



ABU DHABI GLOBAL MARKET
سوق أبوظبي العالمي

CONSULTATION PAPER NO. 7 OF 2018

29 NOVEMBER 2018

**CONSULTATION ON PROPOSED FUND
PASSPORTING RULES**

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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 invite public feedback and comments on proposed new Fund Passporting Rules. This follows the entering into an agreement between the Securities and Commodities Authority ("SCA"), the FSRA and the Dubai Financial Services Authority ("DFSA") facilitating the licensing of domestic funds by each authority for promotion across the UAE. It will enable Collective Investment Funds established within ADGM to be promoted within all three financial services jurisdictions in the U.A.E.
2. The proposed introduction of a fund passporting regime in the ADGM has been created to work in conjunction with equivalent regimes to be enacted by both the **DFSA** and the **SCA**. All three regulatory authorities have collaborated to create a reciprocal fund passporting regime in order to stimulate the development of the domestic investment funds market across the UAE and encourage greater facilitation of business across the UAE.
3. The Board of Directors of ADGM and the FSRA invite comments on the proposed Fund Passporting Rules, as well as the associated amendments to FSRA regulations and Rules.

WHO SHOULD READ THIS PAPER?

4. This Consultation Paper will be of interest to Authorised Persons generally, including those Authorised Persons engaged in the Regulated Activities of Managing a Collective Investment Fund, Advising or Arranging activities in relation to Funds, persons considering seeking a Financial Service Permission enabling them to engage in the above noted activities, and their respective professional advisors.

HOW TO PROVIDE COMMENTS

5. All comments must 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 FSRA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making those comments. Comments supported by reasoning and evidence will be given more weight by the FSRA.

WHAT HAPPENS NEXT?

6. The deadline for providing comments on this proposal is **3 January 2019**. Following receipt of comments, we will consider whether any modifications are required to the proposed amendments to the ADGM's legislative framework. The Board of ADGM and the FSRA will then proceed to enact the proposed legislative framework. You should not act on this proposal until the relevant regulations, Rules and any related guidance are issued. We will issue a notice on our website when this happens.

COMMENTS TO BE ADDRESSED TO:

Consultation Paper No. 7 of 2018
Financial Services Regulatory Authority
Abu Dhabi Global Market Square
Al Maryah Island
PO Box 111999
Abu Dhabi, UAE
Email: consultation@adgm.com

STRUCTURE OF THIS PAPER

7. The substantive amendments under consideration are summarized in this paper, which is organized as follows:
 - a. Annex A – Proposed Fund Passporting Rules;
 - b. Annex B – Draft amendments to Financial Services and Markets Regulations 2015;
 - c. Appendix 1 – Draft amendments to the Conduct of Business Rules;

- d. Appendix 2 – Draft amendments to the Fees Rules; and
 - e. Appendix 3 – Draft amendments to the Glossary.
8. Unless otherwise defined, capitalized terms referred to in this paper have the meanings attributed in the Financial Services and Markets Regulations 2015 (“**FSMR**”) and/or the Glossary (“**GLO**”).

FUND PASSPORTING RULES

BACKGROUND

1. While legislation governing the conduct of Regulated Activities permits the promotion of Collective Investment Fund Units both in and from the ADGM, the promotion of Fund Units outside of the ADGM must accord with applicable law in any host jurisdiction.
2. Promotion of an ADGM Domestic Fund in the broader U.A.E may require an Authorised Person to seek an additional licence before engaging in promotion activities or alternatively engage the services of a licensed agent. To address these potential inefficiencies, the FSRA, in collaboration with the SCA and DFSA, have negotiated a common set of rules, which will provide Fund Managers established in their respective jurisdictions with the option of promoting Funds in multiple jurisdictions across the UAE without obtaining multiple regulatory licenses or engaging multiple agents.
3. This Consultation Paper has been drafted from the perspective of ADGM-based Fund Managers and other Authorised Persons engaged in the promotion of Units of a ADGM Domestic Fund. Fund Managers and licensed fund promoters located in either the DIFC or in the U.A.E., outside of a financial free zone, should review the proposed legislation applicable in their home jurisdiction. For the purpose of reading this paper, the ADGM should be considered as the “home” jurisdiction, while the DIFC and the U.A.E., outside the financial free zones, should be considered the “host” jurisdictions.

ITEM 1 – KEY FEATURES OF THE FUND PASSPORTING RULES

ELIGIBILITY

Registration

4. The proposed Fund passporting regime would be available to both public and private Domestic Funds, i.e. Public Funds, Exempt Funds and Qualified Investor Funds, which are established within the ADGM and managed by

a Fund Manager located in the ADGM (collectively referred to below as “eligible funds”). Upon completion of the registration requirements (see paragraph 5, below), eligible funds may be promoted in the host jurisdiction(s) chosen during the registration process by the Fund Manager or Authorised Person seeking to engage in promotional activities in the host jurisdiction(s). It should be noted that participation in the passporting regime is not mandatory; Fund Units may still be sold to investors in a host jurisdiction by current means in accordance with the laws of each host jurisdiction, including by engaging the services of a licensed fund promoter in a host jurisdiction or reverse solicitation.

Notification

5. Authorised Persons seeking to promote an eligible fund in either or both of the host jurisdictions must deliver prior notice to the FSRA, in the required format, accompanied by the relevant fee (see paragraph 11, below). Upon satisfaction that the eligible fund complies with the requirements of the passporting regime, the FSRA will proceed to include the details of the fund in the published Register of Passported Funds maintained by the FSRA. Upon such publication, the FSRA will notify the relevant regulator(s) in the host jurisdiction(s). Upon a host regulator including the name of the eligible fund in its published Register of Passported Funds, the Authorised Persons identified in the notice will be eligible to commence promotional activities, in relation to such eligible fund only, in such host jurisdiction.

Prospectus Content

6. The Prospectus of a Public Fund should contain the information described in Appendix 1 to the Fund Passporting Rules, which are consistent with the Public Fund Prospectus contents required by the current ADGM Fund Rules (FUNDS). If the Public Fund is to be promoted in the U.A.E. outside of the financial free zones, (i) a Key Investor Information Document (“**KIID**”) should be prepared in both English and Arabic and included within the Prospectus, and (ii) if delegation of safe keeping responsibility to a custodian is necessary, the appointed custodian should be licensed by SCA to provide custody services in the U.A.E.

Deregistration

7. At the request of the Authorised Person entitled to promote the Fund in a host jurisdiction, the FSRA will remove any passported fund from the Register of Passported Funds maintained by it and notify the relevant regulator(s) within the host jurisdiction(s) of such deregistration, who, in turn will amend their respective Register's accordingly. Upon the earlier of the removal from either the Register maintained by the FSRA or any host jurisdiction, all promotional activities related to the passported Fund in such host jurisdiction must cease.
8. In the event of a material breach of the Fund Passporting Rules or other applicable FSRA legislation, or if the FSRA is of the opinion that the relevant Fund will fail to meet the eligibility criteria on an ongoing basis, the FSRA may, upon its own initiative, inform the relevant Authorised Persons and the relevant host regulator(s) of its intention to deregister a Fund.
9. In circumstances where a host regulator is of the opinion that deregistration is warranted in order to achieve its regulatory objectives, a host regulator may deregister a passported Fund upon its own initiative. Deregistration in either event will result in such Fund becoming ineligible for promotion in such host jurisdiction from such date. However, rights and obligations of subscribing investors and unitholders as of the date of deregistration will remain unaffected.

ISSUES FOR CONSIDERATION

Q1: WILL THE PROPOSED FUND PASSPORTING REGIME PRESENT A USABLE ALTERNATIVE TO THE CURRENT METHODS OF PROMOTING DOMESTIC FUNDS FROM THE ADGM INTO OTHER FINANCIAL JURISDICTIONS WITHIN THE U.A.E.?

Supervision and Enforcement

10. While the FSRA will retain responsibility for the supervision of passported Funds established in the ADGM, in the event of material breaches of the principles embodied in the passporting rules, host regulators retain the

authority to take action against persons as they may consider appropriate, if sanctions are required to meet the objectives of such host regulator.

FEES

11. Registration of an eligible Fund for passporting purposes will require the payment of a registration fee of US\$9,500. An annual fee of US\$2,000 will be due in respect of each passported Fund for the duration of its period of registration, due upon each anniversary of the relevant registration date. In the case of a public passported Fund, the FSRA will waive the current requirement to pay the US\$3,000 initial Public Fund registration fee.
12. Each sub-fund of an Umbrella Fund will attract equivalent registration and annual passporting fees, as each will be treated as a distinct fund.
13. No additional fees in respect of a passported Fund will be levied by host regulator(s).

ISSUES FOR CONSIDERATION

Q2: HOW DOES THE PROPOSED FEE STRUCTURE COMPARE WITH THE CURRENT COST OF COMPLIANCE ACROSS MULTIPLE HOST REGIMES?

ITEM 2 – CONSEQUENTIAL AMENDMENTS TO ADGM REGULATIONS AND RULES

14. In order to implement the introduction of the Fund Passporting Rules, it will be necessary to make a number of consequential changes to FSRA's existing regulations and Rules.
15. FSMR will be amended to include a Register of Passported Funds, to reflect additional defined terms and to enable licensed persons based in either host jurisdiction to engage in the promotion of Funds within the ADGM.

16. Slight differences in professional client criteria will require amendment of the Conduct of Business Rules (COBS).
17. Fee Rules (FEES) will be amended to include the relevant passporting fees.
18. Glossary (GLO) will be amended to include the new defined terms to be used in the Fund Passporting Rules.

ISSUES FOR CONSIDERATION

Q3: DO YOU HAVE ANY CONCERNS ABOUT THESE PROPOSALS OR CONSEQUENTIAL AMENDMENTS? IF SO, WHAT ARE THOSE CONCERNS AND HOW SHOULD THEY BE ADDRESSED?