

**FINANCIAL SERVICES AND MARKETS (AMENDMENT)  
REGULATIONS 2017**

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Regulations to amend the Financial Services and Markets Regulations 2015.

Date of Enactment: [•] 2017

The Board of Directors of the Abu Dhabi Global Market, in exercise of its powers under Article 6(1) of Law No. 4 of 2013 concerning the Abu Dhabi Global Market issued by His Highness the Ruler of the Emirate of Abu Dhabi, hereby enacts the following Regulations—

**1. Amendments to the Financial Services and Markets Regulations 2015**

**Part 3 Regulated Activities**

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**25. Enforceability of Agreements resulting from Unlawful Communications**

(1) If<sub>z</sub> in consequence of an Unlawful Communication, a person Engages in Investment Activity as a Customer, any agreement entered into by him as a part of that activity is unenforceable against him and he is entitled to recover—

(a) any money or other property paid or transferred by him under the agreement; and

(b) compensation for any loss sustained by him as a result of having parted with it.

(2) If<sub>z</sub> in consequence of an Unlawful Communication a person exercises any rights conferred by a Specified Investment, no obligation to which he is subject as a result of exercising them is enforceable against him and he is entitled to recover—

(a) any money or other property paid or transferred by him under the obligation; and

(b) compensation for any loss sustained by him as a result of having parted with it.

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**Part 4 Authorisation**

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***Imposition and variation of requirements***

**35. Imposition of requirements by the Regulator**

(1) Where a person has applied to the Regulator for a Financial Services Permission or the variation of a Financial Services Permission, the Regulator may impose on that person such Rrequirements, taking effect on or after the giving or variation of the Financial Services Permission, as the Regulator considers appropriate.

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(3) The Regulator's power under this subsection is a power—

- (a) to impose a new Rrequirement;
- (b) to vary a Rrequirement imposed by the Regulator under this section; or
- (c) to cancel such a Rrequirement.

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**38. Assets Requirements**

- (1) This section applies if—
  - (a) the Regulator imposes an Assets Requirement on a person being given a Financial Services Permission;
  - (b) an Assets Requirement is imposed on an Authorised Person; or
  - (c) an Assets Requirement previously imposed on such a person is varied.
- (2) A person on whom an Assets Requirement is imposed is referred to in this section as "A".
- (3) "Assets Requirement" means a requirement ~~under~~ imposed under section 35—
  - (a) prohibiting the disposal of, or other dealing with, any of A's assets (whether in the Abu Dhabi Global Market or elsewhere) or restricting such disposals or dealings; or
  - (b) that all or any of A's assets, or all or any assets belonging to Customers but held by A or to A's order, must be transferred to and held by a trustee approved by the Regulator.

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**49. Exercise of power under section 48: procedure**

- (1) This section applies to an exercise by the Regulator of the power to vary an Approval under section 48.
- (2) .....
- (7) If<sub>1</sub> having considered the representations made by the Interested Parties, the Regulator decides to vary the Approval, or if the variation has taken effect, not to rescind it, it must give each of the Interested Parties written notice.
- (8) If<sub>1</sub> having considered the representations made by the Interested Parties, the Regulator decides—
  - (a) not to vary the Approval;
  - (b) to vary the Approval in a different way; or
  - (c) if the variation has taken effect, to rescind it;it must give each of the Interested Parties written notice.

(9) .....

**Chapter 4 Investment Trusts**

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**114. Creation of an Investment Trust**

- (10) An Investment Trust shall be created by a Trust Deed entered into between—
- (a) an Authorised Person who has a Financial Services Permission to ~~Manage Assets or~~ Manage a Collective Investment Fund granted by the Regulator or is licensed to provide fund management services by a Non-Abu Dhabi Global Market Regulator in a Recognised Jurisdiction; and
  - (b) an Authorised Person who has a Financial Services Permission to Act as the Trustee of an Investment Trust.

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**Part 17 Information Gathering, Prudential Directions, Skilled Person Reports, Investigations and Cooperation**

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***Investigations***

**205. Commencement of Investigations**

- (1) If it appears to the Regulator that there is good reason for doing so, the Regulator may commence an investigation into—
- (a) the nature, conduct or state of the Business of an Authorised Person or Recognised Body;
  - (b) a particular aspect of that Business;
  - (c) the ownership or control of an Authorised Person or Recognised Body; or
  - (d) a matter reasonably requested to be investigated pursuant to a request made under section 217.
- (2) If the Regulator reasonably suspects that a person may have committed a contravention of these Regulations or any Rules, the Regulator may commence an investigation into the matter.

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**Part 22 General**

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## 258. Definitions

(1) In these Regulations, unless the context otherwise requires—

<b>Board</b>	means the Board of Directors of the Abu Dhabi Global Market.
<b>Fund Manager</b>	<del>means the person who is responsible for the management of the property held for or within a Fund and who otherwise operates the Fund and, in relation to a Domestic Fund, is authorised under a Financial Services Permission granted by the Regulator to operate the Fund.</del> means a Person responsible for the management of the property held for or within a Fund and who otherwise operates the Fund.
<b>Non-Abu Dhabi Global Market Recognised Body</b>	means a Non-Abu Dhabi Global Market Clearing House or Non-Abu Dhabi Global Market Investment Exchange which has been recognised by the Regulator in accordance with section <del>127</del> 165.
<b>Non-Abu Dhabi Global Market Recognised Clearing House</b>	means, for the purposes of Part 13, a clearing house operating outside the Abu Dhabi Global Market which has been recognised by the Regulator in accordance with section <del>127</del> 165.
<b>Non-Abu Dhabi Global Market Recognised Investment Exchange</b>	means, for the purposes of Part 13, an investment exchange operating outside the Abu Dhabi Global Market which has been recognised by the Regulator in accordance with section <del>127</del> 165.
<b>Publication</b>	means— (a) a newspaper, journal, magazine or other periodical publication; (b) a <del>web site</del> <u>website</u> or similar system for the electronic display of information; or (c) any programme forming part of a service consisting of the broadcast or transmission of television or radio programmes.
<b>Takeover</b>	<del>means takeover and merger transactions however effected, including arrangements which have similar commercial effect to takeovers, partial bids, bid by a parent Company for Shares in its subsidiary and (where appropriate) Share repurchases by general bid.</del>

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**261. Meaning of "Participating Interest"**

- (1) ...
- (2) A holding of 20 per cent- or more of the Shares of an Undertaking is presumed to be a Participating Interest unless the contrary is shown.

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**Chapter 1 Dealing in Investments**

***The activity***

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**10. Risk management**

- (1) A person ("B") does not carry on an activity of the kind specified by paragraph 4 by entering as principal into a transaction with another person ("C") if—
  - (a) the transaction relates to investments of the kind specified by any of paragraphs 94 to 96 (or paragraphs 98 or 99 so far as relevant to any of those paragraphs);

.....

- (2) In sub-paragraph (1), "relevant business" means a business carried on by—
  - (a) B;
  - (b) a member of the same Group as B; or
  - (c) where B and another person are, or propose to become, participants in a Joint Enterprise, that other person.

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***Exclusions***

**13. Deals with or through Authorised Persons**

- (1) A person who is not an Authorised Person does not carry on an activity of the kind specified by paragraph 12 by entering into a transaction as agent for another person (the "client") with or through an Authorised Person if—
  - (a) the transaction is entered into on advice given to the client by an Authorised Person; or
  - (b) ...
- (2) But the exclusion in sub-paragraph (1) does not apply, if—

- (a) the transaction relates to a Contract of Insurance; or
- (b) the agent receives from any person other than the client any pecuniary reward or other advantage, for which he does not account to the client, arising out of his entering into the transaction.

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## Chapter 2 Arranging Deals in Investments

### *The activities*

#### **16. Arranging Deals in Investments**

- (1) Making arrangements with a view to another person (whether as principal or agent) Buying, Selling, subscribing for or underwriting a Specified Investment is a specified kind of activity.
- (2) Making arrangements with a view to another person who participates in the arrangements Buying, Selling, subscribing for or underwriting Specified Investments (whether as principal or agent) is also a specified kind of activity.

### *Exclusions*

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#### **19. Arrangements which amount to ~~a~~ Operating a Multilateral Trading Facility or Organised Trading Facility**

There are excluded from paragraph 16 arrangements which amount to Operating a Multilateral Trading Facility or Organised Trading Facility.

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#### **21. Arranging ~~deals~~ transactions with or through Authorised Persons**

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#### **23. Arranging the acceptance of debentures in connection with loans**

- (1) There are excluded from paragraph 16(1) and (2) arrangements under which a person accepts or is to accept, whether as principal or agent, an instrument creating or acknowledging indebtedness in respect of any loan, Credit, guarantee or other similar financial accommodation or assurance which is, or is to be, made, granted or provided by that person or his ~~principal~~ agent.
- (2) .....

.....

**Chapter 3 Advising on Investments or Credit**

*The activity*

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**51. Exclusions**

- (1) A person does not Arrange Credit by—
- (a) providing means by which one party to a transaction is able to communicate with other such parties;
  - (b) making arrangements under which another person accepts or is to accept an instrument creating or acknowledging indebtedness in respect of any loan, Credit, guarantee or other similar financial accommodation which he or his principal has made or provided;
  - (c) making arrangements having as their sole purpose the provision of finance to enable a person to Buy, Sell, subscribe for or underwrite investments; or
  - (d) making arrangements for the issue or redemption of Securities issued by that person ~~it~~.

.....

**Chapter 11 Collective Investment**

*The activities*

**59. Managing a Collective Investment Fund**

- (1) Managing a Collective Investment Fund is a specified kind of activity.
- (2) A person manages a Collective Investment Fund when the person—
- (a) is legally accountable to the Unitholders in the Collective Investment Fund for the management of the property held for or within a Collective Investment Fund under the Collective Investment Fund's Constitution; ~~or~~
  - (b) establishes, manages or otherwise operates or winds up a Collective Investment Fund.

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**76. Activities carried on in connection with the sale of goods or supply of services**

- (1) Subject to sub-paragraphs (10), (11) and (12), this paragraph concerns certain activities carried on for the purposes of or in connection with the sale of goods or supply of services by a supplier to a Customer, where "supplier" means a person whose main business is to sell goods or supply services and not to carry on any activities of the kind specified by any of paragraphs 4, 12, 16, 28, 33, 36, 43, 48, 56, 59, 60 and 61 where the supplier is a member of a Group, ~~also means any other member of that Group.~~



.....

**77. Groups and Joint Enterprises**

(1) .....

(2) There is excluded from paragraph 12 any transaction into which a person enters as agent for another person if that other person is acting as principal, and the condition in sub-paragraph (1)(a) or (b) is met, provided that—

(a) the agent does not hold himself out (other than to members of the same Group or persons who are or propose to become participators with him in a Joint Enterprise) as engaging in the business of Buying Financial Instruments of the kind to which the transaction relates with a view to Selling them, and does not regularly solicit members of the public for the purpose of inducing them (as principals or agents) to Buy, Sell, subscribe for or underwrite Financial Instruments; or

(b) the agent enters into the transaction—

.....

**Schedule 1  
Regulated Activities**

....

**78. Activities carried on in connection with the sale of a Body Corporate**

(1) .....

(2) The conditions mentioned in sub-paragraph (1)(b) are that—

- (a) the Shares consist of or include 50 per cent- or more of the Voting Shares in the Body Corporate; or
- (b) the Shares, together with any already held by the person acquiring them, consist of or include at least that percentage of such Shares; and
- (c) in either case, the acquisition or disposal is between parties each of whom is a Body Corporate, a Partnership, a single individual or a Group of Connected Individuals.

(3) In sub-paragraph (2)(c), a "Group of Connected Individuals" means—

- (a) in relation to a party disposing of Shares in a Body Corporate, a single group of persons each of whom is—
  - (i) a Director or manager of the Body Corporate;
  - (ii) a Close Relative of any such Director or manager; or
  - (iii) a person acting as trustee for any person falling within sub-paragraph (i) or (ii); and

.....

**79. Non-Abu Dhabi Global Market Persons**

(1) A Non-Abu Dhabi Global Market Person does not carry on an activity of the kind specified by paragraph 4 by—

- (a) entering into a transaction as principal with or through an Authorised Person, or an Exempt Person acting in the course of a business comprising a Regulated Activity in relation to which he is exempt; or
- (b) entering into a transaction as principal with a person in the Abu Dhabi Global Market, if the transaction is the result of a legitimate approach.

(2) ....

(4) There are excluded from paragraph 16(2) arrangements made by a Non-Abu Dhabi Global Market Person with a view to transactions which are, as ~~respects~~ regards transactions in the Abu Dhabi Global Market, confined to—

- (a) transactions entered into by Authorised Persons as principal or agent; and
  - (b) transactions entered into by Exempt Persons, as principal or agent, in the course of business comprising Regulated Activities in relation to which they are exempt.
- (5) .....
- .....

**80. Insurance intermediation: incidental basis**

- (1) A Person does not carry on Insurance Intermediation if the activity—
- (a) ....
  - (c) is not remunerated separately from the other services.

.....

**83. Recognised Bodies**

A person who is a Body Corporate does not carry on the activity specified ~~under~~ by paragraph 4 or 12 by way of business, if—

- (a) the person carries on such activities as a member of a Recognised Body;
- (b) the person carries on such activities for ~~its~~ his own account or for another Body Corporate which is in the same Group as the person;
- (c) the person restricts such activities to transactions on or with that Recognised Body involving or relating only to Commodity Derivatives;
- (d) the main business of the person is dealing in relation to Commodity Derivatives; and
- (e) the person is not part of a Group whose main business is the provision of financial services.

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**Part 3**

**Specified Investments**

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**85. Deposits**

- (1) A Deposit is a sum of money paid on terms—
- (a) .....
- (2) Money is paid on terms which are referable to the provision of property or services or the giving of security if—

- (a) .....
- (b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
- (c) without prejudice to sub-paragraph (b), it is paid by way of security for the delivery up of property, whether in a particular state of repair or otherwise.

....

**88. Instruments creating or acknowledging indebtedness**

- (1) .....
- (2) If and to the extent that they would otherwise fall within sub-paragraph (1), there are excluded from that sub-paragraph—
  - (a) an instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
  - (b) ....
- (d) a Contract of Insurance;

....

**89. Sukuk**

- (1) .....
- (2) For the purposes of this paragraph, arrangements constitute a Sukuk if—
  - (a) the arrangements provide for a person (the "Sukuk-holder") to pay a sum of money (the "capital") to another (the "Sukuk-issuer");
  - (b) ....
  - (e) the Sukuk-issuer undertakes under the arrangements—
    - (i) to make a repayment in respect of the capital (the "redemption payment") to the Sukuk-holder during or at the end of the Sukuk term (whether or not in installments); and
    - (ii) to pay to the Sukuk-holder other payments on one or more occasions during or at the end of the Sukuk term (the "profit payments");

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**107. Class 6 - Capital redemption**

Contracts, other than contracts in paragraph 100 of this Part, to provide a capital sum at the end of a term.

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**113. Class 5 - Fire and other property damage**

Contracts of Insurance against loss of or damage to property, other than property to which either of classes 3 and or 4 relates, due to fire, explosion, storm, natural forces other than storm, nuclear energy, land subsidence, hail, frost or any event, such as theft.

...

**116. Class 8 - Suretyship**

- (1) Contracts of Insurance against risks of loss to the persons insured arising from their having to perform contracts of guarantee entered into by them; or
- (2) ~~€~~contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee.

...

**Schedule 2**

**Financial Promotions**

Section 18(5)

**1. Interpretation**

In this Schedule—

- (a) any reference to a communication being made to another person is a reference to a communication being addressed, whether orally or in legible form, to a particular person or persons (for example where it is contained in a telephone call or letter);
- (b) any reference to a communication being directed at persons is a reference to a communication being addressed to persons generally (for example where it is contained in a television broadcast or ~~web site~~website);

.....

***Exempt Communications***

**4. Communications to non-Abu Dhabi Global Market Recipients and Authorised Persons or Recognised Bodies**

- (1) ....
- (2) A communication will fall within the exemption in sub-paragraph (1)(b) if the conditions set out in sub-paragraphs (a) to (d) are met. In any other case where one or more of the conditions in sub-paragraphs (a) to (d) are met, that fact is to be taken into account in determining whether or not the exemption in sub-paragraph (1)(b) applies. The conditions in this paragraph are that—
  - (a) .....

- (d) the communication is included in—
- (i) a ~~web-site~~website, newspaper, journal, magazine or periodical Publication which is principally accessed in or intended for a market outside the U.A.E.; or
  - (ii) a radio or television broadcast transmitted principally for reception outside the U.A.E.

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**12. Communications by and to journalists**

- (1) .....
- (4) The Financial Promotion Restriction does not apply to any non-real time communication relating to a Specified Investment falling under sub-paragraph (5) if—
- (a) the content of the communication is to a person acting in the capacity of a journalist; and
  - (b) the journalist is employed by the publisher of, or regularly contributes as a freelance journalist to, qualifying publications.

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**13. Promotion broadcast by a Director etc.**

- (1) .....
- (2) For the purposes of this paragraph, a "qualifying service" is a service—
- (a) which is broadcast or transmitted in the form of television or radio programmes; or
  - (b) displayed on a ~~web-site~~website (or similar system for the electronic display of information) comprising regularly updated news and information;

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.....

**20. Persons in the business of placing promotional material**

The Financial Promotion Restriction does not apply to any communication which is made to a person whose business it is to place, or arrange for the placing of, promotional material provided that it is communicated so that he can place or arrange ~~for placing~~ to place it.

.....

**24. Persons in the business of disseminating information**

- (1) .....

- (2) This paragraph applies to—
- (a) a person who receives the communication in the course of a business which involves the dissemination through a Publication of information concerning Regulated Activities;
  - (b) a person whilst acting in the capacity of Director, officer or employee of a person falling within sub-paragraph (a) being a person whose responsibilities when acting in that capacity involve him in the business referred to in that sub-paragraph; or
  - (c) any person to whom the communication may otherwise lawfully be made.

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**25. Settlers, trustees and personal representatives**

The Financial Promotion Restriction does not apply to any communication which is made between—

- (a) a person when acting as a settlor or grantor of a trust or an estate, a trustee or a personal representative; and
- (b) a trustee of the trust, a fellow trustee or a fellow personal representative (as the case may be);

if the communication is made for the purposes of ~~the~~ that trust or estate.

.....

**29. Annual accounts and Directors' report**

- (1) .....
- (2) The requirements of this paragraph are that the communication—
  - (a) does not contain any invitation to persons to underwrite, subscribe for, or otherwise acquire or dispose of, a Specified Investment; and
  - (b) does not advise persons to engage in any of the activities within sub-paragraph (a).
- (3) .....
- (4) The requirements of this paragraph are that the communication does not contain any inducement relating to an investment other than one issued, or to be issued, by the Body Corporate (or another Body Corporate in the same Group) which falls within—
  - (a) Paragraph 87, 88 or 89 of Schedule 1; or
  - (b) Paragraph 91 or 92 of that Schedule, so far as ~~relating~~ it relates to any investments within sub-paragraph (a).
- (5) .....

.....

**30. Participation in employee share schemes**

(1) .....

(2) In this paragraph, "employee share scheme", in relation to any investments issued by C, means arrangements made or to be made by C or by a person in the same Group as C to enable or facilitate—

(a) transactions in the investments specified in sub-paragraphs (1)(a) or (b) between or for the benefit of—

(i) the bona fide employees or former employees of C or of another member of the same Group as C;

(ii) the wives, husbands, widows, widowers, surviving ~~or~~ children or step-children under the age of eighteen of such employees or former employees; or

(b) the holding of those investments by, or for the benefit of, such persons.

.....

**32. Sale of a Body Corporate**

(1) ....

(3) The conditions mentioned in sub-paragraph (2)(b) are that—

(a) the Shares consist of or include 50 per cent. or more of the Voting Shares in the Body Corporate; or

(b) the Shares, together with any already held by the person acquiring them, consist of or include at least that percentage of such Shares; and

(c) in either case, the acquisition or disposal is, or is to be, between parties each of whom is a Body Corporate, a Partnership, a single individual or a Group of Connected Individuals.

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**34. Promotions of Financial Instruments already admitted to certain markets**

(1) .....

(2) The requirements of this paragraph are that the communication—

(a) is not, and is not accompanied by, an invitation to Engage in Investment Activity;

(b) is not, and is not accompanied by, an inducement relating to an investment other than one issued, or to be issued, by A (or another Body Corporate in the same Group); and

(c) is not, and is not accompanied by, an inducement relating to a Relevant Security which refers to—



- (i) the price at which Relevant Securities have been bought or sold in the past;  
or
- (ii) the yield on such Securities;

unless the inducement also contains an indication that past performance cannot be relied on as a guide to future performance.

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**2. Short title, extent and commencement**

- (1) These Regulations may be cited as the Financial Services and Markets (Amendment) Regulations 2017.
- (2) These Regulations shall apply in the Abu Dhabi Global Market.
- (3) These Regulations come into force on the date of their publication.