



## **4. SUPERVISORY AND ENFORCEMENT POWERS**

### **4.1 Introduction**

4.1.1 This chapter sets out how we may exercise our supervisory and enforcement powers. We can exercise these powers in respect of any person who has been approved or recognised by us, including persons in senior positions.

4.1.2 Chapter 5 of this document describes how we will exercise additional powers when conducting enforcement activities.

4.1.3 The range of powers available to us includes the power to:

- (a) require information or documents (FSMR section 201 and 206);
- (b) require a firm to provide a report from a skilled person (FSMR section 203);
- (c) impose requirements on a firm (FSMR section 35);
- (d) issue a direction to a firm or an Affiliate for prudential purposes (FSMR section 202);
- (e) impose conditions on an Approved Person on our own initiative (FSMR section 48); and
- (f) suspend the Financial Services Permission of a firm (FSMR section 33).

4.1.4 In exercising a power specified in this Chapter (except when requesting information and/or documents; or a skilled person report), we will generally follow the decision making procedures set out in Chapter 7 of this document.

### **4.2 Power to request information and documents**

4.2.1 In order to supervise the conduct and activities of a firm, a Recognised Body, any director, officer, employee or agent of such firm or Recognised Body, we require access to a broad range of information relating to a Person's business. In particular, firms, Recognised Bodies, Approved Persons or Recognised Persons are expected to deal with us in an open and co-operative manner and disclose to us any information of which we would reasonably expect to be notified.

4.2.2 We may require a person referred to in paragraph 4.2.1 above to give information and produce documents about its business (including reports prepared by external parties such as consultants appointed by the firm or Recognised Body), transactions or employees to us. When we require the giving of information or production of documents, it will give the person a written notice specifying what is required to be given or produced.

4.2.3 We may exercise this power either within, or outside, the ADGM.



### **4.3 Power to require a report**

4.3.1 We may require a firm or Recognised Body to provide it with a report from a skilled person on specified matters, in circumstances where:

- (a) we have concerns about the adequacy of systems and controls (such as compliance, internal audit, anti-money laundering, risk management and record keeping);
- (b) we seek verification of information submitted by it; or
- (c) we require remedial action to ensure the firm or Recognised Body complies with the laws.

4.3.2 GEN 8.12 sets out various requirements relating to the appointment of a skilled person, including:

- (a) give written notification to the firm or Recognised Body, by us, concerning the purpose of the proposed report, the scope, the timetable for completion and any other relevant matters;
- (b) specify the nature of the concerns, by us, that led to the decision to appoint a skilled person and the uses we may have for the results of any skilled person's report;
- (c) the skilled person must be appointed by the firm or Recognised Body and be nominated or approved by us;
- (d) a firm or Recognised Body is required to ensure it provides all assistance that the skilled person may reasonably require and ensure that the skilled person co-operates with us; and
- (e) a firm or Recognised Body is required to pay for the services of the skilled person.

### **4.4 Power to impose requirements on a firm or Recognised Body**

4.4.1 We may impose a requirement on a firm or Recognised Body under FSMR section 35, so as to:

- (a) require a firm or Recognised Body to take action specified by us; or
- (b) require a firm or Recognised Body to refrain from taking action specified by us.

4.4.2 Examples of requirements that we may consider imposing include, among other things, a requirement:

- (a) not to take on new business;



- (b) not to hold or control Client Money;
- (c) not to trade in certain categories of Specified Investment;
- (d) prohibiting or restricting the disposal of, or other dealing with, any of the firm's or Recognised Body's assets (whether in the ADGM or elsewhere); and
- (e) that all or any of the firm's assets (or all or any assets belonging to investors but held by the firm or Recognised Body) must be transferred to a trustee approved by us.

4.4.3 We may exercise our power under paragraph 4.4.1 above in certain circumstances, as set out in FSMR section 35(2) and GEN 8.13.1, including where:

- (a) the firm or Recognised Body is failing, or is likely to fail, to satisfy the Threshold Conditions when it was first granted a Financial Services Permission including:
  - (i) having adequate and appropriate resources;
  - (ii) being fit and proper to carry on a activity regulated by us for which it has an authorisation or recognition;
  - (iii) capability of being effectively supervised; and
  - (iv) having adequate compliance arrangements to enable it to comply with all applicable legal requirements.
- (b) the firm or Recognised Body has committed a contravention of the FSMR, Rules or other enactments or subordinate legislation administered by us;
- (c) the firm or Recognised Body has failed, during the period of at least 12 months, to carry on an activity regulated by us to which the Financial Services Permission relates; or
- (d) we consider that the exercise of the power is necessary or desirable in the pursuit of one or more of our objectives.

4.4.4 In determining whether to exercise our power under section 35 of the FSMR, we may take into account relevant facts and circumstances including, the following:

- (a) whether we have concerns about the fitness and propriety of the firm or Recognised Body;
- (b) whether the firm's or Recognised Body's resources are adequate for the scale or type of activity which the firm is authorised to undertake;
- (c) whether the firm or Recognised Body has conducted its business in compliance with the FSMR and the Rules;



- (d) whether the firm or Recognised Body has ensured full compliance with applicable money laundering or counter terrorism legislation; and
- (e) whether the firm's or Recognised Body's management is able to address the Regulator's concerns about the firm or Recognised Body, or the way the business is being or has been run.

4.4.5 When exercising this power, we will have regard to the principle that any restriction imposed on a firm or a Recognised Body should be proportionate to the objectives which we are seeking to achieve.

#### **4.5 Power to cancel a Financial Services Permission or revoke recognition**

##### **At the request of a firm**

4.5.1 On application of the firm or Recognised Body (in such firm as we shall prescribe), we may exercise our powers to vary or cancel a firm's Financial Services Permission or a Recognised Body's recognition (See FSMR section 32(2)).

4.5.2 Depending on the circumstances, we may need to consider whether we should first use our powers to impose requirements on a firm or Recognised Body or to vary a firm's Financial Services Permission or Recognised Body's recognition, before going on to cancel or revoke the Financial Services Permission.

##### **On our own initiative**

4.5.3 We may exercise our powers to cancel a Financial Services Permission to carry on one or more Regulated Activities, or to revoke recognition in respect of a Recognised Body (see FSMR sections 33 and 134(2)), respectively where:

- (a) firm or Recognised Body is failing, or is likely to fail, to satisfy the threshold conditions;
- (b) firm or Recognised Body has committed a contravention of the laws administered by us;
- (c) firm or Recognised Body has failed, during the period of at least 12 months, to carry on a Regulated Activity to which the Financial Services Permission or recognition relates; or
- (d) we consider that the exercise of the power is necessary or desirable in the pursuit of one or more of our objectives.

4.5.4 Circumstances when we may exercise our powers to cancel a Financial Services Permission or revoke a recognition include, among other things, where:

- (a) we have serious concerns about the manner in which the business of the firm or Recognised Body has been or is being conducted;



- (b) we consider it necessary to protect regulated entities and customers in the ADGM;
- (c) the firm or Recognised Body has failed to have or maintain adequate financial resources or a failure to comply with regulatory capital requirements;
- (d) the firm or Recognised Body has not submitted regulatory returns in a timely fashion or has provided false information in regulatory returns;
- (e) as a result of withdrawal of authorisation in relation to one or more Regulated Activities, the firm or Recognised Body is no longer authorised to carry on a Regulated Activity;
- (f) whether the firm or Recognised Body no longer satisfies the relevant criteria in respect of the fitness and propriety to carry on a Regulated Activity or hold a Financial Services Permission or recognition order (set out in GEN, Chapter 5 and MIR Chapters 2 and 4);
- (g) the firm or Recognised Body has repeatedly contravened the FSMR or the Rules.

#### **4.6 Power to impose conditions on the status of an Approved Person**

4.6.1 We may at any time by a written notice to an Approved Person and the relevant firm:

- (a) impose conditions on the grant of Approved Person status (FSMR section 48); and
- (b) vary or withdraw conditions imposed on the grant of such status (FSMR section 46).

4.6.2 We may exercise this power in circumstances where:

- (a) the Approved Person has not exercised the expected level of skill, care and diligence in carrying out the Controlled Function;
- (b) the conduct of the Approved Person is inconsistent with the requirements and standards expected; or
- (c) we have concerns about the fitness and propriety of the Approved Person (but not such as to warrant the suspension or withdrawal of an Approved Person's status pursuant to section 46 of FSMR).

#### **4.7 Power to withdraw the status of an Approved Person**

4.7.1 Under section 46 of the FSMR, we may withdraw an individual's Approved Person status given under section 45 of FSMR, if we consider that the Approved Person is no



longer fit and proper to perform the Controlled Function in question, including for example, where:

- (a) the individual is in breach of an obligation applicable as a result of their Approved Person status;
- (b) the Financial Services Permission of the relevant firm is withdrawn;
- (c) the individual becomes bankrupt;
- (d) the individual is convicted of an offence that would be considered relevant to his integrity and honesty, or his ability to perform his functions;
- (e) the individual becomes incapable, through mental or physical incapacity, of managing his affairs; or
- (f) the individual or the relevant firm asks us to withdraw the relevant status.

4.7.2 In determining whether to exercise its power under section 46 of FSMR, we will have regard to all relevant matters including, but not limited to:

- (a) the criteria for assessing the fitness and propriety of an Approved Person as set out in GEN Chapter 5 (GEN 5.2.9) and paragraph 2.3 of this document;
- (b) the commission of any offences involving dishonesty, fraud or a Financial Crime by the Approved Person;
- (c) whether other enforcement action should be taken, or has already been taken, against the Approved Person by us or by other enforcement agencies;
- (d) the particular Controlled Function the Approved Person is or was performing;
- (e) the nature and activities of the firm concerned;
- (f) the markets in which the firm operates; and
- (g) the severity of the risk which the individual poses to consumers and to confidence in the ADGM financial system.

#### **Disqualification of Auditors and actuaries under section 233 of the FSMR**

4.7.3 We recognise that the use of our powers to disqualify Auditors and actuaries from being an Auditor of, or acting as an actuary for, a firm will have serious consequences for the Auditors or actuaries concerned and their clients.

4.7.4 In deciding whether to exercise our power to disqualify an Auditor or actuary under section 233(3) of FSMR, and what the scope of any disqualification will be, we will take into account all the circumstances of the case, including:

- (a) the nature and seriousness of any contravention of the FSMR or Rules and the effect of that contravention;
- (b) whether any contravention of the FSMR or Rules, or any failure to disclose information to us, has resulted in, or is likely to result in:
  - (i) loss to customers;
  - (ii) damage to the reputation of the ADGM; or
  - (iii) an increased risk that a firm, Recognised Body or Reporting Entity may be used for the purposes of Financial Crime;
- (c) any action taken by the Auditor or actuary to remedy the contravention;
- (d) any disciplinary action taken (or to be taken) against the Auditor or actuary by a relevant professional body, and whether that action adequately addresses the particular contravention; and
- (e) the previous compliance record of the Auditor or actuary concerned, and whether the relevant regulatory body or professional body has imposed any previous disciplinary sanctions on the firm, Recognised Body, Reporting Entity or individual concerned.