



ABU DHABI GLOBAL MARKET  
سوق أبوظبي العالمي

# CONSULTATION PAPER NO. 1 OF 2019

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**PROPOSED REVISIONS TO THE ANTI-  
MONEY LAUNDERING REGIME IN  
ADGM**

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## INTRODUCTION

### WHY ARE WE ISSUING THIS PAPER?

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1. The Financial Services Regulatory Authority (the “**FSRA**”) of Abu Dhabi Global Market (“**ADGM**”) has issued this consultation paper to invite public feedback and comments on its proposals to revise the regime in ADGM for combatting money laundering, the financing of terrorism and proliferation, and the financing of unlawful organisations (the “**AML regime**”).
2. The proposed revisions to the AML regime have been formulated in the context of a recent review of the federal criminal laws of the United Arab Emirates (“**UAE**”) in relation to money laundering and terrorist financing<sup>1</sup> (the “**Federal AML Legislation**”), and the forthcoming “mutual evaluation” by the Financial Action Task Force (the “**FATF**”) of the compliance of the UAE with its recommendations of in this area, scheduled for the middle of 2019.
3. The FSRA would now like to invite comments on the proposed amendments to the legislative and regulatory framework that supports the AML regime in ADGM.
4. Unless otherwise defined, capitalised terms used in this paper have the meanings attributed to such terms as contained in the Financial Services and Markets Regulations 2015 (“**FSMR**”) and/or the Glossary (“**GLO**”).

### WHO SHOULD READ THIS PAPER?

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5. This Consultation Paper should be of particular interest to all entities incorporated in ADGM, most especially those operating in the financial sector, but also including those in the non-financial sector that fall within the scope of the AML regime. The latter would include those entities

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<sup>1</sup> ADGM is subject to the federal UAE criminal laws in relation to money laundering and terrorist financing, which currently comprise (i) Federal Decree by Law No. 20 of 2018 (which, from 23 September 2018, replaced Federal Law No. 4 of 2002), (ii) Federal Law No. 7 of 2014, and (iii) related secondary regulations made under those laws including Cabinet Resolution No. 38 of 2014.

registered to provide certain professional services, alongside dealers in high-value goods and non-profit organisations.

## **HOW TO PROVIDE COMMENTS**

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

## **WHAT HAPPENS NEXT?**

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8. The deadline for providing comments on the proposed framework is **12 March 2019**. Once we receive your comments, we will consider whether any modifications are required to the proposed amendments to the legislative and regulatory framework in ADGM. The Board and the FSRA will then proceed to enact the proposed framework.
9. You should not act on these proposals until the final regulations, rules and guidance are issued by the FSRA. We will issue a notice on our website when this happens.

## **COMMENTS TO BE ADDRESSED TO:**

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## BACKGROUND

1. ADGM currently has a robust regime in place for the prevention of money laundering, the financing of terrorism and proliferation, and the financing of unlawful organisations (collectively termed “money laundering” in the remainder of this consultation paper). This regime is underpinned by legislative measures embedded in FSMR and more detailed requirements in the Anti-Money Laundering and Sanctions Rules and Guidance Rulebook (the “**AML Rulebook**”) for those entities authorised to undertake financial services in ADGM, plus some other entities that provide services that might pose a risk of being used for money laundering.
2. ADGM contributes to the efforts of the UAE as a whole in combatting money laundering and, in the light of the recent revisions to the Federal AML Legislation, believes that it is necessary to update its AML regime. Through its membership of the Gulf Cooperation Council the UAE has committed itself to implementing the anti-money laundering (“**AML**”) and counter-terrorist financing measures agreed by FATF members, the “**FATF Recommendations**” (“**FATF Recommendations**”)<sup>2</sup>. Enhancing observance of and compliance with those recommendations is a further consideration for ADGM, although the existing AML regime already reflects them very closely.
3. There is therefore an opportunity at this time for the FSRA to update the AML regime with an eye on ensuring continued alignment with the revised Federal AML Legislation and the current suite of FATF Recommendations.

### Scope

4. Before considering the proposals in detail, an important consideration is the scope of the AML regime in terms of those entities that would be subject to it. The scopes of both the revised AML Federal Legislation and the FATF Recommendations encompass both “financial institutions and designated

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<sup>2</sup> The “*International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations*”

(<http://www.fatf-gafi.org/publications/fatfrecommendations/documents/internationalstandardscombatingmoneylaunderingandthefinancingofterrorismproliferation-thefatfrecommendations.html>, February 2012, updated October 2018)

non-financial businesses and professions”, the latter group being termed “**DNFBPs**”. The AML Rulebook does not currently use this term, but the members of that group are captured within its scope, so it is proposed that this specific designation be introduced. Moreover, it is also proposed that the scope of the AML Rulebook be extended to also capture Non-Profit Organisations (“**NPOs**”), see section G below.

5. The three distinct groups of entities – financial institutions, DNFBPs and NPOs constitute the “Relevant Persons” that the AML Rulebook applies to. These groups may be supplemented by other entities that are deemed to be Relevant Persons by the FSRA where it believes they may pose a money-laundering risk, but that do not fall within the earlier categories.

Proposed areas of change

6. The main amendments proposed to the Regulations and rules are detailed in the next section, under the following headings, with references to any related FATF Recommendations.

Section		Revised FSMR/AML Rulebook	
A.	Clarification of the status of the FSRA as the “Supervisory Authority” for ADGM	FSMR 256A(3)	
B.	Beneficial Ownership	AML 3.2.1, and 8.3.3 to 8.3.6	
C.	Designated Non-Financial Businesses and Professions	- definition	AML 3.2.1
		- registration and supervision as Relevant Persons	AML 15
D.	Risk assessments – Business and Customer	- business	AML 6.1
		- customer	AML 7
		- triggers	AML 8.1.1

Section		Revised FSMR/AML Rulebook
E.	Customer Due Diligence	- simplified CDD
		- source of funds and source of wealth
F.	Reporting obligations	AML 4.6.1 and AML 12.4
G.	Registration and supervision of Non-Profit Organisations	AML 16

7. Additionally, there are a number of proposals for less significant amendments to the AML Rulebook in the following areas that are not discussed separately in this Consultation Paper, but of which readers should be aware.

- In the existing Chapter 9, when a Relevant Person outsources its Customer Due Diligence (“**CDD**”) to a third party it must undertake an assessment of the “equivalence” to the FATF Regulations of any overseas jurisdiction in which that third party operates. It is proposed to specify some factors explicitly, in the form of a rule, that must be considered when arriving at this determination of equivalence (or not) in order to provide clarity to Relevant Persons on what factors the FSRA considers to be acceptable when making that determination.
- It is also proposed to provide further clarity in the existing Chapter 11, where further detail would be provided on the measures that would have to be considered when a Relevant Person is ensuring its compliance with sanctions and other obligations in that area.
- The “General Obligations” that are currently contained in Chapter 15 of the AML Rulebook would be merged with the existing Chapter 4, “General Compliance Requirements”.

- The proposal is made to set out the existing, overarching obligations on firms to conduct CDD and keep related records (FATF Recommendation 11) in both legislation, via FSMR, and rules, where those obligations currently exist only in the latter.
- It is being proposed that all existing requirements for records relating to AML practices to be kept for a period of ten years would be reduced to six years as this would be consistent with the other record-keeping obligations for entities subject to FSRA requirements.

## AML REGIME – PROPOSED AMENDMENTS

8. The main amendments proposed would update FSMR and the AML Rulebook to better reflect the requirements of the Federal AML Legislation and the FATF Recommendations, with minor, related consequential amendments proposed as appropriate. A brief glossary has also been added to the AML Rulebook to aid Relevant Persons and others as it has been recognised that there are a material number of terms specific to this area of the regulatory framework.

### ***A. Clarification of the status of the FSRA as the “Supervisory Authority” for ADGM***

9. The Federal AML Legislation requires “**Supervisory Authorities**” to ensure that all entities that might potentially be used for money laundering are aware of their obligations under that legislation and to perform appropriate and adequate supervision of those entities. The authorities in the UAE that are responsible for prohibiting and countering money laundering consider the FSRA as fulfilling this responsibility for ADGM, although it has not been formally designated as such.

10. The FSRA also considers itself to be the Supervisory Authority in ADGM for the purposes of the application of the Federal AML Legislation there, based on the powers given to it under subsection 7(6) of FSMR, which allow it to make rules applying to any person in relation to money laundering and terrorist financing. Accordingly, the FSRA has administered the AML regime arising from the Federal AML Legislation through making regulations and

rules that prohibit money laundering in ADGM and supervising the compliance of relevant entities with the AML Rulebook that was implemented in 2015.

11. We propose, therefore, that FSMR be amended by adding appropriate provisions that explicitly set out the anti-money laundering powers of the FSRA and formally articulate the role and jurisdiction of the FSRA as the Supervisory Authority, under the Federal AML Legislation, for ADGM. Identification of the FSRA as such will also provide a clearer link to its obligations under the FATF Recommendations.

#### PROPOSAL 1

CLARIFY THE STATUS OF THE FSRA AS THE “SUPERVISORY AUTHORITY” FOR ADGM FOR THE PURPOSES OF ADMINISTERING THE FEDERAL AML LEGISLATION.

#### **B. Beneficial Ownership**

12. The Federal AML Legislation has been revised to require financial institutions and other, relevant entities to identify the ultimate beneficiaries of commercial activities they undertake on behalf of clients. Alongside this, FATF Recommendation 10 requires financial institutions, amongst other things, to identify the beneficial owner and take reasonable measures to verify the identity of the “Beneficial Owner”. Similarly, FATF Recommendation 22 (DNFBPs) provides that the CDD requirements in FATF Recommendation 10 must also apply to DNFBPs in certain circumstances, with the obligation to identify the Beneficial Owner.

13. The AML Rulebook does currently use a definition of Beneficial Owner in respect of the identification and verification of beneficial ownership that is consistent with FATF Recommendations 10 and 22. However, the Registration Authority (the “RA”) in ADGM has recently enacted the Beneficial Ownership and Control Regulations 2018<sup>3</sup>, which set out detailed provisions for:

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<sup>3</sup> [http://adgm.complinet.com/en/display/display\\_main.html?rbid=4503&element\\_id=19354](http://adgm.complinet.com/en/display/display_main.html?rbid=4503&element_id=19354)

- the reporting of beneficial ownership information for legal entities operating in ADGM; and
- the maintenance of a registry of beneficial ownership information for all legal entities undertaking commercial activities in ADGM, which will allow more systematic identification of Beneficial Owners.

14. As part of those Regulations, the RA has introduced a new, detailed definition of beneficial ownership of an entity, termed “Ultimate Beneficial Ownership”. This is based on either “control” or, newly introduced, a meaningful degree of ownership of that entity, where the latter applies to categories of entities where “ownership” is relevant and more than 25% of the shares or voting rights are held directly or indirectly. The result is that the characteristics of what constitutes Beneficial Ownership are different across the following categories of entities: (i) companies, limited liability partnerships or partnerships; (ii) trusts; and (iii) foundations or similar arrangements.

15. The FSRA proposes to update the definition of Beneficial Owner contained in GLO so that it is consistent with the new definition currently used by the RA. In tandem with this, the current AML Rulebook provides guidance to Relevant Persons in respect of the identification of Beneficial Ownership of different types of legal entities; it is now proposed that this be codified in Rules, thereby ensuring further consistency with the Beneficial Ownership and Control Regulations 2018.

16. Adoption of these proposals would ensure that the definition to be used by the FSRA would be consistent with those used by the RA and the FATF, whilst affording the FSRA greater flexibility in the identification of Beneficial Owners.

## PROPOSAL 2

AMEND THE DEFINITION OF “BENEFICIAL OWNER” TO BRING IT INTO LINE WITH THE NEW DEFINITION OF “ULTIMATE BENEFICIAL OWNER” CONTAINED IN THE REGULATIONS TO BE ISSUED BY THE RA AND CODIFY CDD REQUIREMENTS FOR THE IDENTIFICATION AND VERIFICATION OF BENEFICIAL OWNERSHIP BY RELEVANT PERSONS IN CHAPTER 8 OF THE AML RULEBOOK.

### ***C. Designated Non-Financial Businesses and Professions***

#### Definition

17. The term “Designated Non-Financial Businesses and Professions”, and similarly “DNFBPs”, covers any business or profession that poses a money laundering risk, but that cannot be classified as a financial institution, such as real estate agencies, dealers in precious metals and precious stones, notaries, legal and tax advisers and other accounting professions. The AML Rulebook does not currently use the term when specifying the scope of Relevant Persons: it does, however, identify particular classes of persons that align with the classes that comprise DNFBPs in the FATF Recommendations.
18. Explicitly adopting the term “DNFBPs” in the AML Rulebook would therefore bring it into line with the use of the term in the revised Federal AML Legislation and the FATF Recommendations. We are also proposing that this opportunity be taken to clarify that providers of “taxation services” should also fall within the definition of DNFBPs.

#### **PROPOSAL 3**

USE THE TERM “DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS” EXPLICITLY TO INCLUDE PROVIDERS, WHERE THEY ARE NOT FINANCIAL INSTITUTIONS, OF CERTAIN SERVICES.

#### Registration and supervision as Relevant Persons

19. FATF Recommendation 28 states that all DNFBPs should be subject to appropriate regulatory and supervisory measures that are comparable to those for financial institutions, which include having an effective system for monitoring and ensuring their compliance with AML requirements.
20. The FSRA does not currently register DNFBPs nor considers the fitness and propriety of their controllers and management. Instead, the current process involves the RA issuing a commercial license to a DNFBP, with the FSRA reviewing:
- the experience and qualifications of any proposed Money Laundering Reporting Officer (“**MLRO**”), but not their fitness and propriety; and

- the policies and processes of the DNFBP.

21. The FSRA believes that the current approach does not meet the level of regulatory and supervisory scrutiny expected of DNFBPs under FATF Recommendation 28. In order to put DNFBPs on the same footing as financial institutions in that area, the FSRA believes that it should be given enhanced powers to register them, and thereafter to scrutinise and hold DNFBPs to account in order to reduce any money-laundering threat to ADGM from their activities. These detailed powers would include the ability to exclude a person from owning or controlling a DNFBP if they are not fit and proper, as well as the power to suspend or withdraw the registration of an existing DNFBP in ADGM, for the same reasons.

22. Under the proposed new registration and supervision regime for DNFBPs the FSRA would work closely with the RA to ensure that the registration and supervision processes used by the FSRA are effected in a proportionate and efficient manner. Adopting this proposal would also further enhance the cross-authority nature of the AML regime that exists in ADGM.

#### PROPOSAL 4

GIVE THE FSRA THE POWER TO REGISTER AND SUPERVISE DNFBPs AND, IF APPROPRIATE, SUSPEND OR WITHDRAW THEIR COMMERCIAL LICENSES, WITH THE OPTION OF DELEGATING ITS AUTHORITY TO THE RA TO UNDERTAKE THOSE ACTIONS.

#### ***D. Risk assessments***

##### Business

23. There is an existing requirement in the AML Rulebook for a Relevant Person to undertake a risk assessment of the money laundering risks to which its business is exposed, with that assessment being proportionate to the nature, size and complexity of the business of the Relevant Person. The business risk assessment should take into account various factors such as the types of customer the Relevant Person is dealing with, its locations, products offered and their complexity, and it should also be forward-looking, i.e. reflect potential new business lines, products and customers.

24. It is proposed that the forward-looking aspect of the business risk assessment should be further emphasised as venturing into new areas may very well pose a more significant threat to a Relevant Person, given likely unfamiliarity with the potential for money laundering to take place.

#### Customer

25. It is also proposed that the requirements for customer risk assessments, which consider relevant risk factors that might see a customer deemed to pose a higher or a lower risk of money laundering, are specified in the AML Rulebook: currently they are in the form of guidance.

#### PROPOSAL 5

(i) FOR BUSINESS RISK ASSESSMENTS, INCORPORATE A SPECIFIC REQUIREMENT FOR RELEVANT PERSONS TO UNDERTAKE THEM WHENEVER A NEW BUSINESS LINE IS LAUNCHED OR A NEW TECHNOLOGY ADOPTED AND MITIGATE ANY IDENTIFIED RISKS, AND  
(ii) FOR CUSTOMER RISK ASSESSMENTS, CHANGE CONSIDERATION OF THE RISK FACTORS TO BE ASSESSED FROM GUIDANCE TO BE A REQUIREMENT IN THE FORM OF RULES.

### ***E. Customer Due Diligence***

#### Triggers

26. The existing requirement in the AML Rulebook to undertake CDD makes no distinction between that required of financial institutions and DNFBPs, which does not reflect the primarily relationship-based business model of the former group and the transactional business model of the latter group. The proposal is that appropriate triggers to undertake CDD, differentiated across the two groups of Relevant Persons, are included. This would better align the CDD requirements in the AML Rulebook with the FATF Recommendations in this area and to ensure that each of those groups of Relevant Persons would have clear and relevant CDD requirements.

#### PROPOSAL 6

DIFFERENTIATE THE CRITERIA FOR FINANCIAL INSTITUTIONS AND DNFBPs THAT TRIGGER THE REQUIREMENT TO UNDERTAKE CDD.

## Simplified CDD

27. The current requirements in the AML Rulebook for customer risk assessment require all Relevant Persons to undertake CDD for each customer. “Standard” CDD is the starting point for all customers, and “enhanced” CDD measures supplement this for customers assessed to exhibit a high risk of potential money laundering; however, “simplified” CDD is not based on the customer risk assessment and it may be undertaken for customers falling into certain specified categories of entities and it represents a less stringent set of CDD requirements.
28. In order to make the CDD requirements in the AML Rulebook consistent with those in the FATF Recommendations it is proposed that the specification of categories of entities eligible for simplified CDD is removed. Instead simplified CDD would be performed for those entities assessed as being low risk for money laundering.

### PROPOSAL 7

ALLOW SIMPLIFIED CDD ONLY FOR LOW-RISK CUSTOMERS, RATHER THAN FOR CERTAIN CUSTOMER CATEGORIES.

## Source of funds and source of wealth

29. FATF Recommendation 10 imposes standard CDD obligations on financial institutions and FATF Recommendation 22 similarly places the same obligation on DNFBPs. Financial institutions and DNFBPs must undertake this CDD when establishing business relations, carrying out certain transactions, having any suspicions about money-laundering or the veracity of customer data.
30. The interpretive note to FATF Recommendation 1 (Assessing Risks and Applying a Risk-Based Approach) also indicates where enhanced CDD should be undertaken, i.e. for customers believed to pose a high risk of money laundering. In those cases, it is appropriate to determine both the source of

funds and the source of wealth of the customer<sup>4</sup>, but this is not a requirement under standard CDD for the FATF Recommendations. The AML Rulebook, however, is currently super-equivalent to the FATF Recommendations in requiring that additional information for standard CDD.

31. We are proposing that this additional requirement be removed, which would align the requirement for standard CDD more closely with the FATF Recommendations.

#### PROPOSAL 8

REMOVE THE EXISTING REQUIREMENT UNDER STANDARD CDD OBLIGATIONS TO IDENTIFY CUSTOMERS' SOURCE OF FUNDS AND OF WEALTH, IN ORDER TO BRING CDD REQUIREMENTS UNDER THE AML RULEBOOK IN LINE WITH FATF RECOMMENDATIONS.

#### **F. Reporting obligations**

32. The Federal AML Legislation requires an independent controller or Money Laundering Reporting Officer (“**MLRO**”) for each financial institution “to prepare biannual reports for internal use and provide a copy to the Central Bank. The AML Rulebook requires Authorised Persons, Recognised Bodies and auditors to complete an annual “AML Return” and retain it, for inspection by the FSRA at the request of the latter.

33. We are proposing that submission of the annual AML Return by Relevant Persons to the FSRA is made mandatory, as that would provide the FSRA with consistent, industry-wide information relevant for monitoring risks associated with money laundering.

#### PROPOSAL 9

REQUIRE RELEVANT PERSONS TO SUBMIT THE ANNUAL AML RETURN TO THE FSRA ON AN ANNUAL BASIS.

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<sup>4</sup> The “source of funds” of a customer is defined in GLO as “the origin of Customer's funds which relate to a Transaction or service and includes how such funds are connected to a Customer's Source of Wealth”. The “source of wealth” of a customer is defined there as “how the Customer's global wealth or net worth is or was acquired or accumulated”.

## ***G. Registration and supervision of Non-Profit Organisations***

34. FATF Recommendation 8 requires focussed and proportionate measures to be applied to NPOs to protect them from potentially being used for terrorist financing. The interpretive note for FATF Recommendation 8 makes clear that the recommendation is mainly focussed on charitable organisations, which is relevant to NPOs in the wider UAE outside ADGM, whereas the NPOs registered in ADGM are not charitable organisations.

35. In order to ensure consistency with the FATF Recommendation, the proposal is to include NPOs, which in ADGM are non-charitable in nature, within the definition of a Relevant Person and detail the associated AML requirements via a new chapter in the AML Rulebook. These requirements would include that NPOs establish and maintain appropriate controls over the funds they receive and disburse, and additionally confirm the identity and good-standing of their beneficiaries, but they would not be subject to any other requirements in AML, including the need to perform CDD.

### **PROPOSAL 10**

INCLUDE NPOs WITHIN THE DEFINITION OF RELEVANT PERSONS AND ESTABLISH PROPORTIONATE REQUIREMENTS FOR THEM TO MAINTAIN APPROPRIATE CONTROLS TO PROTECT THEIR ACTIVITIES FROM BEING USED FOR TERRORIST FINANCING.

## **FINALISATION OF FEDERAL AML LEGISLATION AND ENACTMENT IN ADGM**

36. The revisions to the AML regime proposed by the FSRA in this consultation paper are to align that regime with the revised Federal AML Legislation, where the FSRA has worked alongside the federal authorities that are responsible for reviewing and revising that legislation. The proposals are therefore aligned with the anticipated form and intention of the revised legislation.

37. The FSRA anticipates that that legislation will shortly be finalised and enacted; where there are any material changes in the final form of the legislation we shall consider how best to amend and/or supplement the proposals and present those for further public consultation.

## PROPOSED LEGISLATIVE AND REGULATORY AMENDMENTS

38. The proposed framework will require amendments to FSMR, the AML Rulebook and the Glossary (“GLO”), as contained in the following:

- **Annexure A:** Proposed amendments to FSMR.
- **Appendix 1:** Proposed amendments to the AML Rulebook.
- **Appendix 2:** Proposed amendments to GLO.

## RECOMMENDATION

39. In summary, and subject to any further developments regarding amendments to the Federal AML Legislation, we recommend accepting the proposals in this paper as they have significant benefits for ADGM and the wider UAE. Specifically in relation to ADGM the benefits are that:

- (i) they will align the AML regime in ADGM more closely with the Federal AML Legislation and the FATF Recommendations, in time for the Mutual Evaluation of the UAE that is taking place in 2019; and
- (ii) they will strengthen the AML regime within ADGM.



**APPENDIX 1: PROPOSED AMENDMENTS TO THE AML RULEBOOK**

**APPENDIX 2: PROPOSED AMENDMENTS TO GLO**