



ABU DHABI GLOBAL MARKET  
سوق أبوظبي العالمي

*CONSULTATION PAPER  
NO. 5 OF 2021*

**PROPOSALS FOR BROADENING  
PARTICIPATION IN PRIVATE  
CAPITAL MARKETS**

**22 November 2021**

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*Introduction****Why are we issuing this paper?***

1. The Financial Services Regulatory Authority (“FSRA”) of Abu Dhabi Global Market (“ADGM”) has issued this Consultation Paper to seek views on a proposed regulatory framework for limited Retail Client participation in “private capital markets”, that refer to investments in Shares and investible strategies for investors who wish to invest in privately owned companies. Amendments are proposed to the FSRA’s Market Rules (“MKT”) and the Conduct of Business Rulebook (“COBS”). Upon the enactment of the proposed regulatory framework, the FSRA will publish an updated Guidance document – “Guidance – Regulatory Framework for Private Financing Platforms”.

***Who should read this paper?***

2. This Consultation Paper should be of particular interest to operators of Private Financing Platforms and Multilateral Trading Facilities as well as investors, lenders, individuals and organisations active in the investment sector, private ventures and Issuers, and their respective professional advisors.

***How to provide comments?***

3. All comments should be made in writing and sent to the address or the email address 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. The FSRA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of submitting those comments. Comments supported by reasoning and evidence will be given more weight by the FSRA.

***What happens next?***

4. The deadline for providing comments on the proposed framework is 6 January 2022. After receiving your comments, we shall consider whether any modifications are required to the proposals and the Board of ADGM and the FSRA will then proceed to enact the proposals in their final form. You should not act on these proposals until final rules and guidance are issued by the FSRA. We shall issue a notice on our website when that happens.

***Comments to be addressed to:***

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## Background

1. “Private markets” refers to investments in a broad range of asset classes and investible strategies for investors who wish to invest in privately-owned companies. The absence of a listing on a public exchange or market distinguishes private from public markets. “Private markets” has become an umbrella term to refer to assets that are not liquid, not traded on organised market exchanges and are spread across different segments such as private equity, real estate, private credit and infrastructure.
2. In the uncertain and low yield market environment of recent years, global investors have been looking at returns from alternative markets as a means to access new sources of income and seek greater portfolio efficiency and diversification. Many companies, especially early-stage companies in private markets tend to carry high business risks but also offer high potential growth and investment returns. This has led to increasing capital being allocated to private markets and increasing investment opportunities in them.
3. Within the GCC region, private markets are beginning to become an integral part of institutional investment portfolios and they are a crucial source of financing for private enterprises. Small and mid-size enterprises (“SMEs”) are a significant contributor to the economic growth of the UAE. Since 2019, SMEs have contributed over 60% of non-oil GDP and employed 86% of the private workforce of the UAE<sup>1</sup>. In recognition of their importance, the government of Abu Dhabi has made developing the SME sector a key pillar of its economic growth strategy. Accordingly, it has become a strategic priority to create more avenues to meet the financing needs of SMEs, include tapping private equity opportunities in the market.
4. Given the increasing importance and attractiveness of private markets to investors and SMEs, the FSRA is seeking to enhance its existing suite of regulatory offerings in this space. While being a uniquely attractive investment proposition for investors, private markets come with high inherent risks for Retail Clients, especially those that do not have prior knowledge or experience in investing in such markets.

### **Current Regulatory Framework**

5. In order to facilitate investment opportunities in private capital markets, the FSRA first introduced a regulatory framework for Private Financing Platform (“PFP”) Operators in September 2018 to enable start-ups and SMEs to seek funding from professional and institutional investors on a private placement basis (the “PFP

<sup>1</sup> From research of the National Bank of Fujairah (“SME IN-DEPTH”, April 2019, <https://nbf.ae/media/114007/sme-in-depth.pdf>)

- Framework”). Under the PFP Framework, Issuers are permitted to raise capital in the form of Exempt Offers that are published on an online platform maintained by the PFP Operator and accessible only by PFP Clients.
6. Post offer, the PFP Operator may offer an incidental exit facility allowing Clients to sell or transfer their investments only to other PFP Clients. Any such exit facility must not allow active trading by PFP Clients and is solely an ancillary service provided by the PFP Operator.
  7. As with the conduct of any Regulated Activity that is to be offered to Retail Clients, where a PFP Operator wishes to offer its services to Retail Clients, the FSRA would have to explicitly consider whether the PFP Operator possesses adequate systems and controls enabling it to serve Retail Clients before removing any restrictions included in the Financial Service Permission of the Operator.
  8. Since its launch, the PFP Framework has gained good traction. Based on recent industry engagement, there is increasing demand among PFP Operators to leverage technology to enable capital raising and secondary trading. In particular, the advent and adoption of digital assets has enabled greater accessibility and transferability of investments in the secondary market by Clients. Additionally, there is increasing appetite among appropriately knowledgeable and experienced Retail Clients to invest in promising start-ups and ventures.
  9. The FSRA has identified a gap between the capital markets represented by a Recognised Investment Exchange (‘RIE’), with its Prospectus requirement, admission to the Official List and access to primary and secondary public markets and the ability of an MTF to support trading in Securities offered by Exempt Offer.
  10. The FSRA is thus proposing to create a robust and inclusive regime in a risk appropriate and calibrated manner, in order to promote greater liquidity and limited Retail Client participation in private capital markets in support of companies seeking equity capital, by allowing certain Financial Instruments (Shares) offered by Exempt Offer to trade on MTFs with limited Retail Client participation.

### ***Proposed Regulatory Framework***

11. We propose introducing a regulatory framework that allows, in addition to Professional Clients, a capped number of Retail Clients to participate in PFPs and MTFs. Such a regulatory framework (hereinafter referred to the “Retail Private Market Framework” or “RPM Framework”) will allow PFPs and MTFs to facilitate Exempt Offers to Retail Clients and allow MTFs to permit trading of such Securities amongst qualifying Retail Clients, Professional Clients and Market Counterparties. The RPM Framework will require an MTF to have in place robust systems and controls to limit the number of participating Retail Clients in a secondary market. The key features of the RPM framework are further described below.

| <b>KEY FEATURES OF THE RPM FRAMEWORK</b> |   |   |
|--|---|---|
|  | <b>Requirements for PFP and MTF Operators</b>   | <b>Policy intent</b>  |
| <b>Regulated Activities</b>              | <p><u>Securities Offers</u> - a platform operator that wishes to conduct Securities Offers by Issuers must apply for the Regulated Activity of “Operating a Private Financing Platform” or “Operating a Multilateral Trading Facility”.</p> <p><u>Secondary Trading</u> - to allow for secondary trading of the Securities that are offered by an Issuer by way of an Exempt Offer, a platform operator must apply for the Regulated Activity of “Operating a Multilateral Trading Facility”.</p> <p>Consequently, an Operator of a MTF may provide secondary trading of both Securities that are Admitted to the Official List and admitted to trading on a RIE, as well as Exempt Offer Securities.</p> | Consistent with existing policy and ensures that the governing regulations and rules apply to the relevant, underlying Regulated Activities.  |
| <b>Number of Retail Clients</b>          | Securities offered by way of Exempt Offer, either upon a PFP or an MTF, whether operated by the same Operator or two different Operators, must limit the number of Retail Clients participating in such an Exempt Offer to not more than 200.   | The RPM Framework is intended to expand participation in the private market to a limited number of Retail Clients, investing alongside Professional Clients.  |
| <b>Client Onboarding</b>                 | <p>Retail Clients participating in secondary trading on an MTF must be suitably assessed by that MTF to have relevant knowledge and experience.</p> <p>The MTF Operator will have to develop and implement appropriate rules, policies and procedures to demonstrate compliance with this requirement to the FSRA.</p>  | <p>As such, to mitigate the market impact and conduct risks of limited Retail Client participation in private markets, the approach is to adapt from a baseline regime calibrated for Professional Clients but introduce additional safeguards in terms of allowing participation to a limited number of Retail Clients.</p> <p>To avoid the potential for conflicting duties between Issuers and PFP Clients, a PFP Operator is not required to assess the level of sophistication of Retail Clients (at the initial</p> |

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|  |  | <p>offer) that access its platform, rather, the PFP Operator is obligated to publish statements on the platform that identify the risks associated with investment.</p> <p>In contrast, COBS Rule 8.2.1 requires an MTF Operator to ensure that its members/users are qualified to become a member/user of the MTF, in accordance with MIR 2.8.3. The Regulator would expect the MTF Operator to demonstrate systems and controls verifying that Retail Clients seeking to access its platform and subscribing to an Exempt Offer have a sufficient level of knowledge and experience to be aware of and understand the risks associated with the Securities which are offered via and traded on the MTF.</p> |
| <b>Offer of Securities</b>               | <p>A Securities Offer will qualify as an Exempt Offer in ADGM if the Offer is directed at no more than 200 Retail Clients, where the Securities are offered by a platform operator holding an FSP for the Regulated Activity of “Operating a Private Financing Platform”, “Operating a Multilateral Trading Facility”, or both if appropriate.</p> | <p>This amendment to the Markets Rules concerning an Exempt Offers contemplates a limit of 200 Retail Clients being able to participate in the Exempt Offer, through either an offering on via PFP or an MTF. The 200 Retail Client limit proposed in MKT Rule 4.3.1(13) must not be combined with the 50 Person limit contained in MKT Rule 4.3.1(2), i.e. thereby enabling offers directed at 250 Retail Clients. Offers to other persons through other exemptions contained in</p>   |

| <b>KEY FEATURES OF THE RPM FRAMEWORK</b> |  |  |
|--|--|--|
|  | <b>Requirements for PFP and MTF Operators</b>  | <b>Policy intent</b>   |
|  |  | <p>the Market Rules, such as to Professional Clients, for example, remain unaffected.</p> <p>To accord further regulatory protection, the Offer is subject to minimum disclosure requirements in the form of a prescribed template set out by the FSRA. (See the section on Product Summary Note below.)</p>   |
| <b>Secondary Trading</b>                 | <p>The platform operator that admits Exempt Offer Securities to trading as set out above must hold a Financial Services Permission for the Regulated Activity of “Operating a Multilateral Trading Facility” and must ensure that it has effective systems, controls and procedures in place to:</p> <ul style="list-style-type: none"> <li>(i) admit only Securities of such Exempt Offers that are made on its own platform;</li> <li>(ii) identify those Persons to whom the Exempt Offer was made;</li> <li>(iii) comply with MIR Rule 3.9.1 (Admission to trading), as applicable in relation to the relevant Securities;</li> <li>(iv) allow Clients of its market to obtain Inside Information, including any Offer documents relevant to the Securities; and</li> <li>(v) ensure that no more than 200 Retail Clients hold the Securities relevant to the Exempt Offer at any time.</li> </ul> | <p>To manage the risk of regulatory arbitrage and market fragmentation across multiple trading venues.</p> <p>To validate that such Exempt Offers comply with the criteria for trading on the platform.</p> <p>To ensure a fair, orderly and efficient market.</p> <p>To enable Clients to make informed decisions relevant to the Securities through ongoing disclosure.</p> <p>To ensure a fair, orderly and efficient market.</p> |

| <b>KEY FEATURES OF THE RPM FRAMEWORK</b> |  |   |
|--|--|---|
|  | <b>Requirements for PFP and MTF Operators</b>  | <b>Policy intent</b>  |
|  | The platform operator is required to demonstrate compliance to the FSRA by implementing effective and appropriate rules, policies and procedures for its trading activities.   |   |
| <b>Asset Class</b>                       | The platform operator is restricted to carry on Securities Offers and secondary trading of the relevant Securities in relation to Shares, unless otherwise approved by the FSRA.   | The market demand and appetite for investments in other, non-equity Securities (e.g. debt securities, hybrid instruments) in start-ups and scale-ups by Retail Clients in the region is nascent. Investments in non-equity securities may involve additional risks and complexities (e.g. maturity transformation) that require more study. The FSRA will continue to monitor market developments and review the RPM Framework accordingly. |
| <b>Disclosure Requirements</b>           | As applicable, a platform operator is subject to ongoing disclosure requirements as set out in COBS, specifically Chapter 3, Chapter 6 and Rule 18.5, and a Product Summary Note (see relevant section below) as prescribed by the FSRA. | This aims to enable Clients to make informed decisions on their investments through ongoing disclosure.   |

**Question 1:**

Do you agree with the proposed Retail Private Markets Framework as set out in the table above?

**Question 2:**

Do you agree with the approach of limiting the number of Retail Clients allowed to participate in private markets? Is the limit of 200 appropriate?

**Question 3:**

Are there any other factors to be considered by an MTF Operator when evaluating the suitability of a Retail Client that wishes to participate in the MTF's private market?

**Question 4:**

Do you agree with the criteria for a Securities Offer under the RPM Framework to qualify as an Exempt Offer?

**Question 5:**

Do you agree with the approach of restricting transactions under the proposed RPM Framework to Share-based transactions at this point?

**Question 6:**

Do you agree with the proposed requirements in the areas of systems and controls in relation to Securities admitted for trading on an MTF?

**Question 7:**

Do you agree with the view that the safeguards described above provide adequate protections to Retail Clients? Are there any other requirements that should be implemented to enhance protections accorded to Retail Clients under the proposed RPM Framework?

**Product Summary Note**

12. In order to mitigate the risks of an Exempt Offer to a limited number of Retail Clients under the RPM Framework, the Issuer would be required to prepare and provide a Product Summary Note ("PSN") to investors. The PSN would be a simplified disclosure document that highlights the key features and risks of a Securities Offer in a clear and concise manner. The PSN would be given together with any accompanying Offer document by the Issuer to investors (e.g. term sheet, offer info memorandum, etc.) before they make their investment decisions. In line with an Exempt Offer, the PSN is not subject to the same obligations and statutory

liabilities of a Prospectus as set out in MKT Rule 4.10. Nonetheless, the Issuer will be held accountable for any statement or information in the PSN that is false or misleading.

13. The PSN is subject to the following key requirements:
- information must be clearly disclosed in the prescribed format (including specific questions, layout and font size);
  - must not contain any information that is not included in the Offer document;
  - must not contain any information that is false or misleading; and
  - notified to the FSRA by the Issuer at least 10 business days prior to any Exempt Offer.
14. The detailed PSN template is set out in **Appendix 1**.

**Question 8:**

Do you agree with the FSRA's proposal in relation to the PSN?

**Other Considerations**

15. The FSRA does not intend to impose limits on the total amount that an Issuer can raise and, in order to manage the allocation process, Issuers may impose minimum subscriptions. Similarly, the FSRA does not intend to impose limits on the amount that Retail Clients can invest, as a proxy for limiting their risk exposure, as imposing an investment limit may distort market practices. In terms of risk and impact mitigation, we consider the proposed limits on the number of Retail Clients participating in private markets, the suitability assessments and enhanced disclosures for Retail Clients to be adequate.

**Question 9:**

Do you agree that it is not necessary to impose investment limits for Retail Clients?

16. In order to enhance the safe custody of the Securities of the Issuer, we have considered whether to apply the Central Securities Depository (CSD) requirements under COBS Chapter 10 on an MTF Operator that is undertaking the proposed private market activities. Issuers utilising these platforms may be incorporated in ADGM or in other jurisdictions, and therefore be subject to the companies regulations (or equivalent) of the jurisdiction in which they are incorporated. In line with industry practice in private capital markets, the FSRA recommends that reliance continue to be made on the Issuer satisfying itself against the obligations under its home jurisdiction's companies regulations, including as they pertain to registry or CSD requirements. The FSRA also does not recommend requiring the platform operator to establish its own CSD, though it may choose to do so, taking

into account its regulatory and commercial needs. The FSRA will continue to monitor developments and regulatory needs within this space.

**Question 10:**

Do you agree with the FSRA's proposal not to require RPM operators to establish their own CSD to cover Issuer share registration requirements?

17. Exempt Offers permitted under the Markets Rules do not trigger review and approval by the FSRA, nor is liability imposed upon directors of an Issuer for any unintended misstatements contained in an offering document. As it is anticipated that Professional Clients will primarily invest in an Exempt Offer through either a PFP or an MTF, and that the objective of the PSN is to generate a concise and easy to understand form of offering document, the FSRA has not imposed Director's liability for unintended misstatements contained in any PSN; the Issuer will remain liable for any losses in accordance with applicable law(s) within ADGM.

**Question 11:**

Do you agree with the proposal not to impose liability upon directors of Issuers that include unintended misstatements within the PSN?

### *Proposed Amendments*

18. The detailed draft legislative amendments are set out in **Appendices 1 and 2**.

**Question 12:**

Do you agree with the proposed amendments to the MKT and COBS Rules in relation to the RPM Framework, as set out in the Appendices?