ABU DHABI GLOBAL MARKET
سوق أبوظبي العالمي

CONSULTATION PAPER NO. 7 OF 2015

29 JUNE 2015

FINANCIAL SERVICES REGULATIONS AND RULES

CONTENTS

INTRODUCTION

WHY ARE WE ISSUING THIS PAPER?

1. The Board of Directors (the "**Board**") of Abu Dhabi Global Market ("**ADGM**") have issued this Consultation Paper to invite public comment on the Board's proposals to issue regulations governing financial services and markets to be called the Financial Services and Markets Regulations ("**FSMR**"). The Board would also like to invite comment on draft rules governing financial services and markets set out in FSMR ("**FSMR Rulebook**"). Proposed drafts of FSMR and the FSMR Rulebook are set out at Annex A and Appendices 1 - 11 to this Paper

2. We have summarised the main provisions of FSMR and the FSMR Rulebook in this Consultation Paper. The summaries provided within should be read as an introduction to the provisions only – many of the precise details and specifics are contained in the draft regulations and rules themselves. Where terms are capitalised in this paper, they (unless context requires otherwise) should be taken to have the definitions ascribed to such terms in FSMR or the FSMR Rulebook.

WHO SHOULD READ THIS PAPER?

3. The proposals in this Consultation Paper would be of interest to individuals, organisations and investors with an interest in establishing a presence in ADGM or otherwise doing business in ADGM, and their professional advisors.

HOW TO PROVIDE COMMENTS

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. You may, if relevant, identify the organisation you represent in providing your comments. The Board reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments. Comments supported by reasoning and evidence will be given more weight by the Board.

WHAT HAPPENS NEXT?

5. The deadline for providing comments on this proposal is **11 August 2015**. Once we receive your comments, we will consider whether any modifications are required to this proposal. The Board and the Financial Services Regulatory Authority ("the Regulator") will then proceed to enact the FSMR and FSMR Rulebook. You should not act on these proposals until the relevant regulations and rules are issued. We shall issue a notice on our website telling you when this happens.

COMMENTS TO BE ADDRESSED TO:

Consultation Paper No. 7 of 2015
Abu Dhabi Global Market
Abu Dhabi Global Market Square
Al Maryah Island
PO Box 111999
Abu Dhabi, UAE
Email: consultation@adgm.com
Telephone: +971 (0)2 3330888

BACKGROUND

6. The draft FSMR and accompanying Rulebooks as detailed below form the second phase of legislation developed within the ADGM. The proposed legislation will establish the framework and environment for financial services firms to establish and operate in ADGM. This is a key step forward in the ADGM fulfilling its objectives, in particular, promoting Abu Dhabi as a global financial centre and developing the economy of Abu Dhabi.

7. After careful consideration of the various legislative and regulatory regimes found in the various leading international financial centres, the ADGM financial services regime is broadly modelled on the UK's financial services framework.

8. Prior to this, the Board enacted a set of commercial regulations and rules, including the Application of English Law Regulations, Companies Regulations, Commercial Licensing Regulations, Employment Regulations, Interpretation Regulations, Real Property Regulations, Strata Title Regulations and the associated secondary legislation in the form of rules.

9. The foundation of the civil and commercial law in ADGM is provided by the Application of English Law Regulations, which makes English common law (including the rules and principles of equity) directly applicable in ADGM. In addition, a wide ranging set of English statutes on civil matters are also made applicable in ADGM. All regulations in ADGM are to be construed in accordance with the general clauses and other interpretational rules set out in the Interpretation Regulations. Accordingly, in reading the draft FSMR, reference should be made to the Interpretation Regulations for definitions and other provisions.

10. The direct application of English common law makes ADGM the first jurisdiction in the Middle East to adopt a similar approach to that of Singapore and Hong Kong. We believe English common law will provide an environment conducive to the development of a financial services industry in ADGM and be of benefit to market participants and investors alike.

11. The Commercial Licensing Regulations establish a regime for the licensing of persons to carry on various economic activities in ADGM, such as professional services, financial services, retail and wholesale trade and distribution, real estate services, education, and healthcare. The FSMR will impose a licensing regime that is additional to the regime established by the Commercial Licensing Regulations. Accordingly, an entity that wishes to carry on a financial services business in ADGM will be subject to two sets of licensing requirements: a requirement to obtain a commercial licence under the Commercial Licensing Regulations and a requirement to obtain a Financial Services Permission (or recognition as a Recognised Body) under the FSMR.

CHAPTER 1 – FINANCIAL SERVICES AND MARKETS REGULATIONS (FSMR)

SCOPE AND APPROACH TO THE FINANCIAL SERVICES AND MARKETS REGULATIONS

1. The Financial Services and Markets Regulations ("**FSMR**") establishes the legislative and regulatory framework for financial services in ADGM. In particular, FSMR has been broadly modelled on the UK's Financial Services and Markets Act 2000 ("**FSMA**") and other related legislation (Please see Annex A).

2. FSMR contains provisions including the Financial Services Regulatory Authority ("the Regulator") structure and powers, authorisation, recognition, market infrastructure bodies, enforcement and information gathering powers, accounting/auditing, listing and prospectuses, collective investment funds, settlement finality, disclosure of information, financial services transfers etc. FSMR is supplemented by the FSMR Rulebook consisting of various modules (Funds, MIR, GEN, MKTs, RMC, AML, IFR, COBS, PRU, FEES and GLO) as well as a Guidance and Policies Manual to be published in due course.

PART 1 – THE REGULATOR

3. The ADGM Founding Law sets out the powers and functions of the Regulator. Part 1 of FSMR sets out the objectives of the Regulator, together with the guiding principles to be pursued by the Regulator in exercising those powers and performing those functions.

PART 2 – RULES AND GUIDANCE

4. This part sets out the various rule-making powers of the Regulator. It is proposed that the Regulator going forward will issue rules to complement the FSMR. The Regulator will also be empowered to provide guidance as and when it considers appropriate. Guidance is indicative and non-binding. We have specified that nothing is to constitute guidance unless it is published by the Regulator. This provision on designation of material as guidance was included to ensure consistency and exclude the possibility of individuals claiming reliance on unofficial comments and speeches provided on an informal basis.

ISSUES FOR CONSIDERATION

Q1: DO YOU AGREE WITH THIS APPROACH, IN PARTICULAR THE RULE-MAKING POWERS PROPOSED TO BE CONFERRED ON THE REGULATOR?

PART 3 – REGULATED AND PROHIBITED ACTIVITIES

Sections 16, 17 and 18

5. There are, broadly, two contraventions under Part 3 of the FSMRs, based on the equivalent offences under FSMA. These are (1) carrying out a regulated activity without authorisation or exemption (the "**General Prohibition**"), and (2) making certain financial promotions unless authorised or unless the content has been approved by an Authorised Person (the "**Financial Promotion Restriction**").

6. Contraventions under this Part may give rise to disciplinary action (such as the imposition of a penalty). In addition to such disciplinary action, agreements made in contravention of these provisions may be unenforceable. This approach follows the position in the UK. Disciplinary action may not constitute a deterrent in itself – accordingly, it is supplemented by provisions on unenforceability of agreements.

ISSUES FOR CONSIDERATION

Q2: DO YOU AGREE WITH THE APPROACH OF RENDERING AGREEMENTS UNENFORCEABLE IF THEY ARE MADE IN CONTRAVENTION OF THE GENERAL PROHIBITION AND THE FINANCIAL PROMOTION RESTRICTION?

7. Rather than adopting a model of licenses with endorsements, we have adopted an approach of authorisation with specified permissions.

8. Our approach has the advantage of certainty for Authorised Persons with respect to what they are and are not entitled to do. The basis on which a Regulator may impose conditions or restrictions on an entity's authorisation are prescribed in FSMR (e.g. in relation to public interest or if the Authorised Person has failed to meet certain threshold conditions for authorisation). Similarly, the circumstances in which the Regulator may make cancellations and variations to authorisation granted to entities carrying out regulated activities are explicitly set out. These limitations will function as an important protection for market participants.

9. The Regulated Activities encompass the following:

    a) Dealing in Investments as Principal;

    b) Dealing in Investments as Agent;

    c) Arranging Deals in Investments;

    d) Advising on Investments or Credit;

    e) Accepting Deposits;

    f) Providing Custody (which encompasses entities acting as central securities depositories);

    g) Arranging Custody;

    h) Providing Credit;

    i) Arranging Credit;

    j) Providing Money Services;

    k) Operating a Multilateral Trading Facility or Organised Trading Facility;

    l) Managing Assets;

    m) Managing a Collective Investment Fund;

    n) Acting as the Administrator of a Collective Investment Fund;

    o) Acting as the Trustee of an Investment Trust;

    p) carrying on a Regulated Activity in a manner that complies with Shari'a;

    q) Operating a Credit Rating Agency;

r) Operating a Representative Office;

s) Providing Trust Services;

t) Effecting Contracts of Insurance;

u) Carrying Out Contracts of Insurance as Principal;

v) Insurance Intermediation;

w) Insurance Management;

x) Providing Information in Relation to a Specified Benchmark and Administering a Specified Benchmark; and

y) agreeing to carry on specified kinds of activity.

PART 4 – AUTHORISATION

10. Individuals, bodies corporate or partnerships can apply to carry on regulated activities. The Regulator has powers to vary or cancel permission to carry on regulated activities in accordance with the conditions set out in this Part. Under certain circumstances, it can make variations or cancellations on its own initiative, and also has reasonably wide powers to impose requirements on entities that are, for example, failing to meet the threshold conditions.

ISSUES FOR CONSIDERATION

Q3: ARE THE REGULATOR'S POWERS AS SET OUT IN THESE PROVISIONS APPROPRIATE?

PART 5 - PERFORMANCE OF CONTROLLED FUNCTIONS

11. Only Approved Persons are allowed to perform Controlled Functions in the businesses of Authorised Persons. Authorised Persons must ensure that this is the case and Authorised Persons may apply for approval. Similar to the system of authorisation in Part 4, the Regulator can, under certain circumstances, make variations or cancellations of approval on its own initiative, and has reasonably wide powers to impose conditions attached to the grant of approval.

PART 6 - OFFICIAL LISTING AND OFFERS

12. The Regulator maintains the official list of securities admitted to trading and is empowered to make rules and procedures relating to the admission of securities to the official list ('Listing Rules'). Applications for admission to the list must fulfill the Listing Rules. The Regulator may, in accordance with the Listing Rules, discontinue or suspend the listing in circumstances where this is in the interest of the ADGM. The Regulator can also refuse an application or impose conditions or restrictions, make variations or withdraw these conditions or restrictions in certain prescribed circumstances.

13. This Part also includes provisions on public offers of securities, the obligation to issue a prospectus (and if necessary, supplementary prospectus), prohibits the making of misleading statements or omissions in the prospectus and related defences and disciplinary action. Reporting entities i.e. bodies that have securities

admitted to the list or have made public offers are required to adhere to rules relating to corporate governance, market disclosures and preparation of financial reports.

PART 7 - TRANSFER SCHEMES

14. This section contains the procedure and requirements relating to the transfer of financial services businesses. Details on the contents of the required scheme report and the conditions that the Court must deem to have been fulfilled before a scheme is sanctioned are included.

PART 8 – MARKET ABUSE

15. These provisions on market abuse comprise a tailored amalgamation of: the Market Abuse Directive, as implemented in the UK; and Part VII of the Financial Services Act 2012. While FSMR reflects the present EU regime for market abuse, we are aware that there are some upcoming developments in this area that have yet to be implemented in the EU. We will continue to monitor the law in this area.

PART 9 – MISLEADING STATEMENTS AND IMPRESSIONS

Misleading statements and omissions

16. In addition to the rules on misleading statements and omissions in prospectuses in Part 6, FSMR has a general section on misleading statements and impressions when entering into relevant agreements or relating to relevant investments. Broadly, the provisions set out the circumstances in which a false or misleading statement or impression will be deemed to be made. The rules provide for a defence of conformity with price stabilising or control of information rules.

Benchmarks

17. Specific provisions in relation to benchmarks have been included. However, we are aware that there have been recent developments in the EU aimed at introducing a more rigorous regime relating to benchmarks. We will continue to monitor these developments but there may be merit in moving towards a more comprehensive regulatory regime through incorporating recent EU developments in this regard.

ISSUES FOR CONSIDERATION

Q4: SHOULD A MORE COMPREHENSIVE REGULATORY REGIME FOR BENCHMARKS BE INCLUDED, BASED ON EU LAW?

PART 10 - CONTROL OVER AUTHORISED PERSONS AND RECOGNISED BODIES

18. The Regulator is empowered to prescribe rules on the changes of control of Authorised Persons and Recognised Bodies. The Regulator has fairly broad powers in this regard and the content of the rules can cover approval or objection to a change of control, changes in existing levels of control or objection to an existing controller and related conditions.

PART 11 - COLLECTIVE INVESTMENT FUNDS

19. This Part contains provisions relating to Collective Investment Funds including registration requirement for all public funds, as well as a notification requirement for exempt funds and qualified investor funds – prior to initial and subsequent offers to issue units. FSMR also includes requirements for creation of investment trusts. In addition, the Regulator has various supervisory powers, which include the ability to request

additional information, withdraw or grant registration, make directions for name changes and investigatory powers.

PART 12 – RECOGNISED BODIES

20. The Regulator is empowered to prescribe requirements that investment exchanges and clearing houses must fulfill if they wish to apply for recognition under this chapter. The benefit of recognition is that if recognised, these bodies are exempt from the general prohibition against conducting regulated activities without authorisation.

21. These provisions incorporate Title II of EMIR on clearing, reporting and risk mitigation of OTC derivatives. The purpose of these sections is to import equivalent risk mitigation techniques applicable to OTC derivatives in the European Union into the ADGM. The techniques include obligatory clearing of OTC derivatives that have been declared subject to the clearing obligations and various other requirements applicable to non-clearing contracts.

ISSUES FOR CONSIDERATION

Q5: DO YOU AGREE WITH THE ADOPTION OF THE EMIR PROVISIONS?

PART 13 – SETTLEMENT FINALITY

22. The settlement finality provisions represent a tailored version of Part VII of the UK Companies Act 1989. The purpose of these provisions is to safeguard integrity and finality of trades executed/cleared through market infrastructure by insulating contracts between market participants and exchanges or clearing houses from impact of insolvency of other participants or of the exchange or clearing house itself. In addition, margin held in relation to such contracts is insulated from insolvency processes. This Part gives primacy to the body's own default management rules and procedures over insolvency procedures and disapplies insolvency procedures otherwise available to administrators or liquidators.

PART 14 – AUDITORS AND ACTUARIES

23. FSMR requires that Authorised Persons, Recognised Bodies and Reporting Entities appoint an auditor to report on their financial statements. The Regulator is given the power to prescribe rules relating to this appointment including remuneration, term of office, removal, resignation, notification, access to financial books and reports to the Regulator. The Regulator will, however, not regulate auditors of authorised persons.

24. In line with Part 9 (and Part 6 on misleading statements relating to benchmarks), this Part also prohibits the provision of false or misleading information to any auditor appointed.

PART 15 – PUBLIC RECORD AND DISCLOSURE

Public record

25. The Regulator is required to maintain and make public a reasonably current record of all listed securities, Authorised Persons, Recognised Bodies, Approved Persons, Public Funds, individuals subject to Prohibition Orders etc.

Confidentiality

26. FSMR codifies rules on the client confidentiality obligations that persons must observe. The Regulator (including its employees and persons appointed to make skilled persons' reports or investigate) is also subject to a duty of confidentiality regarding receipt of confidential information. Exceptions to the Regulator's duty of confidentiality are also outlined. Broadly, disclosure by the Regulator is permitted if it facilitates the carrying out of a public function or is in the interest of ADGM.

PART 16 – INFORMATION GATHERING, INVESTIGATIONS AND COOPERATION

27. The information gathering and investigations powers that we have recommended strike what we consider to be a good balance in terms of the powers of the Regulator and the procedural protections available to Authorised Persons. It confers sufficient powers on the Regulator to provide for effective supervisory oversight, while containing sufficient practical procedural protections to reassure Authorised Persons.

28. The Regulator's investigative powers include: the power to require documents/information, appointment of investigators and request for skilled person reports.

ISSUES FOR CONSIDERATION

Q6: DO YOU AGREE THAT PART 16 PROVIDES A SUFFICIENT DEGREE OF PROCEDURAL PROTECTION FOR PERSONS AFFECTED BY THE POWERS CONFERRED BY THAT PART?

PART 17 - CONTRAVENTIONS

29. Part 17 contains a general contravention provision which states that persons who act in contravention of FSMR or the accompanying Rules (in any of the Rulebooks) commits a contravention and is liable to disciplinary action. Provisions on accessorial involvement, i.e. where a person is "knowingly concerned" in a contravention, are also included.

30. In line with the other provisions on misleading statements (in Parts 6, 9 and 15), this Part also prohibits the provision of false or misleading information to the Regulator in purported compliance of FSMR.

PART 18 – REGULATORY COMMITTEE, APPEALS PANEL AND DISCIPLINARY MEASURES

31. The Regulator has available to it various disciplinary measures in relation to breaches of FSMR and the Rules. These include issuance of a public censure, financial penalties, suspension of authorisation or disqualification of auditors, prohibition orders and Enforceable Undertakings.

Regulatory Committee and Appeals Panel

32. FSMR creates two independent bodies, the Regulatory Committee and the Appeals Panel. The function of both the Regulatory Committee and the Appeals Panel is to promote proper observance of due process and provide procedural fairness when the Regulator exercises its powers to secure consistent, transparent and proportionate use of such powers as well as increasing legal certainty and the expedient resolution of matters.

Regulatory Committee

33. Any decision made by the Regulator under FSMR, or any of the Rules made pursuant to it, may be referred to the Regulatory Committee for a full merits review by the person affected by the decision. The Regulator

may also refer an executive decision to the Regulatory Committee for determination if it considers it appropriate to do so. Examples of this would be where there is a perceived or actual conflict of interest or the decision is of sufficient regulatory significance.

34. The structure and procedures of the Regulatory Committee will be less formal than the Appeals Panel. The Regulatory Committee will develop its own procedures in order for it to convene quickly and make decisions efficiently and expeditiously.

35. The members of the Regulatory Committee will be appointed by the Board for fixed terms and are independent of the Board and Regulator.

Appeals Panel

36. Any decision, order or direction made by the Regulatory Committee may in turn be referred to the Appeals Panel for review by the person in respect of whom the decision was made or by the Regulator. A second full merits review may then be conducted by the Appeals Panel. The members of the Appeals Panel are likewise appointed by the Board for fixed terms but are persons independent of the Board, Regulator, Regulatory Committee, or Court. Significantly, the Board pursuant to FSMR may not remove any member of the Regulatory Committee or Appeals Panel without just cause.

37. This Appeal Panel review will provide a robust mechanism to ensure due process in relation to any administrative decisions by the Regulatory Committee.

38. Proceedings and decisions of the Appeals Panel shall be heard and given in public unless the Appeals Panel orders otherwise or the rules of procedure of the Appeals Panel provide otherwise.

39. An application for judicial review of a decision of the Appeals Panel may be made to the Court on the grounds that the decision is wrong in law or is in excess of the Appeal Panel's jurisdiction.

Due Process

40. It is important that due process apply to public authorities exercising administrative powers such as the Regulator. Due process has developed under the common law (however it is also applied in civil law jurisdictions) to ensure that governmental and public regulatory agencies or authorities who are entrusted with wide administrative discretionary powers are subject to appropriate controls when exercising those powers. Such controls are needed because the exercise of these discretionary powers can have a significant adverse impact on the rights, interests and legitimate expectations of persons in relation to whom decisions are made.

ISSUES FOR CONSIDERATION

Q7: IS HAVING TWO INDEPENDENT DECISION MAKING BODIES APPROPRIATE? ARE FURTHER SAFEGUARDS ENSURING DUE PROCESS WARRANTED?

PART 19 – INJUNCTIONS, RESTITUTION AND ACTIONS FOR DAMAGES

Actions for damages

41. We have included provisions that allow for an action for damages at the suit of any person who suffers loss as a result of a contravention of FSMR unless otherwise provided in the FSMR Rulebook.

Compulsory Winding Up

42. We have included provisions relating to compulsory winding up, with the expectation that these will function as a precursor to recovery and resolution regulations. Similarly, the Conduct of Business Rulebook supplements this, incorporating EMIR provisions on recovery and resolution, including maintenance of a resolution pack.

ISSUES FOR CONSIDERATION

Q8: DO YOU AGREE WITH THE PROPOSED PROVISIONS ON INJUNCTIONS AND RESTITUTION?

PART 20 – ENFORCEMENT PROCEDURE

43. At various stages in the regulatory process, the Regulator may take enforcement action. The general structure is to provide a warning notice, followed by a decision notice and where necessary, a final notice. Both warning and decision notices are written notices that specify the action which the Regulator proposes to take (in the case of a warning notice) or decided to take (in the case of a decision notice) and include reasons for the proposed regulatory action. A final notice is given following a decision notice by the Regulator on taking action to which the decision notice relates, unless the matter is referred to the Regulatory Committee or Appeals Panel. If the matter is referred to the Regulatory Committee or Appeals Panel, a final notice must be given by the Regulator on taking action in accordance with any directions given by the Regulatory Committee or Appeals Panel.

44. A warning notice may not be published without a written agreement allowing such publication between the person to whom the notice was addressed and the Regulator. In contrast, a decision notice or final notice may be published by the Regulator at its discretion.

ISSUES FOR CONSIDERATION

Q9: DO YOU AGREE WITH THE ENFORCEMENT PROCEDURE PROPOSED?

SCHEDULE 1 – REGULATED ACTIVITIES

45. The list of regulated activities which are subject to licensing under FSMR is set out in this schedule. We have modeled this schedule on the UK approach but with appropriate modifications to ensure that it is tailored for ADGM.

SCHEDULE 2 – FINANCIAL PROMOTIONS

46. Financial promotions may only be made by Authorised Persons, Exempt Persons or if the content has been approved by an Authorised Person. We have modeled this schedule on the UK but have made significant amendments such that our approach is more restrictive than that in the UK. In particular, we have limited

the list of exceptions to the restriction on financial promotions. For example, FSMR does not have exemptions for communications to individuals of high net worth as ADGM does not consider these appropriate.

ISSUES FOR CONSIDERATION

Q10: DO YOU AGREE WITH THE LIST OF REGULATED ACTIVITIES SET OUT IN SCHEDULE 1 AND THE FINANCIAL PROMOTION REGIME IN SCHEDULE 2?

TRANSITIONAL PROVISIONS

47. We are presently in the process of considering transitional provisions for firms that may currently carry on financial activities within ADGM. We will engage with key stakeholders and any affected parties further regarding these measures.

48. We are considering providing some form of exemption for entities in ADGM currently carrying on financial services business and already licensed by UAE authorities from the ADGM licensing and authorisation requirements for a period, subject to extension by the Regulator.

FINANCIAL SECTOR INSOLVENCY

49. We are proposing to consult in due course with relevant stakeholders on whether ADGM should have bank recovery and resolution legislation.

ISSUES FOR CONSIDERATION

Q11: DO YOU AGREE THAT A BANK RECOVERY AND RESOLUTION REGIME IS REQUIRED IN THE ADGM IN DUE COURSE?

FINANCIAL COLLATERAL

50. We are proposing to consult in due course on amending the relevant provisions of the Insolvency Regulations 2015 which deal with financial collateral, in order to extend such provisions to contracts other than derivatives.

ISSUES FOR CONSIDERATION

Q12: DO YOU AGREE WITH THIS PROPOSAL?

CHAPTER 2 – GENERAL RULEBOOK (GEN)

SCOPE AND APPROACH TO THE GENERAL RULEBOOK (GEN)

1. GEN applies to all persons to whom the FSMR applies, save for Non-ADGM Recognised Bodies (i.e., clearing houses and investment exchanges that are recognised within the ADGM, but which operate outside its jurisdiction). Therefore, all references below and in GEN of rules applying to Recognised Bodies refer to those Recognised Clearing Houses and Recognised Investment Exchanges which are established and operate in the ADGM (Please see Appendix 1).

2. Persons to whom GEN applies are required to comply with core principles and to establish effective systems and controls. They are also required to appoint Auditors and ensure their production of certain reports, as well as to uphold specific supervisory standards.

3. GEN contains rules under the following Chapter headings:

    a) Introduction (i.e., application and overview of the rulebook) (Chapter 1);

    b) Core Principles (e.g., integrity, resources, due skill, care and diligence, where such principles are relevant as conditions to the authorisation of a person, and, separately, principles governing the carrying out by individuals, i.e. Approved Persons, of certain key functions of Authorised Persons) (Chapter 2);

    c) Management, Systems and Controls (e.g., allocation of significant responsibilities, organisation and risk management) (Chapter 3);

    d) General Provisions (e.g., interpretation, disclosure of regulatory status, close links, complaints against the Regulator) (Chapter 4);

    e) Authorisation and Threshold Conditions (i.e., applications for Financial Services Permissions and Approved Person status) (Chapter 5);

    f) Accounting and Auditing (e.g., financial statements and reporting standards, cooperation with Auditors) (Chapter 6);

    g) Complaints Handling and Dispute Resolution (i.e., complaints handling procedures for Retail Clients and Professional Clients) (Chapter 7);

    h) Supervision (e.g., information gathering, waivers, applications for changes to the scope of a Financial Services Permission, notifications of changes in control) (Chapter 8); and

    i) Representative Offices (e.g., general principles, obligation to demonstrate their fitness and propriety, disclosure and record keeping obligations) (Chapter 9).

4. GEN also contains the following appendices supplementing its Rules:

    a) Best Practice Relating to Corporate Governance (e.g., role of Governing Body and senior management) and Remuneration (e.g., remuneration structures and policies, remuneration of persons undertaking key control functions) (APP1); and

b) Trade Repository (disclosure of market data by trade repositories, processes and procedures and information systems) (APP2).

SUBMISSION OF AUDITOR'S REPORTS

5. In accordance with Chapter 6 of GEN, requirements are imposed on Authorised Persons and Recognised Bodies to ensure that Auditors are appointed and prepare the necessary reports as required by the Regulator. This structure of imposing an obligation on the Authorised Persons and Recognised Bodies has been adopted on the basis that the Regulator will not directly regulate the performance of activities by Auditors.

6. Within the provisions of Chapter 6, there is an obligation upon Authorised Persons and Recognised Bodies to submit any reports produced by an Auditor within four months of that Authorised Person or Recognised Body's year end. Such a provision has been worded to apply to all parties, without any exception.

ISSUES FOR CONSIDERATION

Q1: SHOULD THERE BE ANY CATEGORY OF AUTHORISED PERSON OR RECOGNISED BODY THAT IS EXEMPT FROM THIS REQUIREMENT?

Q2: DO YOU THINK THAT A WIDER EXCEPTION SHOULD APPLY TO THIS OBLIGATION?

THRESHOLD CONDITIONS AND AUTHORISATION

7. Threshold conditions are the minimum requirements to be satisfied by Authorised Persons and Recognised Bodies, for the purposes of:

    a) receiving Financial Services Permissions to perform Regulated Activities within ADGM;

    b) receiving recognition orders to be considered Recognised Bodies within ADGM; and

    c) continuing to be so authorised or recognised.

8. Such conditions have been introduced, and incorporated into the Authorisation and recognition procedure outlined in Chapter 5 of GEN. They reflect a similar level of threshold conditions as those found in Schedule 6 of the UK FSMA. They include an obligation on the Authorised Person or Recognised Body to show that, both upon application for authorisation and continuously when operating in the ADGM, they:

    a) have appropriate and adequate resources for the purposes of their functions;

    b) are fit and proper;

    c) are capable of being effectively supervised by the Regulator; and

    d) have adequate procedures and means to comply with their obligations under the Rules.

9. Specific factors demonstrating compliance with these broad requirements are also expressly identified, together with points to be included in the Regulator's consideration in assessing satisfaction of threshold conditions. This ensures that all possible resources, capabilities and relationships, potentially affecting the operation of Authorised Persons or Recognised Bodies, are considered before concluding whether a party meets the performance standards required in ADGM. By also requiring parties to satisfy such conditions

both on application for authorisations and approvals, and continually during operation in ADGM, such minimum conditions of market performance standards are maintained throughout parties' operations within the ADGM financial services system.

MANAGING CONFLICTS AND INSTITUTING INFORMATION BARRIERS

10. The management of conflicts of interests has been enshrined in Chapter 2 of GEN as one of the core principles to be upheld by Authorised Persons. This requires that Authorised Persons ensure prevention and management, as well as any necessary disclosures, within conflicts of interest arising between themselves and their Customers, and their Employees and their Customers. This is further elaborated upon in Chapter 3 of GEN where systems and controls to comply with this principle are required to be established.

11. One such system and control required of Authorised Persons includes the notion of information barriers or 'Chinese walls', similar to those adopted by the SYSC Chapter of the UK FCA Handbook.

12. Chapter 3 of GEN therefore provides for an Authorised Person to establish and adopt information barriers between different sections of its business where necessary. As a result of adopting such controls, individuals within Authorised Persons who are on the opposite side of the information barrier will not be regarded as being in possession of knowledge denied to them as a result of such barrier. It is also expressly clarified that using such procedures will not amount to Market Abuse.

ISSUES FOR CONSIDERATION

Q3: DO YOU AGREE THAT AUTHORISED PERSONS SHOULD BE REQUIRED TO ADOPT INFORMATION BARRIERS WHERE APPROPRIATE BETWEEN DIFFERENT PARTS OF THEIR BUSINESS IN INSTANCES OF POTENTIAL OR ACTUAL CONFLICTS?

CHANGE IN CONTROL REGIME

13. The regime relating to notifications to the Regulator and subsequent approvals required from the Regulator in relation to changes in control over Authorised Persons, has been developed in accordance with provisions from the equivalent regime in Part XII of UK FSMA. GEN includes wide powers for the Regulator to modify the definition of a Controller, give unconditional or conditional approval or reject applications for changes in control and to exercise disciplinary powers in respect of non-compliance with any conditions or restrictions imposed by the Regulator further to receiving such applications.

14. These provisions ensure that the regime as currently included in GEN Rule 8.8 allows for the Regulator to be continually informed of, and to consequently assess, changes in control over Authorised Persons operating in the ADGM. By also providing the Regulator with the flexibility of the powers as outlined above, the elements of the change in control regime can be subsequently adapted to suit changes in market practice as well as other developments in the ADGM.

CHAPTER 3 – CONDUCT OF BUSINESS RULES (COBS)

SCOPE AND APPROACH TO THE CONDUCT OF BUSINESS RULES ('COBS')

1. The Conduct of Business rules ("**COBS**") set out the rules of conduct applicable to authorised institutions operating in ADGM. These rules reflect international standards expected of entities carrying out regulated activities in sophisticated jurisdictions, and have been crafted to provide an appropriate conduct of business regime that strikes a balance between ensuring regulatory oversight and consumer protection on the one hand, and the freedom to conduct regulated activities in a sophisticated financial market on the other (Please see Appendix 2).

2. In particular, our rules have addressed a number of areas including the operation of a credit rating agency being aligned to IOSCO standards, client classification is in line with international standards and finally, client assets rules have been aligned with new EMIR developments.

3. The COBS rulebook is of wide application, and applies to any firm carrying on any Regulated Activity or related service in ADGM.

CLIENT CLASSIFICATION

4. Before carrying on a Regulated Activity with or for a person in ADGM, an Authorised Person must determine the appropriate client categorisation for that person.

5. We have considered international client classification systems including those found in Europe and tailored our proposed rules to create a suitable system of client classification for ADGM. Our rules recognise that the category of 'professional client' is not homogenous and instead comprises groups of potentially very dissimilar clients, which require different levels of protection. Accordingly, we have remodeled the traditional three-tier model to ensure that the process of client classification does not result in classification at the expense of adequate levels of protection.

6. The categories of client are:

    a) Professional Client;

    b) Market Counterparty; and

    c) Retail Client.

7. We have introduced three routes through which a Person may be classified as a Professional Client:

    a) 'deemed' Professional Clients.

    b) 'Service-based' Professional Clients; and

    c) 'assessed' Professional Clients.

8. We have also introduced presumptions to facilitate this classification while retaining the mechanism to opt for greater protection albeit in a bolstered form by explicitly recognising and listing the limited scenarios where Clients that would normally be classified as professional, may opt to be retail.

9. We have also included detailed guidance on (i) the time of classification and how this is to be determined; (ii) classification procedures where Clients may fulfil criteria for both Retail or Professional Clients and the Client's right to elect; (iii) calculation of a Professional Client's net asset value; (iv) obligations on Professional Clients; and (v) reliance on a classification made elsewhere (e.g. by a head office or a different branch).

ISSUES FOR CONSIDERATION

Q1: IS THIS CLIENT CLASSIFICATION STRUCTURE APPROPRIATE?

CORE RULES – INVESTMENT BUSINESS, ACCEPTING DEPOSITS AND PROVIDING CREDIT

MARKETING

10. This section details the application of the Core Rules in a commercial context. The rules require firms to adhere to international standards e.g. firms presenting information relating to past performance must follow the Global Investment Performance Standards issued by the Institute of Chartered Financial Analysts of the USA or an equivalent reputable independent actuarial, financial or statistical reporting service provider.

11. In particular, all communications in relation to these investment activities must be clear, fair and not misleading. All marketing material must be clearly identified as such, and must contain the minimum information set out in this chapter. Different rules apply to marketing sent to professional clients/market counterparties than apply to marketing sent to retail clients.

12. Similarly, the rules set out specific requirements in relation to past performance and forecast information provided in marketing materials. More generally, firms presenting information relating to past performance as required following the Global Investment Performance Standards issued by the Institute of Chartered Financial Analysts of the USA or a reputable independent actuarial, financial or statistical reporting service provider. There are also additional rules on "soft dollar agreements" to which Authorised Persons must adhere.

CLIENT AGREEMENT

13. Before carrying out any of these investment activities for a client, a Client Agreement must be entered into. An Authorised Person must carry out a suitability assessment on the potential client, and include all information as set out in this chapter in the Client Agreement. There is a set process for amending the Client Agreement.

CONFLICTS OF INTEREST

14. Detailed rules apply in relation to identifying and managing conflicts of interest. In particular, Authorised Persons must take reasonable steps to ensure that conflicts of interest, and potential conflicts of interest, between itself and its Clients and between one Client and another Client are identified and then prevented or managed in such a way that the interests of a Client are not adversely affected and to ensure that all its Clients are fairly treated and not prejudiced. Specific rules relating to inducements and soft dollar agreements are set out in detail.

RECORD KEEPING

15. Authorised Persons are generally required to keep records for six years. The records to be kept are set out in detail, and include all marketing materials, all advice provided, documents regarding client classification and all other disclosures made to clients.

INVESTMENT BUSINESSES

PERSONAL ACCOUNT TRANSACTIONS

16. An Authorised Person must establish and maintain adequate policies and procedures as regards personal account transactions of its employees. The policies must ensure that, if an Employee is prohibited from undertaking a personal account transaction, he must not, except in the proper course of his employment procure another person to enter into such a Transaction; or communicate any information or opinion to another Person if he knows, or ought to know, that the Person will as a result, enter into such a Transaction or procure some other Person to do so. Additional records must be kept for all Personal Account Transactions for a minimum of six years.

INVESTMENT RESEARCH AND OFFERS OF SECURITIES

17. An Authorised Person preparing or publishing investment research is expected to have adequate procedures, systems and controls to manage effectively any conflicts that arise, and to ensure that investment research is impartial and managed appropriately.

18. Disclosures in investment research must adhere to strict detailed rules regarding the information provided, the nature of the presentation and other considerations designed to ensure that recipients of the information are not mislead.

19. Publication of investment research is restricted during certain "quiet periods" in relation to an IPO or secondary offering to prevent market manipulation. Likewise, Own Account Transactions are limited where a firm has published Investment Research

BEST EXECUTION

20. COBS best execution rules do not apply to market counterparties, for the purposes of managing a fund, or in execution-only transactions. In all other circumstances, when an Authorised Person agrees or decides to execute any Transaction with or for a Client in an Investment, it must provide best execution. This means taking reasonable care to determine the best execution available for that Investment under the prevailing market conditions and deals at a price and other conditions which are no less advantageous to that Client. Detailed rules are set out regarding what a firm must take into account in determining whether reasonable care has been taken to provide the best overall price for the Client.

NON-MARKET PRICE TRANSACTIONS

21. Where the dealing rate or price paid by the Authorised Person or its Client differs from the prevailing market rate or price (after taking into account all costs) to a material extent, a firm must not enter into the transaction unless it has taken reasonable steps to ensure that it is not being entered into for an improper purpose. Specific record-keeping requirements apply to such transactions.

AGGREGATION OF ORDERS

22. Specific rules apply in relation to aggregation of orders, and allocation of investments. More detailed records of such aggregated orders and transactions must be kept.

23. Various other rules relating to dealing are set out in the remainder of this chapter of COBS. These include requirements, limitations or prohibitions on: churning; timely execution; dealing with own account transactions and client transactions fairly and in due turn; averaging of prices; allocation of transactions to be executed; providing direct electronic access to an AMI; sending of confirmation notes; and the sending of period statements.

ISSUES FOR CONSIDERATION

Q2: THE BOARD INVITES COMMENTS AS TO WHETHER THE SCOPE OF THE BEST EXECUTION REQUIREMENTS (NOTING THAT THEY DO NOT APPLY TO MARKET COUNTERPARTIES, EXECUTION-ONLY TRANSACTIONS AND CERTAIN FUNDS) IS APPROPRIATE?

OPERATING A CREDIT RATING AGENCY

24. The conduct of business rules in relation to operating a credit rating agency have been drafted in accordance with the applicable IOSCO standards.

25. The quality of the rating process is ensured by a series of requirements on firms providing ratings, including the processes utilised, the employees engaged in the process, the resources available, review procedures and assessment of methodologies and models.

26. A Credit Rating Agency should ensure that adequate personnel and financial resources are allocated to monitoring and updating its ratings, and to ensure the integrity of the credit rating process.

27. Independence of Credit Rating Agencies is particularly important. CRAs are required to have sufficient procedures and policies in place to deal with this issue, including identifying and managing potential conflicts of interest, disclosure of financial interest in a rating, and ensuring the independence not only of the authorised person but of the analysts and employees engaged in the rating process.

28. Transparency and timeliness requirements are set out, and a firm's policies for distributing ratings, reports and updates must be publicly available.

29. Enhanced protections in relation to confidential information received by CRAs in the course of providing this investment service are detailed. These include both substantive requirements only to use confidential information for proper purposes, and procedural protections to ensure that all employees involved in the ratings process are aware of the procedures to be followed.

30. Strict record-keeping requirements apply in relation to ratings issued, including keeping records of all parties and persons involved in the rating, information provided and any internal records and non-public information and working papers used to form the basis of the opinions.

ISSUES FOR CONSIDERATION

Q3: THE BOARD INVITES COMMENTS AS TO WHETHER THIS APPROACH OF COMPLIANCE WITH INTERNATIONAL STANDARDS WOULD BE APPROPRIATE IN THE ADGM.

CENTRAL SECURITIES DEPOSITORIES

31. A CSD must have rules and procedures, including robust accounting practices and controls that ensure the integrity of the securities issues. A CSD must also have a definitive record of title to relevant securities at all times and minimise and manage risks associated with the safekeeping and transfer of securities.

32. Links between CSDs are restricted, and CSDs establishing link arrangements must comply with the requirements set out in this chapter.

CLIENT ASSETS - CLIENT MONEY AND SAFE CUSTODY

33. An Authorised Person which holds or controls Client Money (as defined in the COBS rulebook) must comply with the client money provisions in relation to that Client Money and have systems and controls in place to be able to evidence compliance with the Client Money Provisions. Client assets must be identifiable and secure at all times.

CLIENT MONEY

34. The 'Client Assets' section is separated into Client Money and Safe Custody. The 'Client Money' module, in particular, includes significant detail and protection for clients.

35. Detailed rules apply in relation to handling, identifying and depositing Client Money. This includes restrictions on the use of client accounts, the processes involved in paying client or non-client money into such client accounts, and the circumstances in which Client Money can be held in an account other than a client account.

36. Third party agents in relation to Client Money are subject to requirements on their appointment, terms of reference and suitability. Specific disclosures to the client are required in these circumstances.

37. Money held in client accounts is subject to reconciliation rules at least every 25 days, and is subject to an annual auditing requirement.

38. Distribution of client money from a client account is subject to procedural protections, which include disclosure obligations in certain circumstances.

39. Finally, COBS includes provisions on porting, segregation, brokerage, daily reporting and Client Money distribution, which have been adapted from the recently updated FCA client assets sourcebook. When drafting these provisions we have considered the FCA rules which represent the most up-to-date client money regime, drafted in response to recent global developments in the area including Europe-wide initiatives such as the Markets in Financial Instruments regime ('MiFID II') and regulation on derivatives, central counterparties and trade repositories ('EMIR'). The FCA client asset rules are very detailed, but we have ensured an appropriate level of tailoring so as to benefit from the world-class reputation of these new rules, while respecting an appropriate balance with the need for accessibility.

OTHER CLIENT ASSETS

40. Rules relating to the holding of other client assets, including collateral, are set out. The basis on which such assets are held, the processes and protections that apply in relation to such assets, and notification and record-keeping requirements are set out.

CUSTODY

41. An Authorised Person which Provides Custody or holds or controls Client Investments must ensure that Safe Custody Investments are recorded, registered and held in an appropriate manner to safeguard and control such property. Client accounts in relation to Client Investments must be operated in accordance with rules broadly similar to those that apply to Client Money.

42. Before an Authorised Person Arranges Custody for a Client it must disclose to that Client, if applicable, that the Client's Safe Custody Investments may be held in a jurisdiction outside the ADGM and the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the ADGM. Other disclosures must be made to the client in relation to the custody arrangements applicable to that property.

43. Custody accounts are subject to reconciliation rules at least every 25 days, and are subject to an annual auditing requirement.

ISSUES FOR CONSIDERATION

Q4: IS THERE MERIT IN MOVING TOWARDS A MORE DETAILED CLIENT MONEY FRAMEWORK SIMILAR TO THAT ADOPTED IN THE NEW FCA CLIENT MONEY RULES.

RESOLUTION

44. Rules intended to reduce the impact of a firm’s insolvency on clients are set out. These rules have been adapted from the recently updated FCA client assets sourcebook, which as mentioned above, brings the rules up to international standards. The aim is to facilitate the return of client assets post insolvency. In particular, firms must maintain an accessible resolution pack containing records of assets and agreement.

CHAPTER 4 – FUND RULES (FUNDS)

APPROACH TO FUND RULES

1. A consideration of the regime applicable to the management and/or marketing of funds in or from the ADGM requires a consideration of the Fund Rules collectively with the other rules and enactments applicable to funds, fund managers and investment advisers. Those other rules and enactments include the FSMR, the Companies Regulations (including forthcoming Investment Company provisions), the Insolvency Regulations and the GEN, PRU, AML, COBS, MIR and MKT Rulebooks (Please see Appendix 3).

2. In drafting the Fund Rules, consideration has also been given to approaches taken in various other jurisdictions to the regulation of the management and marketing of funds.

3. The Fund Rules have been drafted with a view to striking a balance between creating a clear and concise regulatory framework for the management and marketing of funds, which provides clear, effective and flexible regulatory oversight on the one hand, and certainty and investor protection on the other.

ARRANGEMENTS NOT CONSTITUTING A COLLECTIVE INVESTMENT FUND

4. We have included at the outset of the Fund Rules information regarding arrangements that will not constitute a collective investment fund (or "Fund") for the purposes of the Fund Rules. Those excluded arrangements include (amongst others) deposits, certain group arrangements, clearing services, insurance and profit sharing investment accounts. Pursuant to the FSMR, the Regulator has the power to amend the Fund Rules or grant waivers from time to time to exclude other arrangements from constituting a Fund.

ISSUES FOR CONSIDERATION

Q1: DO YOU AGREE WITH THE LIST OF ARRANGEMENTS THAT WILL NOT CONSTITUTE A COLLECTIVE INVESTMENT FUND AND, IF NOT, WHAT EXCLUSIONS WOULD YOU LIKE TO REMOVE OR WHAT FURTHER EXCLUSIONS WOULD YOU SUGGEST INCLUDING.

FUND TYPES / CLASSES OF FUNDS

5. We have proposed to specifically categorise certain Domestic Funds as Feeder Funds, Master Funds and Umbrella Funds. Further micro-categorisation of funds (such as private equity funds, infrastructure funds or hedge funds) was contemplated in drafting the Fund Rules. However, it was considered that such micro-categorisation and application of different rules to different categories, can lead to uncertainty over which category might apply to any given fund, and also result in unnecessary complication of the funds regulatory framework.

ISSUES FOR CONSIDERATION

Q2: DO YOU AGREE WITH THE APPROACH OF NOT DIFFERENTIATING FURTHER TYPES OR CLASSES OF FUND?

CLASSIFICATION OF DOMESTIC FUNDS

6. We have proposed to categorise Domestic Funds into three broad categories: (i) Public Funds, (ii) Exempt Funds and (iii) Qualified Investor Funds - with the regulatory requirements applicable to such Domestic Funds depending on such categorisation.

ISSUES FOR CONSIDERATION

Q3: DO YOU AGREE THAT DOMESTIC FUNDS SHOULD BE CATEGORISED IN THIS WAY?

Q4: DO YOU AGREE WITH THE DIFFERING LEVELS OF REGULATION APPLICABLE TO THE CATEGORISATION OF DOMESTIC FUNDS, AS MORE PARTICULARLY DESCRIBED IN THE FUND RULES?

NOTIFICATION OF INTENTION TO MANAGE FOREIGN FUNDS AND INTENTION TO DELEGATE

7. We have proposed that Authorised Fund Managers intending to manage Foreign Funds must provide the Regulator with one month's notice of such intention by submitting an application. The Regulator has the power to either confirm or deny such application.

8. We have also proposed that Fund Managers notify the Regulator when delegating a "critical management" function (such as portfolio and/or risk management).

9. Whilst not required in all jurisdictions, we consider that these additional notification requirements, which are similar in spirit to recently introduced European legislation (without all of the accompanying burden), strike the right balance between (i) making sure that Fund Managers are not hampered in their day-to-day operations and (ii) ensuring that the level of fund regulation in the ADGM is sufficient for it to be regarded as robust.

ISSUES FOR CONSIDERATION

Q5: DO YOU AGREE THAT THE MANAGEMENT OF FOREIGN FUNDS BY AN AUTHORISED FUND MANAGER AND THE DELEGATION OF CRITICAL MANAGEMENT FUNCTIONS SHOULD NECESSITATE A NOTIFICATION OR ALTERNATIVELY AN APPLICATION TO THE REGULATOR?

MARKETING DISCLOSURE REQUIREMENTS

10. In summary, the disclosure requirements applicable to the marketing of different classes of Funds in or from the ADGM are proposed to be as follows:

    a) *Authorised Fund Manager of a Public Fund:* high level of disclosures required in the Prospectus;

    b) *Authorised Fund Manager of an Exempt Fund and/or Qualified Investor Fund:* minimum level of disclosures required in the Prospectus;

c) *Foreign Fund Manager of a Domestic Fund:* as per (a) and (b) above, depending on the type of Domestic Fund; and

d) *Authorised Person marketing any Foreign Fund into the ADGM:* minimum level of disclosures required in the Prospectus.

11. We think that disclosure of key information to fund investors is increasingly expected by prospective investors. It is essential that differing types and sophistications of investors are provided with sufficient information to enable them to make decisions regarding investments.

ISSUES FOR CONSIDERATION

Q6: DO YOU AGREE WITH THE MARKETING DISCLOSURE REQUIREMENTS AS SET OUT IN (A) TO (D) ABOVE AND AS MORE PARTICULARLY DESCRIBED WITHIN THE FUND RULES?

REQUIREMENT TO APPOINT AN ELIGIBLE CUSTODIAN

12. We have proposed that Fund Managers generally be required to ensure that an Eligible Custodian is appointed in relation to a Fund (in addition to an administrator) to perform custody services before commencing management of that Fund. However, an Eligible Custodian will not be required where (a) the Fund has engaged the services of a Trustee as the Fund is structured as an Investment Trust; (b) the Fund holds real estate and certain prescribed alternative arrangements for holding that real estate are satisfied; or (c) it is neither practical nor proportionate to appoint an Eligible Custodian. The Fund Rules set out the criteria that an entity must meet in order to act as an Eligible Custodian.

13. The appointment of a custodian is increasingly becoming market practice as a result of regulatory initiatives and we consider that including it within the Fund Rules presents a more robust regulatory regime, without unduly burdening Fund Managers.

ISSUES FOR CONSIDERATION

Q7: DO YOU AGREE WITH THE REQUIREMENTS FOR ELIGIBLE CUSTODIANS, AS SET OUT IN FULL IN THE FUND RULES?

MANDATORY DISCLOSURE REQUIREMENTS

14. In relation to an Authorised Fund Manager intending to manage a Foreign Fund, we have proposed requiring adequate disclosure of a number of minimum items to investors before they invest in the Fund (for example, the investment strategy of the Fund and the risks involved, how the assets are valued and the use of leverage).

15. In line with general market practice, we have included a provision requiring Fund Managers to set out how they ensure fair treatment of investors. In addition, we have proposed that, in relation to Exempt Funds and Qualified Investor Funds, Fund Managers must disclose whether they have the power to enter into side-letter arrangements. Regarding Public Funds, we have proposed a further requirement that Fund Managers include in the Prospectus a description of any side-letter arrangements entered into, including a description of the type of investor receiving the benefit of such arrangements (on a no-names basis). We have also

introduced a restriction on the ability of Fund Manager of Public Funds to grant more favourable liquidity terms in side letters.

16. Disclosure to investors is increasingly becoming an important focus in the regulation of funds around the world, and is important for investor protection purposes. We are of the opinion that the introduction of these requirements reflects good practice without including the overly burdensome disclosure requirements that have been introduced in certain jurisdictions.

ISSUES FOR CONSIDERATION

Q8: DO YOU AGREE WITH THE MANDATORY DISCLOSURE REQUIREMENTS DESCRIBED ABOVE AND DETAILED IN FULL WITHIN THE FUND RULES?

Q9: ARE THERE ANY OTHER INTERNATIONALLY-USED DISCLOSURES WHICH YOU CONSIDER NECESSARY TO PROVIDE TO INVESTORS?

RISK MANAGEMENT

17. We have proposed a requirement for Fund Managers of Domestic Funds to ensure, to the extent proportionate, the functional and hierarchical separation and independence between the functions of (a) risk management and (b) portfolio management.

18. Again, this separation of functions has been the focus of regulatory initiatives elsewhere, but we have suggested that it be required of Fund Managers only to the extent proportionate given the nature and scale of the Fund Manager and the nature of the Fund itself. This should, we feel, reduce the risk of this requirement being overly burdensome to (for example) small managers.

ISSUES FOR CONSIDERATION

Q10: DO YOU AGREE WITH THIS PROPORTIONATE APPROACH TO REQUIRING THE SEPARATION OF RISK MANAGEMENT AND PORTFOLIO MANAGEMENT?

AUDITED FINANCIAL STATEMENTS

19. We have proposed that a Fund Manager be given the ability to obtain the consent of investors (via a Special Resolution), in relation to Exempt Funds and Qualified Investor Funds only, to waive the requirement to have financial statements audited. The Guidance contains examples of situations where it may be appropriate for a Fund Manager to obtain such a waiver (for example, where the Fund holds only a small number of illiquid assets).

20. We think that this reflects the concerns of institutional investors of reducing unnecessary costs.

ISSUES FOR CONSIDERATION

Q11: DO YOU AGREE THAT FUND MANAGERS OF EXEMPT FUNDS AND QUALIFIED FUNDS SHOULD BE ABLE TO WAIVE THE REQUIREMENT TO HAVE FINANCIAL STATEMENTS AUDITED IF INVESTORS CONSENT?

SEPARATE WINDING UP PROCEDURES FOR DOMESTIC FUNDS

21. Some jurisdictions have a separate and/or additional set of winding up procedures applicable to Funds. It has been decided to include only minimum circumstances in which a Domestic Fund may be wound up, separately from the generally applicable Insolvency Regulations, which shall include:

    a) the expiration of any period specified in the Constitution of the Fund as the period at the end of which the Fund will terminate;

    b) upon the effective date of a duly approved transfer scheme; or

    c) as otherwise provided for in the Constitution of the Fund.

    In addition, we have included a provision whereby a Public Fund may also be wound up upon the passing of a Special Resolution of investors.

ISSUES FOR CONSIDERATION

Q12: DO YOU CONSIDER IT NECESSARY TO HAVE SEPARATE WINDING UP PROCEDURES FOR DOMESTIC FUNDS, SEPARATE FROM THE OVERARCHING INSOLVENCY REGULATIONS WHICH WOULD BE APPLICABLE TO THE FUND STRUCTURE IN QUESTION?

Q13: IF YOU DO CONSIDER IT NECESSARY TO HAVE SEPARATE WINDING UP PROCEDURES FOR DOMESTIC FUNDS, DO YOU CONSIDER THE PARAMETERS FOR A WINDING UP AS OUTLINED ABOVE TO BE APPROPRIATE?

Q14: DO YOU AGREE THAT ONLY PUBLIC FUNDS SHOULD BE ABLE TO BE WOUND UP UPON THE PASSING OF A SPECIAL RESOLUTION OF INVESTORS?

RECOGNISED JURISDICTION LIST

22. We have introduced a list of jurisdictions considered as "Recognised Jurisdictions" for the purposes of certain threshold regulation requirements for Fund Managers and certain service providers, as more particularly described within Appendix 8 of the Fund Rules.

ISSUES FOR CONSIDERATION

Q15: DO YOU AGREE WITH THE LIST OF COUNTRIES LISTED AS RECOGNISED JURISDICTIONS?

CHAPTER 5 – MARKET INFRASTRUCTURE RULES (MIR)

SCOPE AND APPROACH TO THE MARKET INFRASTRUCTURE RULES ('MIR')

1. We have created a single market infrastructure rulebook applicable to exchanges and clearing houses setting out recognition requirements and internationally-recognised standards to be followed by market infrastructure firms. In addition to rules applicable to all recognised market infrastructure firms, we have also included two separate sections containing exchange-specific and clearing house-specific rules. Our model also features a specialised regime for applications from, and supervision of, non-ADGM market exchanges and clearing houses (Please see Appendix 4).

2. The Market Infrastructure Rules ('MIR') set out the rules applicable to exchanges and clearing houses in the ADGM. It sets out recognition requirements and standards to be followed by Recognised Bodies. Notification requirements and the supervisory approach are also set out.

3. These rules are bespoke rules for Recognised Bodies operating in ADGM. They have been drafted taking into account the following overarching principles and sources:

    a) Exchanges are regulated on the basis of the UKFCA model, along with certain MiFID II obligations and other international standards as appropriate, as set out below.

    b) Clearing Houses are regulated on the basis of IOSCO standards, along with certain EMIR obligations and other international standards as appropriate, as set out below.

    c) Supervisory powers of the financial services Regulator are equivalent to those found in the UK Financial Services and Markets Act 2000, and our FSMR.

    d) A specialised regime applies for applications from, and supervision of, non-ADGM exchanges and clearing houses.

4. The general structure of the rulebook is as follows:

    a) Rules applicable to all recognised bodies, including: application process; governance/operational infrastructure; financial resources; membership criteria and access; and mechanisms for disciplinary action dispute resolution.

    b) Rules for exchanges and for clearing houses, including (for exchanges) transparency, admission of financial instruments, and exchange-specific capital requirements and (for clearing houses) stress testing, settlement and delivery, collateral and margin, and settlement finality.

    c) Event-driven notifications to the Regulator are detailed. Notification triggers include governance changes, financials publication, complaints, changes to products/services, and other significant factors affecting the firm's functions. Recognised bodies will also submit regular communications to the regulator.

    d) Supervisory powers of the regulator, including giving directions, revoking recognition and imposing other disciplinary measures is set out in detail.

e) Specialised rules relating to the recognition of market infrastructure firms which already operate outside ADGM are set out, providing for a regime under which such firms can be recognised to operate in ADGM.

RULES APPLICABLE TO ALL RECOGNISED BODIES

5. All Recognised Bodies must comply on a continuing basis with the recognition requirements. These set out the fundamental obligations for Recognised Bodies operating in the ADGM.

6. The recognised body must be a fit and proper person to perform the relevant functions of a recognised body. The Regulator will assess all relevant factors in determining whether this requirement is met. The recognised body's managers must be Approved Persons, and its governing body must comply with the requirements of an investment firm's governing body.

7. A recognised body must have financial resources sufficient for the proper performance of its relevant functions as a recognised body. The Regulator will assess all relevant factors in determining whether this requirement is met.

8. The recognised body must ensure that the systems and controls used in the performance of its relevant functions are adequate, and appropriate for the scale and nature of its business, particularly in relation to information transmission, risk assessment, monitoring and safeguards of investors. The Regulator will assess all relevant factors in determining whether this requirement is met.

9. A recognised body must have rules, procedures and appropriate surveillance to ensure that its facilities are such as to afford proper protection to investors. The Regulator will assess all relevant factors in determining whether this requirement is met, and ensure that appropriate measures are in place to guard against market abuse and market misconduct, and to enable users of the recognised body's facilities to interact fairly with respect to those facilities. A Recognised Body must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of business on or through its facilities.

10. Recognised Bodies must have systems and processes in place to identify and manage conflicts of interest. These include having procedures to deal with confidential information, separation of functions, appropriate managerial oversight and restrictions on staff engagement in situations where a conflict might arise. The Regulator will, in particular, assess the Recognised Body's risk management processes, internal/external audit arrangements and the IT systems of the facilities.

11. A Recognised Body must establish a robust operational risk management framework with appropriate systems and controls to identify, monitor and management operational risks that key participants, other Recognised Bodies, service providers (including outsourcees) and utility providers might pose to itself. This includes having an appropriate business continuity plan and incident management procedures.

12. The Recognised Body must ensure that satisfactory arrangements are made for recording transactions effected on or cleared (or to be cleared) by the Recognised Body by means of its facilities, and must comply with detailed rules on allowing access to its facilities according to criteria designed to protect the orderly functioning of the market and interests of investors. Access requirements (including direct electronic access) must be transparent and non-discriminatory rules, based on objective criteria, governing access to, or membership of, its facilities

13. Financial crime and market abuse processes that Recognised Bodies must have in place are set out in detail. The Regulator will assess a Recognised Body's ability to operate an effective market surveillance program

and appropriate measures to identify, monitor, deter and prevent conduct which may amount to market misconduct, financial crime and money laundering on and through the Recognised Body's facilities.

14. The Recognised Body must ensure that where its facilities include making provision for the safeguarding and administration of assets belonging to users of those facilities, satisfactory arrangements are made for that purpose with an appropriate custodian or settlement facility and clear terms of agreement between the users of the facility and the Recognised Body.

15. Rule-making processes are set out, covering requirements for market consultation and approval by the Regulator as appropriate.

16. The Regulator will assess the Recognised Body's disciplinary and complaints process, which must provide for mechanisms for ensuring compliance with its rules and making complaints according to objective criteria and in accordance with fair and impartial processes.

17. Outsourcing of functions is permitted, subject to certain requirements. Where a Recognised Body makes such arrangements, the arrangements do not affect the responsibility on the Recognised Body to satisfy the requirements applying to it.

18. The process to apply for recognition as a Recognised Body and the documentation required is set out in detail. Applicants must submit any information required in accordance with directions issued by the regulator.

ISSUES FOR CONSIDERATION

Q1: ALL OF THESE PROVISIONS REPRESENT INTERNATIONALLY-RECOGNISED STANDARDS FOR REGULATION OF EXCHANGES AND CLEARING HOUSES. THE BOARD INVITES COMMENTS AS TO WHETHER THEIR SCOPE AND SUBSTANCE IS IN LINE WITH EXPECTATIONS.

RULES APPLICABLE TO RECOGNISED INVESTMENT EXCHANGES (RIE)

19. The capital requirements for exchanges are generally simplified compared to those applicable to either Authorised Persons or clearing houses. We have recommended 12 months' operational expenses, plus a buffer in an amount to be determined.

20. An RIE must ensure that it has transparent and non-discretionary rules and procedures to provide for fair and orderly trading, and to establish objective criteria for the efficient execution of orders. The Regulator will assess all relevant factors in determining whether this requirement is met, including determining whether the RIE is ensuring that that business conducted by means of its facilities is conducted in an orderly manner (and so as to afford proper protection to investors).

21. The pre- and post-trade transparency obligations on RIEs are in-line with the MiFID II transparency obligations applicable to regulated markets in the EEA. The details set out precise rules regarding the timing, content and format of information to be made public, waivers available to RIEs (based on market model and large transactions) and the criteria an RIE must utilise to assess whether the waivers apply. Specific rules apply in relation to deferred post-trade publication in respect of large transactions, with clearly-defined thresholds and permissible delays, in line with MiFID II requirements.

22. The process by which an RIE admits financial instruments to trading on its financial markets must be clear and transparent. Specific rules set out the requirements in relation to transferable securities, units in collective investment undertakings and derivatives.

23. An RIE must have legally enforceable default rules which, in the event of a member of the RIE being or appearing to be unable to meet his obligations in respect of one or more market contracts, enable it to suspend or terminate such member's membership and cooperate by sharing information with its RCH.

24. An RIE's default rules must be appropriate to deal with the default of a member being able to meet its obligation. RIEs must adhere to procedures relating to the suspension and termination of a member in the event of default.

25. We have included the (expected) requirement for exchanges to provide access to clearing houses, but have not introduced a mandatory clearing obligation for contracts traded on an exchange, as is the case under MiFID II. We would appreciate confirmation that this flexibility is desired, rather than the more restrictive MiFID II position.

ISSUES FOR CONSIDERATION

Q2: THE BOARD INVITES ANY COMMENTS ON THE ABOVE APPROACH, IN PARTICULAR IN RELATION TO (I) THE SIMPLIFIED CAPITAL REQUIREMENTS FOR EXCHANGES; (II) THE "UPGRADED" MIFID STANDARD IN REQUIREMENTS AND AVAILABILITY OF WAIVERS; (III) WHETHER A MANDATORY CLEARING OBLIGATION FOR CONTRACTS TRADED ON AN EXCHANGE SHOULD BE INCLUDED.

RULES APPLICABLE TO RECOGNISED CLEARING HOUSES (RCH)

26. An RCH must hold capital calculated on the basis of the following risks: winding down or restructuring activities, operational and legal risks, credit/counterparty/market risks, and business risks.

27. An RCH's clearing services must include arrangements for clearing and settlement of the rights and liabilities of parties to a transaction in a timely manner.

28. An RCH must have business rules and default rules, which are legally binding, and regulate the operation of the RCH's business and its processes in the event of a default of a clearing member. An RCH must make these rules available in the manner set out in the MIR, and subject them to testing for suitability and effectiveness at least annually to ensure that they are practical and effective.

29. Risk management is a highly significant area for RCHs. The MIR sets out requirements for RCHs to ensure that each RCH has a comprehensive risk management framework (i.e. detailed policies, procedures and systems) capable of managing systemic, legal, credit, liquidity, operational and other risks to which it is exposed. These include robust stress-testing requirements, restrictions on exposure to risk, requirements as regards calculation and mitigation of risks and strategy for minimising the effects of risky practices. Detailed rules apply to RCHs that conduct money settlements using commercial bank money (and are therefore exposed to enhanced credit and liquidity risk), and RCHs that incur obligations that require physical delivery of physical instruments or commodities (and are therefore exposed to risks associated with storage and delivery obligations).

30. The MIR sets out detailed requirements as regards collateral and margin. An RCH must call and receive collateral to manage its risks arising in the course of or for the purposes of its payment, clearing, and settlement processes. An RCH must establish and implement a collateral management system that is well designed and operationally flexible to enable ongoing monitoring and management of collateral. Collateral and margin requirements and management processes must be clearly set out in the RCH's rules, and must provide for margin at the levels necessary to allow an RCH to effectively manage its risk.

31. An RCH must have adequate arrangements to ensure clear and certain final settlement of payments, transfer instructions or other obligations of members and other participants using its facilities and where relevant, its own obligations.

32. RCH's must provide for segregation and portability of positions of its members' clients. The requirements are broadly in line with the EMIR requirements on CCPs in the EEA.

ISSUES FOR CONSIDERATION

Q3: THE BOARD INVITES ANY COMMENTS ON THIS GENERAL APPROACH.

NOTIFICATION RULES FOR RECOGNISED BODIES

33. All recognised bodies must notify the regulators of certain important events, so that the Regulator has all the information it requires to monitor, oversee and supervise the recognised body.

34. Full details of trigger events, timing requirements and the scope of the information required are set out in the rulebook. The trigger events include the following :

    a) Changes in relation to key individuals;

    b) Changes to a recognised body's committees;

    c) Disciplinary action and events relating to key individuals;

    d) Changes to a recognised body's constitution and governance;

    e) Changes to a recognised body's auditors;

    f) Publication of financial information;

    g) Changes to a recognised body's fees and incentive schemes;

    h) Complaints;

    i) Insolvency events and other legal proceedings;

    j) Delegation of functions by a recognised body;

    k) Changes to a recognised body's products, services or hours of operation;

    l) Suspension of services and inability to operate facilities;

m) Changes or events affect a recognised body's IT systems

n) Inability to discharge regulatory functions;

o) Admission of new members;

p) Investigations by any other regulatory body into the recognised body;

q) Disciplinary actions taken against members;

r) Evidence of criminal or civil offences by its members;

s) Restriction of, or instruction to close out, open positions;

t) Events and declarations of default;

u) Significant rule breaches or disorderly trading conditions;

v) Changes to its rules; and

w) (in the case of RCHs) capital falling below a "notification threshold".

ISSUES FOR CONSIDERATION

Q4: ARE THE RELEVANT TRIGGERS AND THE TIMINGS FOR EACH APPROPRIATE?

SUPERVISION

35. The Regulator, in order to protect investors or the orderly functioning of markets, have several powers in relation to the supervision of Recognised Bodies. The trigger events for the exercise of such powers, as well as their scope and processes, are set out in detail in the rulebook.

36. The powers available to the Regulator include:

a) Suspension or removal of financial instruments from trading;

b) Requiring the Recognised Body to provide the Regulator with information;

c) Taking action following the receipt of a complaint about the recognised body;

d) Supervision of action by Recognised Bodies under their default rules (including directing a Recognised Body to take or not to take action under its default rules under certainly tightly-defined circumstances);

e) Giving directions to a Recognised Body to take specified steps in order to secure its compliance with its obligations;

f) Directing controllers of a Recognised Body; and

g) Revoking recognition of a Recognised Body.

37. The last of these is the most significant, and is subject to its own processes, which ensure that a Recognised Body has sufficient time and opportunity to respond to circumstances leading to a proposed revocation of its recognition, and other procedural requirements related to this process.

NON-ADGM RECOGNISED BODIES

38. Exchanges and clearing houses operating outside the ADGM can apply for recognition as a Non-ADGM Recognised Investment Exchange or Non-ADGM Recognised Clearing House. A Non-ADGM Recognised Body must ensure that:

    a) investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with recognition requirements;

    b) there are adequate procedures for dealing with a person who is unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the Non-ADGM Recognised Body;

    c) the applicant is able and willing to co-operate with the Regulator by the sharing of information and in other ways; and

    d) adequate arrangements exist for co-operation between the Regulator and those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated.

39. As Non-ADGM Recognised Bodies are primarily supervised by their home state regulators, the notification triggers for Non-ADGM Recognised Bodies are limited to events that have an impact in the ADGM.

40. The Regulator has the same power to supervise Non-ADGM Recognised Bodies as other recognised bodies, but has additional powers to give directions, demand information or (ultimately) revoke recognition in circumstances specific to their status as a Non-ADGM Recognised Body.

CHAPTER 6 – MARKETS RULES (MKT)

BACKGROUND - APPROACH TO THE RULES OF MARKET CONDUCT

1. MKT applies to:

    a) a person in ADGM making an offer of securities to the public, except in relation to units of a fund;

    b) a person in ADGM applying to have securities admitted to trading in ADGM;

    c) persons in ADGM who are liable for the content of a prospectus (e.g., an issuer of securities, and any person who takes responsibility for the content of a prospectus);

    d) Authorised Persons in ADGM and "related parties" and "connected persons" (as defined in MKT); and

    e) persons appointed as sponsors, compliance advisers, or other expert advisers of Authorised Persons in ADGM (Please see Appendix 5).

2. MKT contains rules under the following Chapter headings:

    a) listing rules (Chapter 2);

    b) listed funds (e.g., prospectus requirements relating to listed funds) (Chapter 3);

    c) offers of securities (e.g., exempt communications, exempt offers, exempt securities, requirements for prospectus structure and content, requirements and process for approval and publication of prospectus, liability for prospectus and exemptions from liability) (Chapter 4);

    d) sponsors and compliance advisers (Chapter 5);

    e) market abuse, price stabilisation and buy-back programmes (Chapter 6);

    f) market disclosure (e.g., requirements to disclose inside information, interests by "connected persons", and directors' material interests) (Chapter 7);

    g) systems and controls (Chapter 8);

    h) governance of Authorised Persons (e.g., general principles, director duties and fair treatment of shareholders) (Chapter 9); and

    i) accounting periods and financial reports and auditing (Chapter 10).

3. MKT contains Appendices 1 to 6 which supplement the above Chapters.

MINIMUM FREE FLOAT REQUIREMENT

4. Rule 2.3.10 states as follows:

> *(1) If an application is made for the admission of a class of Shares, a sufficient number of Shares of that class must, no later than the time of admission, be held by persons other than the Issuer.*
>
> *(2) For the purposes of Rule (1), a sufficient number of Shares will be taken to have been distributed to the public when [10-12%] of the Shares for which application for admission has been made are in public hands.*

5. The Board has conducted a review of minimum free float requirements in various jurisdictions and has opted for a [10-12%] minimum float requirement similar to the requirement applicable to listings in Singapore. It is expected that a relatively low float requirement compared to the EU (25%) will attract companies to list in ADGM, in particular young companies which are able to comply with standard ADGM listing criteria as set out in MKT. In order to mitigate any risks in such a minimum free float, Appendix 4 on Corporate Governance Best Practice Standards contains a number of provisions which seek to ensure that controlling shareholders do not become dominant at the expense of minority shareholders (for example, see Principle 5 – Shareholder rights and effective dialogue).

ISSUES FOR CONSIDERATION

Q1: THE BOARD INVITES ANY COMMENTS AS REGARDS THE PROPOSED MINIMUM FREE FLOAT REQUIREMENT.

PRICE STABILISATION AND BUY-BACK PROGRAMMES

6. Chapter 6 sets out price stabilisation and buy-back rules which are to be complied with by stabilisation programmes and buy-back programmes in order to ensure that such activities do not constitute market abuse.

7. In order to follow best-practice standards in this area the Board believes that the UK Code of Market Conduct ("**MAR**") is an appropriate benchmark for price stabilisation and buy-back programmes, and MKT therefore replicates relevant provisions of MAR where possible with changes to reflect the particular circumstances of ADGM.

ISSUES FOR CONSIDERATION

Q2: DO YOU AGREE WITH THIS APPROACH?

RELATED PARTY TRANSACTIONS

8. Rule 9.5 governs Related Party Transactions in ADGM. Rule 9.5.3(e) prohibits a Related Party and any of its associates from voting on any shareholder approval required for the purposes of authorising a Related Party Transaction to which they are connected. This follows the approach in the UK Listing Rules.

ISSUES FOR CONSIDERATION

Q3: DO YOU BELIEVE THIS APPROACH IS APPROPRIATE IN ADGM?

9. Rule 9.5.3(d) requires shareholders to re-approve Related Party Transactions in instances where there has been a material change to the terms of such transactions following the granting of initial shareholder approval and prior to their completion. This follows the approach in the UK Listing Rules.

ISSUES FOR CONSIDERATION

Q4: DO YOU BELIEVE THIS APPROACH IS APPROPRIATE IN ADGM?

CHAPTER 7 – RULES OF MARKET CONDUCT (RMC)

APPROACH TO THE RULES OF MARKET CONDUCT

1. The purpose of the Rules of Market Conduct ("**RMC**") is to provide guidance on the market abuse provisions in Parts 8 and 9 of FSMR (Please see Appendix 6).

2. The RMC is intended to:

    a) assist persons in determining whether or not conduct amounts to market abuse in ADGM;

    b) assist persons in ADGM who may be subject to obligations to monitor for, prevent, and/or report market abuse to comply with their obligations; and

    c) clarify that certain market practices do not, in the Regulator's view, ordinarily amount to market abuse.

3. The RMC is relevant to any person to whom Parts 8 and 9 of the FSMR apply. Parts 8 and 9 apply to persons generally, that is, whether an individual, body corporate, or body unincorporate, and whether regulated by the Regulator or unregulated.

4. The RMC has the status of non-binding rules, and are issued as "Guidance" on Parts 8 and 9 of the FSMR under section 15 of the FSMR. In the RMC, the Regulator occasionally sets out its views on the interpretation of provisions in Parts 8 and 9 of the FSMR. These views are not intended to be exhaustive or definitive and interpretation of the FSMR is ultimately a matter for the Court in ADGM.

5. The chapters of RMC set out for each type of market abuse:

    a) the text of the prohibition and relevant definitions;

    b) the Regulator's interpretation of elements of the prohibition (including factors it may take into account in determining whether or not there has been a contravention);

    c) general or specific examples of conduct that in the Regulator's view may contravene the prohibition; and

    d) where relevant, defences in the FSMR.

ISSUES FOR CONSIDERATION

Q1: ARE THERE ANY REASONS TO DEPART FROM THIS APPROACH?

UK CODE OF MARKET CONDUCT AS THE FOUNDATION OF THE RULES OF MARKET CONDUCT

6. The Board believes that it is appropriate to generally follow the provisions of the UK Financial Conduct Authority "Code of Market Conduct" in drafting the RMC albeit with amendments as required to cater for the circumstances of ADGM.

7. The UK Code of Market Conduct has been developed over the course of several years to create a robust framework for detailing types of conduct which amount to market abuse, as well as guidance for persons required to comply with market abuse rules on how to comply with their obligations.

APPROACH TO INTERNATIONAL DEVELOPMENTS ON MARKET CONDUCT

8. The Board is following various international developments on market conduct including the UK approach to implementation of the EU Market Abuse Directive ("**MAD II**") in 2016. The Board intends to further update the RMC where necessary to update current developments.

USE OF EXAMPLES IN THE RMC

9. Where possible, examples of items which might constitute prohibited behaviours or defences to prohibited behaviours have been included although these do not exist in the UK Code of Market Conduct. This is not intended to broaden the restrictions in RMC but rather to provide persons in ADGM with clarity regarding the scope of their obligations under operative provisions of the RMC, by providing relevant guidance.

10. For instance, RMC 6-6(1)(c) provides an example of insider dealing:

> *"a person who enters an order and consequent to the order becomes privy to Inside Information, and then amends or cancels the order based on that Inside Information "*

11. Further, in RMC 6-7(1)(a), the following is provided as an example of conduct that may be considered by the Regulator as a defence to market abuse:

> *"the person is participating in a liquidity scheme which is operated by a Recognised Investment Exchange."*

ISSUES FOR CONSIDERATION

Q2: IS THERE ANY REASON TO DEPART FROM THIS APPROACH?

CHAPTER 8 – ANTI-MONEY LAUNDERING RULES (AML)

BACKGROUND - THE AML RULEBOOK APPROACH TO INTERNATIONAL STANDARDS FOR AML

1. In drafting the AML Rules the Regulator has had close regard to international standards on anti-money laundering and terrorist financing, in particular:

    a) the Financial Action Task Force ("**FATF**") Recommendations of February 2012[1];

    b) the FATF Guidance on Transparency and Beneficial Ownership of November 2014;[2] and

    c) the Basel Committee on Banking Supervision ("**BCBS**") standards on the "Sound Management of Risks Related to Money Laundering and Financing of Terrorism" of January 2014.[3]

2. The AML Rulebook has been designed to provide a single reference point for all persons and entities who are supervised by the Regulator for anti-money laundering and sanctions compliance (e.g., Authorised Persons, Representative Offices, real estate developers or agencies, law firms, notary firms, accounting firms, and dealers in previous metals or precious stones) (collectively in AML, "**Relevant Persons**") (Please see Appendix 7).

3. Relevant Persons are also encouraged to refer to relevant international standards in understanding their obligations under the AML Rulebook (as stated at Chapter 2, paragraph 17 of the AML Rulebook). However, to the extent that international standards conflict with any provisions of the AML Rulebook, the AML Rulebook provisions must be followed by Relevant Persons (as stated at Chapter 2, paragraph 17 of the AML Rulebook).

THRESHOLD FOR APPLICATION OF AML RULEBOOK TO DEALERS IN PRECIOUS METALS OR PRECIOUS STONES, OR DEALERS IN SALEABLE ITEMS OF A PRICE EQUAL OR GREATER THAN USD $15,000

4. The AML Rules create a threshold for the application of these rules. In particular, Rule 1.2.1(2) states that Chapter 7 (customer risk assessment), Chapter 8 (customer due diligence), and Chapter 9 (reliance and outsourcing) of the AML Rulebook apply to dealers in precious metals or precious stones and to a dealer in any saleable item of a price equal to or greater than a threshold of USD $15,000.

5. The USD $15,000 threshold reflects FATF "Guidance for Dealers in Precious Metals and Stones" of June 2008.[4]

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1 http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

2 http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf

3 http://www.bis.org/publ/bcbs275.pdf

4 http://www.fatf-gafi.org/media/fatf/documents/reports/RBA%20for%20Dealers%20in%20Precious%20Metal%20and%20Stones.pdf

ISSUES FOR CONSIDERATION

Q1: THE PROPOSED EU 4TH MONEY LAUNDERING DIRECTIVE ("EU 4TH MLD") HAS STATED THAT THE CASH THRESHOLD SHOULD BE EUR 10,000 WHEREAS THE ADGM AML RULES REFLECT THE FATF RECOMMENDATION OF USD 15,000. SHOULD THE ADM AML RULES REFLECT THE EU 4TH MLD?

THRESHOLD FOR BENEFICIAL OWNERSHIP

6. The AML Rules do not provide a threshold for determination of the controlling shareholders of a company based on a defined percentage *de minimis* threshold (for example, any persons owning more than 25% of a company). FATF do not mandate a percentage threshold for determining beneficial ownership.

7. The definition of Beneficial Owner in the ADGM Rulebook Glossary is:

    a) an individual who ultimately owns Customers' assets or controls a Customer account;

    b) a Person on whose behalf a Transaction is being conducted;

    c) a Person who exercises ultimate effective control over a legal Person or arrangement;

    d) a Person on whose instructions the signatories of an account, or any intermediaries instructing such signatories, are for the time being accustomed to act; or

    e) in relation to a trust, a beneficial owner as defined in the Financial Services and Markets Regulations.

ISSUES FOR CONSIDERATION

Q2: DO YOU BELIEVE THAT THERE IS REASON TO INCLUDE A *DE MINIMIS* 25% BENEFICIAL OWNERSHIP PERCENTAGE THRESHOLD? OR IS A RISK-SENSITIVE APPROACH BASED ON THE CHARACTERISTICS WHICH ARE STATED IN THE DEFINITION OF BENEFICIAL OWNER APPROPRIATE IN ADGM.

POLITICALLY EXPOSED PERSONS

8. Individuals who have or have had a high political profile or public office ("**politically exposed persons**", or "**PEPs**") are, as a result, particularly vulnerable to corruption. In the AML Rulebook higher due diligence requirements therefore apply to Relevant Persons taking on PEPs as customers, and to their monitoring of relationships with PEPs on an on-going basis (see Paragraphs 43-49 of the guidance to Rule 8.3 of AML Rulebook).

9. The AML Rulebook definition of Politically Exposed Person is consistent with the FATF Recommendations:

    "Politically Exposed Person" means a Natural Person (and includes, where relevant, a family member or close associate) who is or has been entrusted with a prominent public function, including but not limited to, a head of state or of government, senior officials and functionaries of an international or supranational organisation, senior politician, senior government, judicial or

military official, ambassador, senior executive of a state owned corporation, or an important political party official, but not middle ranking or more junior individuals in these categories.

10. Following the FATF recommendations, the above definition does not include middle-ranking or junior individuals who are deemed not to offer a risk of money laundering comparable to officials in more senior positions. In line with FATF recommendations, the definition also includes domestic persons, *i.e.*, there is no preferential treatment for domestic officials, as has been adopted in certain other jurisdictions, therefore treating domestic and foreign PEPs alike for the purpose of money laundering risk.

ISSUES FOR CONSIDERATION

Q3: DO YOU AGREE THAT THE DEFINITION OF POLITICALLY EXPOSED PERSON IS APPROPRIATE?

RESTRICTED SCOPE COMPANIES

11. The Restricted Scope Company ("**RSC**") is a corporate vehicle established under the Companies Regulations 2015 which offer a greater degree of confidentiality than other forms of corporate entity in ADGM. RSCs are not required to file accounts and are not required to audit their accounts. RSCs must file an annual return, articles, and details of their registered offices, directors and secretary (if they have one) with the Registrar.

12. Relevant Persons will know that the RSC is subject to less onerous corporate disclosure requirements than other forms of corporate entity due to the requirement to have "(Restricted)" in the company's name. Given that only a RSC's constitution and details of its registered office will be available in a public register, Relevant Persons will be required to have a bilateral dialogue with the RSC in accordance with the risk-based approach in AML to obtain any other relevant information which is needed to assess the money laundering risks to which it is exposed.

13. RSCs should be forthcoming with regards to requests for information by other persons and entities for the purpose of their compliance with AML. In such cases, RSCs should not have difficulty in establishing business relationships with other persons and entities in ADGM. The fact that RSCs are not subject to strict standards of disclosure of corporate documentation to a public registry should not be interpreted by RSCs to prohibit their providing of any relevant information for AML purposes to the relevant regulatory authority.

ISSUES FOR CONSIDERATION

Q4: IS THERE ANY REASON TO DEPART FROM THIS APPROACH?

14. AML Rule 15.1.1 deals with the annual AML report and the lodgement thereof. The Regulator is considering whether or not an Authorised Person should only self-certify that the annual report has been completed and there are no significant matters that require reporting to the Regulator. The Regulator will review those annual reports whenever an on-site inspection takes place or on a risk-based approach.

ISSUES FOR CONSIDERATION

Q5: SHOULD AUTHORISED PERSONS BE REQUIRED TO LODGE THE AML REPORT OR SELF-CERTIFY?

CHAPTER 9 – ISLAMIC FINANCE RULES (IFR)

APPROACH TO ISLAMIC FINANCE RULES

1. Islamic finance in the ADGM will be regulated under the FSMR. Activities that relate to Islamic Finance will be regulated as Regulated Activities (or benefit from appropriate exclusions thereunder) (Please see Appendix 8).

2. The FSMR are based on English law. However, the Islamic Finance Rules adopt a more prescriptive approach to the regulation of Islamic Finance whilst still retaining wide flexibility for institutions. English law does not have a similar precedent for the regulation of Islamic Finance.

3. Market participants that hold themselves out as Islamic Financial Institutions or Islamic Windows will be subject to the same regulations and rules to which conventional institutions are subject. The Islamic Finance Rules are intended to supplement and modify the conventional rules as opposed to providing for a standalone Islamic Finance regulatory regime.

4. We have examined other Islamic Finance legal and regulatory environments such as the Malaysian Islamic Finance Centre (MIFC) as well as reviewing the standards produced by the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) and the Islamic Financial Services Board (IFSB) and considered whether certain aspects of those regimes and/or standards might enhance the Islamic Finance Rules.

5. The approach taken to the drafting of the Islamic Finance Rules is consistent with the approach taken in most jurisdictions (with the notable exception of the MIFC) to the regulation of Islamic Finance i.e. to draft those rules as a supplement to the existing rules with which an Islamic Financial Institution or Islamic Window would need to comply if it were a purely conventional institution. This is intended to provide that all regulated entities meet the same regulatory standards in relation to regulated activities undertaken by them.

6. We have not followed the approach taken by the MIFC owing to the fact that the MIFC has been established solely for the purposes of Islamic finance to the exclusion of conventional financial institutions and products. The ADGM is intended to be an open market that attracts both conventional and Shari'a-compliant financial activities and as such the MIFC model is not directly comparable.

ISSUES FOR CONSIDERATION

Q1: THE BOARD WOULD LIKE YOUR VIEW ON THIS APPROACH.

7. Shari'a-compliant Regulated Activities and the activities that constitute Conducting Islamic Financial Business are each described in full in the IFR. These have been drafted broadly with the intention that they cover the full universe of activities that may be undertaken in a Shari'a-compliant manner.

ISSUES FOR CONSIDERATION

Q2: THE BOARD WOULD LIKE YOUR VIEW AS TO WHETHER THIS APPROACH SHOULD BE MAINTAINED OR WHETHER THE SCOPE OF SHARI'A-COMPLIANT REGULATED ACTIVITIES AND ISLAMIC FINANCIAL BUSINESS SHOULD BE LIMITED TO DEPOSIT-TAKING, INSURANCE (TAKAFUL) AND FUND MANAGEMENT ACTIVITIES UNDERTAKEN IN ACCORDANCE WITH SHARI'A.

Shari'a Supervision

8. The Islamic Finance Rules require an Islamic Financial Institution and/or Islamic Window to appoint an appropriately qualified Shari'a Supervisory Board. The composition of this Shari'a Supervisory Board is at the discretion of the relevant Islamic Financial Institution and/or Islamic Window within certain parameters.

9. This approach is consistent with most jurisdictions in the Middle East but is notably different to the approach taken in Malaysia. In Malaysia, a Shari'a-compliant institution must have its own dedicated scholar and there are limits on the number of boards on which that scholar can sit. The central "Shariah Advisory Council of Bank Negara Malaysia" acts as a universal governing body to which questions of Shari'a that cannot be resolved at the level of an individual institution may be referred.

10. Whilst there is currently no intention to do so, the Islamic Finance Rules provide flexibility for the ADGM to appoint a central Shari'a supervisory council which it may do in the event that the prevailing market view is that it would be beneficial to do so.

11. However, it is the view of the board that, owing to the wide variety of interpretations of Shari'a and in the interests of promoting a global and inclusive market, the ADGM is best served by following an approach that sets out the framework of supervision that must be adopted as opposed to the interpretation of Shari'a to which market participants must adhere.

Shari'a Reviews

12. The Islamic Finance Rules provide that annual Shari'a audits will be undertaken in accordance with the AAOIFI Standards.

MANAGING A PROFIT SHARING INVESTMENT ACCOUNT (PSIA)

13. The Islamic Finance Rules contains specific rules that relate to Managing a Profit Sharing Investment Account.

14. A Profit Sharing Investment Account is a Shari'a-compliant investment product that is unique to Islamic Finance. The reason for this is that losses on the account are borne solely by the investor up to the amount invested. As such, these accounts do not benefit from deposit protection.

15. The regulated activity of Managing a Profit Sharing Investment Account has been specifically addressed in the Islamic Finance Rules and not in any other part of the rulebook. As such PSIAs are the only Shari'a-compliant product for which the rules are prescribed solely in the Islamic Finance Rules.

16. In prescribing these rules the Board has looked to the proposals set down by the IFSB in particular in relation to capital adequacy provisions.

ISSUES FOR CONSIDERATION

Q3: THE BOARD WOULD LIKE YOUR VIEWS ON THIS APPROACH.

ISLAMIC COLLECTIVE INVESTMENT FUNDS

17. The Islamic Finance Rules set out certain requirements that are to be complied with by Domestic Funds that are Public Funds that hold themselves out as being Shari'a-compliant.

18. The Islamic Finance Rules do not apply to Exempt Funds or to Qualified Investor Funds on the basis that investors in those funds will be expected to satisfy themselves as to the Shari'a compliance or otherwise of that fund. Such investors may play a more active role in the structuring of such funds.

ISSUES FOR CONSIDERATION

Q4: THE BOARD WOULD LIKE YOUR VIEWS ON THIS APPROACH AND WHETHER ANY ADDITIONAL REQUIREMENTS SHOULD BE INTRODUCED IN RESPECT OF EXEMPT FUNDS OR TO QUALIFIED INVESTOR FUNDS.

DISCLOSURE REQUIREMENTS

19. Certain disclosure requirements are prescribed for a Prospectus that relates to an Offer of Islamic Securities

20. Similarly, certain disclosure is prescribed for Takaful.

ISSUES FOR CONSIDERATION

Q5: THE BOARD WOULD LIKE YOUR VIEWS ON THE PROPOSED LEVEL OF DISCLOSURE AND WHETHER ADDITIONAL DISCLOSURE SHOULD BE REQUIRED.

CHAPTER 10 – PRUDENTIAL – INVESTMENT, INSURANCE INTERMEDIATION AND BANKING RULES (PRU)

SCOPE AND APPROACH TO THE PRUDENTIAL – INVESTMENT, INSURANCE INTERMEDIATION AND BANKING RULES (PRU)

1. PRU applies to all Authorised Persons in ADGM other than insurers, representative offices, and credit rating agencies (Please see Appendix 9).

2. Authorised Persons in ADGM are allocated to one of five categories based on their authorised activities, as set out at Appendix 1 of PRU (Categories of Authorised Persons).

3. For example, an Authorised Person which has a Financial Services Permission to accept deposits would, according to Appendix 1, be designated as a "Category 1" firm. The firm would then need to look at the relevant "Application Table" in Section 1 which are designed to assist Authorised Persons in understanding the scope of PRU and the provisions which apply to them. The Board believes that this is best done diagrammatically at Appendix 1.

4. Due to the high number of definitions which are unique to PRU, for ease of reference the meaning of terms used in PRU are defined at Chapter 1.2 rather than in the separate ADGM Glossary "**GLO**".

5. PRU contains rules under the following Chapter headings:

    a) Application, interpretation and categorisation (Chapter 1);

    b) General requirements (e.g., prudential valuation practices) (Chapter 2);

    c) Capital (e.g., calculation of capital requirements and leverage ratio reporting) (Chapter 3);

    d) Credit risk (e.g., credit risk management and systems and controls, and the credit risk capital requirement) (Chapter 4);

    e) Market risk (e.g., market risk management and systems and controls, and market risk capital requirements) (Chapter 5);

    f) Operational risk (e.g., risk management and controls for operational risk, and operational risk capital requirements) (Chapter 6);

    g) Interest rate risk in the non-trading book (e.g., stress-testing for non-trading book interest rate risk and systems and controls for non-trading book interest rate risk) (Chapter 7);

    h) Group risk (e.g., systems and controls for group risk management, capital requirements and concentration risk limits) (Chapter 8);

    i) Liquidity risk (e.g., systems and controls for liquidity risk management, liquidity requirements) (Chapter 9);

    j) Supervisory review and evaluation processes (Chapter 10); and

    k) Disclosure requirements (Chapter 11).

6. PRU contains Appendices 1 to 11, which supplement various Chapters of PRU.

COMPLIANCE WITH BASEL COMMITTEE ON BANKING SUPERVISION STANDARDS FOR BANK CAPITAL AND LIQUIDITY (BASEL III)

7. The Basel Committee on Banking Supervision ("**Basel Committee**") published a revised set of bank capital and liquidity standards in December 2010 (revised June 2011) known as the "Basel III framework". Basel III supplements and, in certain respects, replaces, the existing Basel II standards, the composite version of which was issued in 2006, replacing Basel I. The Board has had close regard to Basel III in drafting PRU.

8. Basel III contains revised standards in a number of areas, including capital, liquidity, buffers for capital and liquidity, and leverage.

9. As a general principle, ADGM does not propose to implement any standards ahead of the Basel III timeline, as has been done in certain Basel Committee member jurisdictions such as the US and the EU.

ISSUES FOR CONSIDERATION

Q1: THE BOARD INVITES ANY COMMENTS ON THIS GENERAL APPROACH.

LIQUIDITY COVERAGE RATIO

10. Rules 9.3.4 to 9.3.6 set out an "LCR Requirement" requiring Authorised Persons to maintain sufficient "high quality liquid assets" ("**HQLA**") to meet their liquidity needs for a minimum 30 calendar day period under a severe stress scenario. The LCR has two components:

    a) the value of the stock of HQLA in stressed conditions; and

    b) total net cash outflows, calculated according to specified stressed scenarios.

11. The Liquidity Coverage Ratio (the "**LCR**") is expressed by the following formula:

$$\frac{\text{Stock of HQLA}}{\text{Total net cash outflows over the next 30 calendar days}} \geq 100\%$$

12. Absent a situation of financial stress, the value of the LCR under PRU should not be 100% or lower (i.e., the stock of HQLA should at least equal total net cash outflows). Authorised Persons are expected to meet this requirement on an on-going basis and hold a stock of HQLA which is unencumbered in order to withstand liquidity stress. During stressed periods, Authorised Persons are permitted to use their stock of HQLA which may cause the LCR to fall below 100%.

13. The Basel III timeline for phase-in of the LCR is as follows:

	1 January 2015	1 January 2016	1 January 2017	1 January 2018	1 January 2019
Minimum LCR Requirement	60%	70%	80%	90%	100%

14. National timelines for implementation of the LCR vary between jurisdictions. The EU and the US have introduced their own phase-in arrangements which are shorter than those specified under Basel III.

15. As currently drafted, PRU follows the Basel Committee phase-in timing of the LCR as shown above.

16. The LCR Requirement in PRU applies to all banks in ADGM, including their branches. Banks operating as branches in ADGM would be able to apply to the Regulator for a "global liquidity concession" to the LCR Requirement, effectively exempting the branch from the LCR Requirement, if they and their head office meet certain conditions as set out in Rule 9.3.2 and App9, Section A9.1 of PRU including the requirement that it is demonstrated to the Regulator's satisfaction that the branch head office is subject to equivalent or more restrictive liquidity requirements than those imposed by the Regulator (App9, A9.1.1(23)(c)). The global liquidity concession should enable firms to reduce their burden of reporting to the Regulator in respect of their liquidity position in situations where they qualify for appropriate treatment.

ISSUES FOR CONSIDERATION

Q2: DO YOU AGREE THAT THE LCR SHOULD BE PHASED-IN IN ACCORDANCE WITH THE BASEL III TIMELINE AND REQUIRE FULL IMPLEMENTATION NO EARLIER THAN 1 JANUARY 2019?

Q3: DO YOU AGREE THAT A GLOBAL LIQUIDITY CONCESSION SHOULD BE AVAILABLE TO BRANCHES?

THE NET STABLE FUNDING RATIO

17. The Basel Committee recommends introduction of a net stable funding ratio ("**NSFR**") by 1 January 2018 to ensure that banks hold a minimum amount of stable funding based on the liquidity characteristics of their assets and activities over a one year horizon, with the objective of reducing maturity mismatches between asset and liability items on the balance sheet and thereby reduce funding and rollover risk.

18. The NSFR works with and counterbalances the cliff-edge effects of the LCR, by off-setting incentives to fund liquid assets with short term funding that matures just outside of the LCR's 30 day stress tested period. In broad terms, the NSFR is calculated by dividing a bank's "available stable funding" by its "required stable funding". The ratio must always be greater than 1. Thus:

$$\frac{\text{Available amount of stable funding}}{\text{Available amount of stable funding}} \geq 100\%$$

19. The Board wishes to implement the NSFR in line with the Basel III timeline, by 1 January 2018. As such, there is no current NSFR requirement in ADGM.

ISSUES FOR CONSIDERATION

Q4: THE BOARD INVITES ANY COMMENTS ON THIS APPROACH.

THE LEVERAGE RATIO

20. The Basel III leverage ratio is intended to reduce excessive leverage on banks' balance sheets. As was often shown to be the case in the financial crisis, banks were often highly leveraged while apparently maintaining strong risk-based capital ratios.

21. PRU applies a leverage ratio to Authorised Persons. The leverage ratio is a separate, additional requirement from the binding risk-based capital requirements, so is a supplemental non-risk-based "back-stop". It is defined as the capital measure (the numerator) divided by the exposure measure (the denominator). The

capital measure is made up of Basel III Tier 1 capital. The Basel Committee set a minimum 3% leverage ratio binding requirement by 1 January 2018. Until that date the 3% minimum ratio is not a required Pillar 1 limit.

22. The PRU leverage ratio does not currently mandate compliance with a minimum leverage ratio requirement of 3%. Currently, there is only a reporting requirement to the Regulator in line with standards set out in Basel III.

23. The Basel Committee has developed and published a common disclosure template to be used for both regulatory reporting and also reconciling disclosures with published financial statements, which the Regulator intends to make use of.

24. It is proposed that the leverage ratio should only apply to certain Domestic Firms in ADGM (e.g., a firm which is registered in or has its head office in ADGM). The leverage ratio is not proposed to be applied to branches of firms incorporated outside of ADGM. Under PRU, branches are required to report their head office leverage ratio calculated on a consolidated basis on a quarterly basis to the Regulator, in line with the existing capital reporting requirements.

ISSUES FOR CONSIDERATION

Q5: THE BOARD INVITES ANY COMMENTS ON THE APPROACH TO THE LEVERAGE RATIO IN ADGM.

THE CAPITAL CONSERVATION BUFFER

25. Chapter 3 of PRU requires that Authorised Persons maintain a Capital Conservation Buffer of 25% of its "Risk Capital Requirement" (the aggregate measures of the components of a firm's capital requirements relating to credit risk, market risk, operational risk and certain commercial risks) in the form of CET 1 capital. If the Authorised Person's capital falls below certain levels, then it would be restricted with regards to the amount of dividends or bonus payments that it may make.

26. The timeline being considered for phase-in of the Capital Conservation Buffer under Basel III is as follows:

	1 January 2016	1 January 2017	1 January 2018	1 January 2019
Capital Conservation Buffer	0.625%	1.25%	1.875%	2.5%

ISSUES FOR CONSIDERATION

Q6: WOULD A FULLY LOADED CAPITAL CONSERVATION BUFFER BE APPROPRIATE IN ADGM, AHEAD OF THE BASEL III TIMELINE FOR PHASE-IN?

THE COUNTERCYCLICAL CAPITAL BUFFER

27. PRU does not currently require maintenance of a countercyclical capital buffer (the "**CCyB**"). The CCyB is a prudential tool in Basel III which applies to counter-act the effects of the economic cycle on banks' lending activities by making the supply of credit less volatile. The CCyB works by requiring a bank to have an additional amount of capital during 'good times' (i.e., credit bubbles or crunches). This prevents credit from

becoming too cheap (which creates incentives for banks to over-lend) because there is a cost to the capital that the bank must hold. If a bank has insufficient capital to meet the CCyB, the same restrictions as in the case of the Capital Conservation Buffer are triggered (i.e., restrictions on dividends and bonus payments). When the economic cycle turns and economic activity slows or contracts, the CCyB can be 'released' (i.e., the bank is no longer required to have the additional capital). This allows the bank to keep lending to the real economy, or at least reduce its lending by less than would otherwise be the case.

28. Under Basel III the CCyB regime will be phased-in in parallel with the Capital Conservation Buffer between 1 January 2017, becoming fully effective on 1 January 2019.

29. The Board believe that it is currently not appropriate or necessary to implement the CCyB in ADGM as it is not yet possible to appropriately calibrate a CCyB by reference to economic cycles given that ADGM is a new market.

ISSUES FOR CONSIDERATION

Q7: DO YOU AGREE WITH THIS APPROACH?

BASE CAPITAL REQUIREMENT FOR FUND MANAGERS

30. Authorised Persons are required to maintain at all times Common Equity Tier 1 Capital of no less than its relevant "Base Capital Requirement" under Section 3.6 of PRU. Fund managers are subject to a Base Capital Requirement of $250,000 which is calibrated having regard to other jurisdictions, including Singapore.

ISSUES FOR CONSIDERATION

Q8: DO YOU AGREE WITH THIS APPROACH?

CHAPTER 11 – FEES RULES (FEES) & GLOSSARY RULES (GLO)

SCOPE AND APPROACH TO THE FEES & GLO RULEBOOKS.

1. The FEES Rulebook sets out the applicable fees for all regulated activities. We have taken an approach that we believe is appropriate to the activities undertaken by a Firm (Please see Appendix 10).

2. The GLO Rulebook applies to every Person to whom any module of the Rulebooks applies. A word or phrase which is defined in GLO is a defined term and has the meaning given in GLO (Please see Appendix 11).