



ABU DHABI GLOBAL MARKET  
سوق أبوظبي العالمي

# CONSULTATION PAPER NO. 4 OF 2019

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7 OCTOBER 2019

**PROPOSED MISCELLANEOUS  
AMENDMENTS TO FSRA REGULATIONS  
AND RULES**

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## INTRODUCTION

### WHY ARE WE ISSUING THIS PAPER?

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1. The Financial Services Regulatory Authority ("**FSRA**") of the Abu Dhabi Global Market ("**ADGM**") has issued this Consultation Paper to invite public feedback and comments on proposed amendments to FSRA administered legislation.
2. We would like to invite comments on the proposal to make various amendments to the FSRA's Regulations and Rules, including:
  - a. Specific amendments to the Financial Services Markets Regulations 2015 ("**FSMR**"), Conduct of Business Rules ("**COBS**"), Fund Rules ("**FUNDS**") and the Anti-Money Laundering and Sanctions Rules and Guidance ("**AML**"); and
  - b. Various miscellaneous amendments to FSMR and the FSRA Rulebooks to provide clarity or correct typographical and inadvertent errors.

### WHO SHOULD READ THIS PAPER?

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3. This Consultation Paper may be of interest to persons who may be considering a Financial Services Permission ("**FSP**") in the ADGM, Authorised Persons generally and their respective professional advisors.

### HOW TO PROVIDE COMMENTS

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4. All comments should be in writing and sent to the address or email specified below. If sending your comments by email, please use the Consultation Paper number in the subject line. If relevant, please identify the organisation you represent when providing your comments. The FSRA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making any comments. Comments supported by reasoning and evidence will be given more weight by the FSRA.

### WHAT HAPPENS NEXT?

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5. The deadline for providing comments on this proposal is **5 November 2019**. Once we receive your comments, we will consider whether any modifications

are required to the proposed amendments to the FSRA's legislative framework. The Board and the FSRA will then proceed to enact the proposed amendments. You should not act on this proposal until the relevant regulations, rules or guidance are issued. We will issue a notice on our website when this happens.

**COMMENTS TO BE ADDRESSED TO:**

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## **STRUCTURE OF THIS PAPER**

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6. The amendments under consideration are summarized in this paper, which are organized as follows:
  - (a) Annexure A - Draft amendments to the Financial Services and Markets Regulations 2015
  - (b) Appendix 1 - Draft amendments to General Rules;
  - (c) Appendix 2 - Draft amendments to Conduct of Business Rules;
  - (d) Appendix 3 - Draft amendments to Prudential – Investment, Insurance Intermediation and Banking Rules;
  - (e) Appendix 4 - Draft amendments to Fund Rules;
  - (f) Appendix 5 – Draft amendments to Anti-Money Laundering and Sanctions Rules and Guidance;
  - (g) Appendix 6 - Draft amendments to Glossary;
  - (h) Appendix 7 - Draft amendments to Islamic Finance Rules;
  - (i) Appendix 8 – Draft amendments to Market Infrastructure Rules;
  - (j) Appendix 9 – Draft amendments to Market Rules;
  - (k) Appendix 10 – Draft amendments to Prudential – Insurance Business Rules;
  - (l) Appendix 11 – Draft amendments to Captive Insurance Business Rules; and
  - (m) Appendix 12 – Draft amendments to the Guidance & Policies Manual.
7. Unless otherwise defined, capitalized terms referred to in this paper have the meanings attributed to such terms as contained in the Glossary.

## BACKGROUND

1. Since its commencement in 2015, the ADGM reviews its regulations and rules on an ongoing basis. This allows ADGM to maintain and update its legislative framework in a timely and efficient manner that reflects international best practice. It also assists, where appropriate, to reduce the regulatory burden upon firms based on a risk proportionate approach to our framework. As part of our ongoing review, we have taken into consideration useful and constructive feedback from external stakeholders. Accordingly, we take the opportunity at this time to make a number of miscellaneous amendments to the FSRA administered regulations and rules.

## ITEM 1 – COLLECTIVE INVESTMENT FUNDS

### *FSMR s106(3)*

2. FSMR allows a fund to have ‘either or both of’ the stated characteristics set out in section 106(3)(a) or (b) in order to be considered a Collective Investment Fund. These characteristics include the pooling of unitholder contributions, profits or income, and management by a Fund Management.
3. FSRA is of the view that both characteristics of this provision should be present in order for the arrangement to properly be considered a Collective Investment Fund.
4. FSRA proposes to remove the words “either or” from s106(3) of FSMR to be transparent of the requirements and expectations of the FSRA of what a collective investment fund is in the ADGM.

## ITEM 2 – FSRA’S PROHIBITION ORDER POWERS

### *FSMR s246(1)*

5. Under s246(1) of FSMR, the FSRA can only make prohibition orders against individuals carrying on Controlled Functions, i.e. Approved Persons. However, the power does not currently extend to:

- (a) Recognised Persons (i.e. Finance Officers, Compliance Officers, Senior Managers, Responsible Officers and Money Laundering Reporting Officers); or
  - (b) Employees of Authorised Persons performing functions in relation to the carrying on of Regulated Activities.
6. FSRA considers it necessary to be empowered to make prohibition orders to cover the abovementioned categories of individuals as part of its 'regulatory toolkit', to enable the proper discharge of its' regulatory powers and functions, particularly in such instances where an individual:
- (a) is found to not be fit and proper to perform Recognised Functions (i.e. key control functions within Authorised Persons); and
  - (b) has been involved in misconduct in the carrying on of Regulated Activities in the ADGM. For example, where the FSRA finds a client-facing employee operating in the ADGM had been involved in miss-selling or other misconduct.
7. If the FSRA does not have this capability, then it would be constrained in its ability to effectively achieve its objectives, including protecting users of the industry in the ADGM, and the reputation of the ADGM.
8. FSRA notes that other jurisdictions with comparable regulatory frameworks have the power to make, and have issued, such prohibition orders as has been proposed, including the UK Financial Conduct Authority and the Monetary Authority of Singapore.
9. Accordingly, adopting a wider approach to empower the FSRA to prohibit individuals in the ADGM is consistent with international best practice.
10. FSRA therefore proposes to amend s246(1) of FSMR to extend the prohibition order powers to include an individual who performs any function on behalf of an Authorised Person.

## ITEM 3 – SUITABILITY ASSESSMENT FOR PROFESSIONAL CLIENT OF DISCRETIONARY PORTFOLIO MANAGEMENT ACCOUNT

### *Conduct of Business Rule 3.4.2*

11. COBS Rule 3.4.2 at paragraph (a) compels the performance of a suitability assessment in specific circumstances. Paragraph (b) provides an exception to the obligation in paragraph (a) in the case of Professional Clients, where such limitations have been disclosed and consented to by a Professional Client.
12. Further, paragraph (c) of the Rule appears to not provide for the exception granted in paragraph (b) where it relates specifically to an Authorised Person who manages a Discretionary Portfolio Management Account.
13. The intention of paragraph (c), was that it would only apply after the initial 12 months from onboarding a Professional Client, to ensure that the account remains suitable for the Professional Client having regard to the matters specified in paragraph (a).
14. FSRA therefore proposes to amend COBS Rule 3.4.2(c) to clarify that the requirement only applies after every 12 months.
15. We are also taking this opportunity to turn paragraphs (d) and (e) of COBS Rule 3.4.2 into Guidance, which better reflects their intention to provide further clarity for Authorised Persons.

## ITEM 4 – FUNDS ACCOUNTING PERIODS

### *FUNDS Rule 16.4.2*

16. FUNDS Rule 16.4.2 currently does not allow the Fund Manager to choose the financial year-end for the Fund. Instead, the current wording of the Rule aligns the first accounting period of the Fund to the date of registration or notification (for Exempt or Qualified Investor Funds) to the Regulator and is unconnected to the Fund's financial year end.

17. Also, currently the Rule allows the Fund's accounting period to be aligned with that of the Fund Manager, which should not be connected, as the Fund Manager's financial year end should not impose itself on the Fund.
18. FSRA is of the view that it is more appropriate to allow Funds Managers to align their financial year end date to that stipulated in the Fund's constitutional document, with an allowance to extend the first accounting period (where it is less than 6 months). This will align with Unitholder expectations and more efficient fund accounting.

## **ITEM 5 – FUND ADMINISTRATOR COMPLIANCE WITH THE AML RULES**

### ***FUNDS Rule 17.1.2***

19. FUNDS Rule 17.1.2 provides that the AML Rules apply to a Fund Administrator to the extent that it carries on the Regulated Activity of Acting as the Administrator of a Collective Investment Fund for a Domestic Fund or Foreign Fund. However, Fund Administrators generally do not accept responsibility for AML compliance and are not empowered to make the decision to accept or reject a subscription from a Prospective Unitholder on behalf of an ADGM-based fund manager.
20. The exception to this would be where the Fund Administrator is engaged by a Foreign Fund Manager of a Foreign or Domestic Fund. In such a case, as an Authorised Person, the Fund Administrator would bear primary responsibility under the AML Rules and should not be exempted from having to consider and apply AML Rules.
21. Generally, domestic Fund Managers, being responsible for the operation of the Fund vehicle, have ultimate decision making power concerning the admission of new Unitholders and consequently should bear responsibility for compliance with AML Rules, even if they outsource and seek assistance from third parties.
22. In the case of ADGM-based managers of foreign funds, as fund management is undertaken by an Authorised Person within ADGM, ADGM Fund Managers must comply with ADGM's AML requirements, in addition

to the AML obligations of the foreign jurisdiction where the Fund is domiciled.

23. As a result, FSRA considers it appropriate to amend FUNDS Rule 17.1.2 so that it is applicable only to Fund Administrators acting on behalf of a Foreign Fund Manager and to clarify that ADGM-based fund managers bear an equivalent obligation, by amending Chapters 7 (Domestic managers of foreign funds) and 12 (Domestic managers of domestic funds) of the FUND Rules.

## ITEM 6 - MLRO SEMI-ANNUAL REPORTS TO HIGHER MANAGEMENT

### **AML Rule 12.4.1**

24. The UAE Cabinet Resolution No. (10) Of 2019 Concerning Executive By-Laws of Federal Decree No. (20) of 2018 (the “**AML Cabinet Resolution**”) and in particular, Part 8 Article 21(3), require an MLRO to prepare semi-annual reports for submission to higher management, with a copy of such reports to be sent to the concerned Regulator including comments and decisions of higher management.
25. Currently, AML Rule 12.4.1 only requires that the MLRO Report be submitted at least annually to the Governing Body or Senior Management of the Relevant Person. It does not require the submission of the report semi-annually nor for a copy to be sent ‘to the Regulator’. An amendment to Part 12.4 (*Reporting*) of the AML Rules is therefore required to ensure that FSRA’s requirements are consistent with the AML Cabinet Resolution.
26. Rule 12.4.1 also requires the annual MLRO report to be ‘in a form prescribed by the Regulator’. FSRA consider it unnecessary to prescribe a form for this report as it would serve Relevant Persons better to have it in freeform to enable flexibility. Accordingly, FSRA proposes to remove the requirement for the annual MLRO report to be in prescribed form.

### ISSUES FOR CONSIDERATION

Q1: DO YOU HAVE ANY COMMENTS ABOUT ANY OF THE PROPOSED AMENDMENTS IN ITEMS 1-6?

## ITEM 7 – OTHER PROPOSED MISCELLANEOUS AMENDMENTS

### 27. *FSRA administered Regulations and Rules*

The addition to the changes outlined in this Consultation Paper, the FSRA also proposes to make a number of other miscellaneous amendments to the FSRA administered Regulations and Rules. The amendments proposed include addressing a number of typographical or inadvertent errors (such as missing definitions) and to provide greater clarity to the framework. Please refer to Appendices 1 to 10.

#### ISSUES FOR CONSIDERATION

Q2: DO YOU HAVE ANY COMMENTS ABOUT ANY OF THE PROPOSED AMENDMENTS IN ITEM 7?