Member at any time falls below the minimum required by DGCX Group.

- Indicative fine: \$5,000 and upwards.
- Suspension of trading rights.

5.2. Reporting Obligations

Under the By-Laws, the Member has obligations to provide DGCX Group with regular reports and ad hoc reports as may DGCX Group request.

- Indicative fine: \$5,000 and upwards.

5.3. Segregation of Clients’ Funds

By-Laws (E.9) sets out the rules related to the handling of Clients’ Funds, including proper segregation between Clients’ Funds and proprietary funds. Any violation of this By-Law is considered to be a significant breach of the By-Laws.

- Indicative fine: \$10,000 and upwards.

5.4. Prohibited Practices

By-Laws (D.3) outlines the prohibited practices that no Member should practice or attempt to practice. The non-exhaustive practices are related to market manipulation, insider trading, front running, wash trades or any practice that aims to create a disorderly market. These practices may be reported to the Financial Intelligence Unit of the Central Bank of UAE as these are considered possible indicators of money laundering.

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- Due to the seriousness of such misconduct, DGCX Group in its discretion shall determine a penalty according to the disciplinary actions gradually referred to in point no. 3 of the Guidance.

5.5. Change in Control, Directors, Shareholders

- (a) According to By-Laws C.7, and Clearing Rules B.25 and B.26, Members are required to inform DGCX Group of any changes to the information and documentation that were provided upon obtaining the license.
- (b) Below is the list of changes that should be approved by DGCX Group prior to them becoming effective:
 - Changes in Control, shareholders and ultimate beneficial owners;
 - Transfer of 15% of shareholding or more; and
 - Issuance of new shares whereby new shareholders are added.
- (c) The Member shall notify DGCX Group in writing for changes in directors or shareholdings in excess of 5% within 21 days of such occurrence.
 - Indicative Fine \$2,500 and upwards.
 - Termination of Membership.

5.6. Dealings with DGCX Group

Members are required to be open, transparent and cooperative with the DGCX Group and its staff members at all times.

According to By-Laws (F.1.3), Members are required to cooperate with the inspection team assigned by DGCX Group to conduct regular or ad hoc inspection or any other investigation.

- Indicative Fine \$5,000 and upwards.

5.7. Clients' Account Opening Agreements and Handling Orders

- (a) By-Laws E.3 set out the requirements for account opening of clients which shall also comply with SCA Decision No.17 of 2010, as amended in 2017.
- (b) By-Laws E.5 stipulate the obligations of Members to handle clients' instructions and the minimum required period of record keeping.
 - Indicative Fine \$5,000 and upwards.

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5.8. Non-payments of Fees

All Members are required to pay the fees referred to in By-Laws (C.2.2) and the Clearing Rules (D.6.) in addition to any other fee prescribed by DGCX and DCCC from time to time.

- Indicative Fine \$1,000 and upwards.

5.9. Daily in Payment of Clearing Obligations

According to the Clearing Rules Parts D, E and H and Notice of DCCC No. RISK-2018-039, Clearing Members are required to pay the Margin, Daily Settlement Amounts and Contribution to the Default Fund, and other financial obligation as DCCC may require, and by the times specified by DCCC.

- A Fine \$500 or 36% per annum whichever is higher on each delay.
- Indicative Fine \$5,000 and upwards, if such delay was recurrent for three times in a calendar month.
- Immediate suspension of trading rights.

5.10. Other Violations

Any violation to any of By-Laws, the Clearing Rules and SCA regulations may be punishable by DGCX Group, and relevant disciplinary actions will be imposed as appropriate.

6. Delay or Non-Payment of Fines

6.1. Interest shall be payable by the Member if the Member fails to pay the financial penalty within the time stipulated by DGCX Group. The interest rate is 5% for each month or part of a month that the financial penalty goes unpaid.

6.2. Non-payment of a fine is considered as a separate breach of the By-Laws and/or Clearing Rules.

- Indicative Fine \$1,000 and upwards.

7. Appeal

- 7.1. According to By-Laws (F.4) and the Clearing Rules (C.7), the Member may appeal the decision of the CMC or the BCC within 10 business days of notification of the decision to the relevant Appeal Body:
 - (a) The BCC, if it is a CMC decision; or
 - (b) The Board, if it is a BCC decision.
- 7.2. The Appeal Body shall either:
 - (a) Confirm the initial decision; or
 - (b) Reach a different decision.
- 7.3. Any Board Member or BCC Member who was a member of the initial decision-making body shall be ineligible to hear and decide in the appeal.
- 7.4. An appeal fee may be determined to be paid by the Member.
- 7.5. The decision of the Appeal Body shall be final, with no further right of appeal.
- 7.6. Members may appeal (submit a grievance) to SCA against the final decision of the Appeal Body that have been implemented in accordance with SCA Administrative Decision No. (46 / R.T) of 2016 concerning the Regulation for Grievances against Decisions Relating to Capital Markets Transactions.
- 7.7. The Appeal Body may impose such sanctions as it considers appropriate, in accordance with the powers set out in the By-Laws and/or Clearing Rules.