

ENFORCEABLE UNDERTAKING

R.J. O'Brien (MENA) Capital Limited (RJO MENA)

THIS ENFORCEABLE UNDERTAKING is made under and for the purposes described in Article 89 of the Regulatory Law 2004.

The commitments in this Enforceable Undertaking are offered to the Dubai Financial Services Authority (**DFSA**) by RJO MENA.

Capitalised terms not otherwise defined in this Enforceable Undertaking have the meanings given to them in the Glossary (**GLO**) Module of the DFSA Rulebook.

1. BACKGROUND

- 1.1 RJO MENA is a wholly owned subsidiary of JVMC Holding Corp, a group holding company.
- 1.2 It is part of a group of futures brokerage companies (the **Group**) which operates in the US, UK, EU, Middle East and Asia. The Group has a futures brokerage and clearing firm, including a full clearing member of the Chicago Mercantile Exchange and all its markets, as well as the markets operated by the Intercontinental Exchange Group in the EU (**ICE EU**) and the US (**ICE US**).
- 1.3 RJO MENA is licensed by the DFSA to provide the following Financial Services:
 - 1.3.1 Arranging Custody;
 - 1.3.2 Dealing in Investments as Principal;
 - 1.3.3 Arranging Deals in Investments;
 - 1.3.4 Dealing in Investments as Agent; and
 - 1.3.5 Advising on Financial Products.

Findings

- 1.4 Following a DFSA investigation, the DFSA found that between 1 July 2020 and 20 November 2022 (the **Relevant Period**) RJO MENA failed to:
 - 1.4.1 ensure it maintained proper records of electronic communications relating to transactions;
 - 1.4.2 monitor the trading of its trading desks to ensure compliance with ICE Europe and ICE USA rules relating to block trading and the reporting of block trades; and
 - 1.4.3 ensure compliance with the DFSA's client onboarding rules.
- 1.5 As a result, RJO MENA failed to:
 - 1.5.1 maintain adequate resources to conduct and manage its affairs;

- 1.5.2 ensure that the Compliance Officer had access to sufficient resources, including an adequate number of competent staff, to perform his duties objectively and independently of operational and business;
 - 1.5.3 establish and maintain systems and controls that ensured that its affairs were managed effectively and responsibly by its senior management; and
 - 1.5.4 establish and maintain monitoring and reporting processes and procedures to ensure that any compliance breaches were readily identified, reported and promptly acted upon.
- 1.6 The DFSA found that, during the Relevant Period, RJO MENA contravened:
- 1.6.1 Rule 4.2.4 (Principle 4 of the Principles for Authorised Firms – Resources) of the DFSA Rulebook, General Module (**GEN**);
 - 1.6.2 GEN Rule 4.2.3 (Management, systems and controls);
 - 1.6.3 GEN Rule 5.3.1 (Systems and controls – General requirement);
 - 1.6.4 GEN Rules 5.3.9 and 5.3.11 (Systems and controls – Compliance);
 - 1.6.5 Rule 7.2.1 (Timing of CDD) of the DFSA Rulebook, Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module (**AML**); and
 - 1.6.6 Rule 6.7.1 (Record Keeping – Voice and Electronic Communications) of the DFSA Rulebook, Conduct of Business Module (**COB**).

Offer and Acceptance of this Enforceable Undertaking

- 1.7 RJO MENA acknowledges the DFSA's concerns and offers the undertakings set out below to resolve these concerns.
- 1.8 The DFSA acknowledges that RJO MENA has cooperated with the DFSA in its inquiries, and accepts the undertakings given by RJO MENA in this Enforceable Undertaking as a satisfactory resolution of its concerns. This includes the offer to appoint an independent expert to assist RJO MENA in complying with its obligations, and the Evaluation and Compliance Resource Plan referred to in the undertakings below.

2. TERMS AND CONDITIONS OF ENFORCEABLE UNDERTAKING

Appointment of External Compliance Expert

- 2.1 RJO MENA undertakes that, within 30 days from the date of this Enforceable Undertaking, it will engage a suitably qualified and experienced third party firm or

person (the **External Compliance Expert**) to carry out the activities described in paragraphs 2.4 to **Error! Reference source not found.** below.

- 2.2 RJO MENA's engagement of the External Compliance Expert, and the terms and conditions of the engagement of the External Compliance Expert, are both subject to the DFSA's approval.
- 2.3 RJO MENA further undertakes that it will pay the costs and expenses of the engagement and the services provided by the External Compliance Expert.

Role of External Compliance Expert

Compliance Resource Evaluation and Compliance Resource Plan

- 2.4 RJO MENA will carry out, and engage the External Compliance Expert to assist it to carry out, an evaluation of RJO MENA's business (the **Evaluation**) to assess the resources RJO MENA needs to ensure compliance with its obligations under DFSA administered legislation. The Evaluation must:
 - 2.4.1 include a consideration of how automation could reduce the need for manual reviews and thereby reduce the number of human resources required;
 - 2.4.2 include an assessment of the compliance resources required (both in terms of headcount and skillset) appropriate to the nature, scale and complexity of the business; and
 - 2.4.3 address the compliance training needs of all relevant senior management and staff regarding RJO MENA's obligations under DFSA administered legislation and make recommendations about how these needs should be addressed.
- 2.5 RJO MENA will prepare, and engage the External Compliance Expert to assist it to prepare, a plan (the **Compliance Resource Plan**) based on the Evaluation to ensure RJO MENA has sufficient compliance resources to comply with its obligations under DFSA administered legislation.
- 2.6 RJO MENA undertakes to:
 - 2.6.1 submit the Evaluation and the draft Compliance Resource Plan to the DFSA no later than 60 days after the date of the appointment of the External Compliance Expert;
 - 2.6.2 make any changes to the draft Compliance Resource Plan that may be reasonably required by the DFSA in order for it to approve the plan; and
 - 2.6.3 resubmit the draft Compliance Resource Plan for approval, with the changes requested under paragraph 2.6.2, no later than 14 days after the DFSA has requested the changes.

Implementation of the Compliance Resource Plan

- 2.7 RJO MENA undertakes to implement all of the recommendations in the Compliance Resource Plan within the timetable in the Compliance Resource Plan and, in any event, to complete all of the recommendations no later than 240 days from the date

that the Compliance Resource Plan is approved by the DFSA (the **Plan Approval Date**).

- 2.8 If RJO MENA has decided not to implement one or more of the recommendations in the Compliance Resource Plan, then it must set out in writing to the DFSA the reasons for its decision(s) (the **Reasons**). The Reasons must be submitted to the DFSA as soon as possible after the decision(s) has been made and, in any event, must be submitted on or within 240 days from the Plan Approval Date.

Confirmation

- 2.9 RJO MENA undertakes that it will engage the External Compliance Expert to provide RJO MENA and the DFSA with an assessment and written confirmation, either during or at the end of the period of 240 days from the Plan Approval Date, as to whether RJO MENA has properly implemented the Compliance Resource Plan (the **CRP Confirmation**). If the External Compliance Expert cannot provide the CRP Confirmation on or by the due date, the External Compliance Expert must be engaged by RJO MENA to provide a statement in writing to RJO MENA and the DFSA that the CRP Confirmation cannot be provided and the reasons for same.

Further Undertakings

- 2.10 RJO MENA agrees to comply with any reasonable and lawful directions given to it by the DFSA about compliance with its obligations under this Enforceable Undertaking, within a reasonable period prescribed at the sole discretion of the DFSA.
- 2.11 RJO undertakes not to make any public statement that in any way conflicts with the intent and purpose of this Enforceable Undertaking or that disputes the determinations reached by the DFSA as recorded in this Enforceable Undertaking. However, this Clause shall not prevent RJO MENA from in good faith disputing or contradicting the contents of the Enforceable Undertaking in relation to any submissions or pleadings it may make in any future civil or criminal matters in which it is a claimant or defendant.

Remedies for Breach of Enforceable Undertaking

- 2.12 RJO MENA acknowledges the right of the DFSA, at its sole discretion, to reasonably determine that RJO MENA has failed to satisfy the terms and conditions of this Enforceable Undertaking.
- 2.13 In the event the DFSA determines that a failure to satisfy the terms and conditions of this Enforceable Undertaking has occurred, then the DFSA reserves the right to pursue any remedy available to it in law without further notice, including but not limited to those specified in Article 89(4) of the Regulatory Law 2004.

Address for Service of Documents or Process

- 2.14 RJO MENA agrees that its address for service of any letter, document or process in relation to this Enforceable Undertaking is:

R.J. O'Brien (MENA) Capital Limited
Unit L21-02, Level 21
ICD Brookfield Place
Dubai International Financial Centre
PO Box 507280
Dubai, United Arab Emirates

Acknowledgements

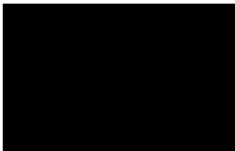
- 2.15 This Enforceable Undertaking is drafted and agreed to as between the DFSA and RJO MENA.
- 2.16 A person who is not a party to this Enforceable Undertaking has no rights under Part 10 of the *Contract Law (DIFC Law No. 6 of 2004)* or otherwise to enforce any term of this Enforceable Undertaking.
- 2.17 Subject to paragraph 2.18 below, the facts and matters contained in this Enforceable Undertaking are without prejudice to the DFSA and RJO MENA in that they may not be used, produced or relied upon in any other proceedings, including without limitation any civil, administrative or criminal actions or proceedings that may be brought by any other person or agency.
- 2.18 Paragraph 2.17 above does not prevent the DFSA from seeking any court order in relation to this matter or bringing any action to enforce a term or condition of this Enforceable Undertaking.
- 2.19 This Enforceable Undertaking is governed by and shall be construed in accordance with the laws of the DIFC. The parties irrevocably agree that the DIFC Court shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of or in connection with this Enforceable Undertaking.
- 2.20 This Enforceable Undertaking does not affect the DFSA's power to investigate or take further action against RJO MENA in relation to any other concerns, or arising from future conduct or findings, other than the facts and concerns set out in this Enforceable Undertaking.
- 2.21 The DFSA may issue a media release upon execution of this Enforceable Undertaking referring to its terms and the concerns of the DFSA that led to its execution. Further, the DFSA may publish this Enforceable Undertaking or parts thereof.

2.22 This Enforceable Undertaking takes effect on the date on which it is accepted by the DFSA's authorised delegate.

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For and on behalf of R.J. O'Brien (MENA) Date
Capital Limited

Accepted by the Dubai Financial Services Authority under Article 89 of the Regulatory Law by its authorised delegate:



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For and on behalf of Christian Cameron Date 26 December 2023
As Settlement Decision Maker for and on
behalf of the DFSA