

## Fund Rules (FUNDS)

\*In this attachment underlining indicates new text and striking through indicates deleted text.

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## INTRODUCTION

### 1. APPLICATION AND CLIENT CLASSIFICATION

#### 1.1 Application

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1.1.3 These Rules also apply to an Authorised Person that:

- (a) carries on a Regulated Activity; or
- (b) undertakes a Transaction in or from the Abu Dhabi Global Market;

in relation to a Domestic Fund or Foreign Fund.

#### Guidance

1. These Rules regulate Fund Managers.
2. These Rules also apply to marketing and selling of Units of Foreign Funds in or from the Abu Dhabi Global Market and to the carrying on of a Regulated Activity in relation to a Foreign Fund where any such activity is undertaken by an Authorised Person. In that regard, the COBS Rules also apply to the carrying on of Regulated Activities by an Authorised Person.
3. If a Domestic Fund or Foreign Fund intends to list its Units on a Recognised Body, it will need to comply with the relevant Rules in the ~~MKT module~~Rulebook and the ~~MIR module~~Rulebook in respect of Domestic Funds.
4. For the purposes of these Rules, an oversight provider is any person that would conduct oversight of a Public Fund, as permitted in accordance with FUNDS Rule 13.3.2.

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#### Real Estate Investment Trust (REIT)

4.1.5 A Fund is a Real Estate Investment Trust (REIT) only if it meets the criteria in Rule 13.5.

#### Venture Capital Fund

4.1.6 A Fund is a Venture Capital Fund if it:

- (a) invests directly in equity share capital of businesses which are at an early stage of development and not listed on any exchange;
- (b) .....

....

#### Appointment of Fund Administrator/Trustee/Custodian

7.2.3 An Authorised Fund Manager to whom this Chapter applies must:

- (a) ensure that there is appointed to the Fund an administrator or trustee before commencing the management of that Fund;

....

7.2.4 The AML Rules apply to an Authorised Fund Manager of a Foreign Fund to the extent that it carries on the Regulated Activity of Acting as the Manager of a Collective Investment Fund in relation to such Foreign Fund as if each reference in AML to a "customer" is a reference to a "Unitholder" or "prospective Unitholder" as appropriate to the context.

#### **PART 4: MARKETING OF DOMESTIC AND FOREIGN FUNDS**

##### **Guidance**

- 1. Section 18 of the FSMR contains the restrictions on the financial promotion of Units in a Fund by any person other than an Authorised Person, and Schedule 2 of the FSMR specifies the limited circumstances in which such a person may market Units in a way that does not breach the general prohibition. In addition, these Rules prescribe that an Authorised Person may not market a Unit in the Abu Dhabi Global Market unless:

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- 3. This Part of the ~~module~~ Rulebook sets out the detailed requirements that apply to the Offer of Units of Domestic and Foreign Funds, including Prospectus disclosure by Authorised Persons. The Rules in this Chapter supplement provisions of COBS, which also govern the carrying on of Regulated Activities by an Authorised Person, except where otherwise provided.

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#### **9. MARKETING OF DOMESTIC FUNDS AND PROSPECTUS DISCLOSURE**

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##### **Publicity**

9.3.2 (1) A person undertaking a financial promotion in respect of a Prospectus shall ensure that:

- (a) the information contained in the Prospectus complies with this Rule and the FSMR;
- (b) the Fund Manager, in the case of a Public Fund, has filed a copy of the Prospectus with the Regulator in accordance with Rule 9.2.1(b); and
- (c) the financial promotion states a Prospectus has been published and gives an address where a copy may be collected in the Abu Dhabi Global Market.

(2) Nothing in (1) prevents a person from issuing a financial promotion before the issue of a Prospectus provided it clearly states that a Prospectus will be issued and how a copy of such Prospectus may be obtained.

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#### 9.4 **General requirements relating to Prospectuses**

9.4.1 (1) The Prospectus must not contain any provision which is unfairly prejudicial to the interests of Unitholders generally or to the Unitholders of any class of Units.

(2) For the purposes of the information that must be included in a Prospectus pursuant to Rule 9.3 above:

(a) such information must be material information; and

(b) information is material if it is either:

(i) within the knowledge of the Directors or partners of the Fund Manager or

(ii) information which such Directors or partners ought reasonably have obtained by making reasonable enquiries.

(3) The Prospectus must be available in the English language.

(4) The expiry date of a Prospectus must be no later than 12 months after the date of the Prospectus.

#### **Guidance**

In conducting inquiries relating to the obligations under (2), a Fund Manager of a Public Fund must give particular regard to the information which would be required and expected by a Retail Client in order to make an informed decision about the merits of investing and the extent and characteristics of risk.

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### **10. MARKETING OF FOREIGN FUNDS AND PROSPECTUS DISCLOSURE**

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#### **Recommendation-Based Offers of Units of Foreign Funds**

10.1.6 An ~~Authorised Fund Manager~~ or Authorised Person may not recommend a Unit of a Foreign Fund to a particular Retail Client unless it has made an assessment of the suitability of the investment for that Retail Client in accordance with COBS Rule 3.4.2 and has a reasonable basis for recommending the investment in the Fund as suitable for the particular Retail Client.

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#### **Allocation of payments to capital or income**

12.13.7 (1) The Fund Manager and the Trustee or the Persons providing the oversight function may agree that all or any part of any permitted payments, charges and expenses of the Fund may be treated as a capital expense or income expense and allocated to the capital account or income account respectively.

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### **12.14 Compliance with AML Rules**

12.14.1 The AML Rules apply to an Authorised Fund Manager of a Collective Investment Fund as if each reference in AML to a "customer" is a reference to a "Unitholder" or "prospective Unitholder" as appropriate to the context.

### **13. REQUIREMENTS SPECIFIC TO PUBLIC FUNDS AND REAL ESTATE INVESTMENT TRUSTS**

#### **13.1 Application**

13.1.1 (1) ~~This Chapter 13 applies in its entirety~~ to a Fund Manager and Trustee of a Domestic Fund which is a Public Fund, and also to Persons providing the oversight function for such a Fund, unless Rule 13.1.1(2) applies. Rules 13.5.1 to 13.5.5 apply to all Domestic Funds of all types which are Real Estate Investment Trusts.

(2) A Fund Manager and Trustee of a Public Fund are not subject to the oversight requirement in (1) if the Fund's investments are limited to those that require passive management and the Fund's systems and controls contain adequate measures to address any risks arising in that context.

#### **Guidance**

A Fund is passively managed if it is investing in products such as index tracking products or if it is invested in such a way that exactly mirrors the constituent and weight allocations of an index without discretion on the part of the investment manager.

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#### **Investment in other Funds**

13.4.4 A Fund may invest in Units of another Fund, except where otherwise provided for in these Rules. Before investing in another Fund, the Fund Manager must take reasonable care to determine that it: ~~A Fund may invest in Units of another Fund, except where otherwise provided in these Rules, only where the Fund Manager has taken reasonable care to determine, before investing in that other Fund, it:~~

- (a) is the subject of an independent annual audit conducted in accordance with IFRS or US GAAP;
- (b) has mechanisms in place to enable Unitholders to redeem their Units within a reasonable time if it is an open-ended Fund;
- (c) is prohibited from having more than 20% of its gross asset value in the Units of other Funds; and
- (d) has a proper and disclosed basis for asset valuation and the pricing of Units in that Fund.

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#### **Investment in Real Property**

13.4.8 A Fund Manager must ensure that a suitable Valuer is appointed for a Fund at all times in order to ensure the proper valuation of any Real Property that forms part of Fund Property.

~~A Fund Manager must before investing in Real Property, appoint, with the approval of the Person providing the oversight function for the Fund, a Valuer with relevant expertise and likewise upon any vacancy to ensure that any property in the Fund Property is expertly valued.~~

- 13.4.9 (1) The Fund Manager must ensure that the Valuer appointed under Rule 13.4.8 procures the proper valuation of all the property held within the Fund Property, on the basis of a full valuation with physical inspection including, where the property is or includes a building, an internal inspection at least once a year.

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#### **Guidance**

1. A Fund Manager should consult with the oversight provider before appointing a Valuer.
2. The Regulator would expect the Fund Manager to define 'market value' based on an authoritative text such as the current edition of the Royal Institute of Chartered Surveyors' Appraisal and Valuation Standards ("Red Book") or similar practitioners text used by surveyors for the valuation to be a proper valuation under Rule 13.4.9(5).

#### **13.5 Real Estate Investment Trusts (REITs)**

- 13.5.1 (1) A Fund Manager, or any other Authorised Person making an Offer of a Unit of a Domestic Fund or otherwise marketing a Domestic Fund, must not include the term "Real Estate Investment Trust" or "REIT" or refer to a Fund or otherwise hold out a Fund as being a Real Estate Investment Trust or a REIT, unless it is a Property Fund which complies with (2).

(2) A REIT is a Property Fund which:

- (a) is primarily aimed at investments in income-generating Real Property; and
- (b) distributes to the Unitholders at least 80% of its audited annual net income; ~~and~~

~~(c) if~~ if at any time during the operation of the Fund the requirements in Rule 13.5.1(2)(a) ~~or (b)~~ are not met, the Fund Manager, and, if appointed the Trustee, must immediately notify the Regulator of the failure to meet the requirements in these Rules and what measures have been or will be taken to remedy the breach.

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- 16.3.4 (1) A Fund Manager must take reasonable steps to ensure that the auditor and the relevant audit staff of the auditor are independent of, and not subject to, any conflict of interest with respect to the Fund Manager, the Trustee or the Fund.

(2) A Fund Manager or Trustee must notify the Regulator if it becomes aware, or has reason to believe, that the auditor or the relevant audit staff of the auditor are no longer independent of the Fund Manager, the Trustee or the Fund, or have a conflict of interest which may affect their judgement in respect of the Fund.



## Guidance

1. A Fund Manager should consider whether there is any financial or personal relationship between it or any of its relevant Employees and the auditor or any of the relevant Employees of the auditor that may affect the judgement of the auditor when conducting an audit of the Fund or complying with all its legal obligations, including the FSMR, GEN, AML and other relevant ~~modules~~ Rulebooks of the rules made by the Regulator.

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- 16.4.2 (1) A Fund Manager must produce the required annual report and interim report as follows:

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- (2) For the purposes of (1), the first annual accounting period of a Fund begins:

- (a) in the case of a Public Fund, on the date of registration by the Regulator; or
- (b) in the case of an Exempt Fund or a Qualified Investor Fund, on the date of notification to the Regulator; and

ends on the date stipulated as the annual accounting period end date in the prospectus ~~12 months later~~. Thereafter, annual accounting periods cover the period between each subsequent financial year end.

- (3) Notwithstanding the requirement in (2), should a Fund's first accounting period end within less than 6 months, the Fund Manager may notify the Regulator that it has chosen to extend the first accounting period to end on the subsequent accounting period end date, provided that the extended first accounting period is no longer than 18 months in duration ~~a Fund Manager may, subject to the prior approval of the Regulator, produce the Fund's reports and financial statements in accordance with the Fund Manager's reporting periods.~~

- (4) For the purposes of (1), an interim accounting period is the period covering:

- (a) from the date that the first accounting period begins to the date 6 months prior to the end of the first accounting period after the date of registration of the Fund with the Regulator in the case of a Public Fund, or the date of notification to the Regulator in the case of an Exempt Fund or Qualified Investor Fund; and
- (b) 6 months after ~~the anniversary of each annual accounting period~~ end date.

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## 17. FUND ADMINISTRATORS

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**Compliance with the AML Rules**

17.1.2 The AML ~~module~~ Rules applies 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, if managed by a Foreign Fund Manager, as if each reference in AML to a "customer" is a reference to a "Unitholder" or "prospective Unitholder" as appropriate to the context.

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**APP4 GUIDANCE ON ASSET VALUATION AND PRICING**

**Guidance**

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**Action to be taken as regards compensation for incorrect pricing.**

- 32. ~~Prices found to be incorrect by less than 0.5%~~
  - a. ~~Where the dealing price of any Unit of a Fund is found to be incorrect by less than 0.5% of the price of a Unit of a Fund, compensation to Unitholders will not normally be required, unless the Eligible Custodian decides otherwise.~~
  - b. ~~Where an issue or cancellation of Units has taken place at a price which is incorrect by less than 0.5% of the price of a Unit of a Fund, compensation to or from the Fund will not normally be required, unless the oversight arrangement decides otherwise.~~

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