

**MoU concerning consultation, cooperation and the exchange of information related to the supervision of AIFMD entities between the Abu Dhabi Financial Services Regulatory Authority and the Estonian Financial Supervisory Authority (EFSA)**

In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of Managers of alternative investment funds, the Abu Dhabi Financial Services Regulatory Authority and the Estonian Financial Supervisory Authority have reached this Memorandum of Understanding (MoU) regarding mutual assistance in the supervision and oversight of Managers of alternative investment funds, their delegates and depositaries that operate on a cross-border basis in the jurisdictions of the signatories of these MoU. The Authorities express, through this MoU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates, particularly in the areas of investor protection, fostering market and financial integrity, and maintaining confidence and systemic stability.

**Article 1. Definitions**

For the purpose of this MoU:

- a) "Authority" means a signatory to this MoU or any successor.
- b) "Requested Authority" means the Authority to whom a request is made under this MoU; and
- c) "Requesting Authority" means the Authority making a request under this MoU.
- d) "EU competent authority": means any authority appointed in an EU Member State in accordance with Article 44 of the AIFMD for the supervision of Managers, delegates, depositaries and, where applicable, Covered Funds.<sup>1</sup>
- e) "AIFMD" means the Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.
- f) "Manager" means a legal person whose regular business is managing one or more Covered Funds in accordance with the AIFMD or in accordance with the Abu Dhabi Law no (4) of 2013 Concerning Abu Dhabi Global Market, Parts 11 and 22 (s.258) of the Abu Dhabi Global Market Financial Services and Markets Regulations 2015 and the Abu Dhabi Global Market FSRA Fund Rules.
- g) "Covered Fund" means a collective investment undertaking, including investment compartments thereof, which: (i) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (ii) is not a UCITS;
- h) "UCITS" means an undertaking for collective investment in transferable securities authorised in accordance with Article 5 of Directive 2009/65/EC.

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<sup>1</sup> Some EU Member States have more than one competent authority designated to carry out the duties provided under the AIFMD.

- i) "Delegate" means an entity to which a Manager delegates the tasks of carrying out the portfolio management or risk management of one or more Covered Funds under its management in accordance with Article 20 of the AIFMD or in accordance with the with section 12.12 and Appendix 1 of the Abu Dhabi Global Market FSRA Fund Rules.
- j) "Depositary" means an entity appointed to perform the depositary functions of a Covered Fund in accordance with Article 21 of the AIFMD or in accordance with the Part 22 s.258 of the Financial Services and Markets Regulations 2015, sections 12.3.8, 13.3, 15.3 and Section 1.3 of Appendix 1 of the Abu Dhabi Global Market FSRA Fund Rules
- k) "Operate on a cross-border basis" means the following situations: when a) EU Managers manage non-EU Covered Funds, b) EU Managers market non-EU Covered Funds in an EU Member State, c) non-EU Managers market EU and/ or non-EU Covered Funds in an EU Member State, d) EU Managers marketing non-EU Covered Funds in the EU with a passport, e) non-EU Managers managing EU Covered Funds in the EU, f) non-EU Managers marketing EU Covered Funds in the EU with a passport, g) non-EU Managers marketing non-EU Covered Funds in the EU with a passport and h) EU Managers marketing Covered Funds in Abu Dhabi. Insofar as there is a link to the activity of the Managers and the Covered Funds, the MoU also covers delegates and depositaries as defined in letters i) and j) of this Article.
- l) "Covered Entity" means a Manager, Covered Fund where applicable, and, insofar as there is a link to the Manager and the Covered Fund, delegates and depositaries as defined in letters i) and j) of this Article, including the persons employed by such entities.
- m) "Cross-border on-site visit" means any regulatory visit by one Authority to the premises of a Covered Entity located in the other Authority's jurisdiction, for the purposes of on-going supervision.
- n) "Governmental Entity" means the Ministry of Finance, the Central Bank and any other national prudential authority in the jurisdiction of the relevant Authority.
- o) "Local Authority" means the Authority in whose jurisdiction a Covered Entity operates.
- p) "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of a Covered Entity, AIF investors, or the markets, independently from a decision of the European Council within the meaning of Article 18 of the ESMA Regulation (Regulation 1095/2010/EU).

## **Article 2. General provisions**

- 1) This MOU is a statement of intent to consult, cooperate and exchange information in connection with the supervision and oversight of Covered Entities that operate on a cross-border basis in the jurisdictions of the signatories, in a manner consistent with, and permitted by, the laws and requirements that govern the Authorities. The Authorities anticipate that cooperation will be primarily achieved through on-going, informal, oral consultations, supplemented by more in-depth, ad hoc cooperation. The provisions of this MoU are intended to support such informal and oral communication as well as to facilitate the written exchange of non-public information where necessary.

- 2) This MoU does not create any legally binding obligations, confer any rights, or supersede domestic laws. This MoU does not confer upon any person the right or ability directly or indirectly to obtain, suppress, or exclude any information or to challenge the execution of a request for assistance under this MoU.
- 3) This MoU does not intend to limit an Authority to taking solely those measures described herein in fulfilment of its supervisory or oversight functions. In particular, this MoU does not affect any right of any Authority to communicate with, or obtain information or documents from, any person or Covered Entity subject to its jurisdiction that is established in the territory of the other Authority.
- 4) This MoU complements, but does not alter the terms and conditions of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MMoU), to which the Authorities are signatories, which also covers information-sharing in the context of enforcement investigations; and any of the existing arrangements concerning cooperation in securities matters between the signatories.
- 5) The Authorities will, within the framework of this MoU, provide one another with the fullest cooperation permissible under the law in relation to the supervision and oversight of Covered Entities. Following consultation, cooperation may be denied:
  - a) Where the cooperation would require an authority to act in a manner that would violate domestic law;
  - b) Where a request for assistance is not made in accordance with the terms of the MoU;  
or
  - c) On the grounds of the national public interest.
- 6) No domestic banking secrecy, blocking laws or regulations should prevent an Authority from providing assistance to other Authority.
- 7) The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements between the Authorities with a view, inter alia, to expanding or altering the scope or operation of this MoU should that be judged necessary.
- 8) To facilitate cooperation under this MoU, the Authorities hereby designate contact persons as set forth in Appendix A.

### **Article 3. Scope of cooperation**

- 1) The Authorities recognize the importance of close communication concerning Covered Entities, and intend to consult at the staff level where appropriate regarding: (i) general supervisory issues, including with respect to regulatory, oversight or other program developments; (ii) issues relevant to the operations, activities, and regulation of Covered Entities; and (iii) any other areas of mutual supervisory interest.
- 2) Cooperation will be most useful in, but is not limited to, the following circumstances where issues of regulatory concern may arise:

- a) The initial application of a Covered Entity for authorization, registration or exemption from registration in another jurisdiction;
  - b) The on-going oversight of a Covered Entity; or
  - c) Regulatory approvals or supervisory actions taken in relation to a Covered Entity by one Authority that may impact the operations of the entity in the other jurisdiction.
  - d) Enforcement actions taken against a Covered Entity
- 3) *Notification.* Each Authority will inform the other Authority as soon as practicable of
- a) Any known material event that could adversely impact a Covered Entity; and
  - b) Enforcement or regulatory actions or sanctions, including the revocation, suspension or modification of relevant licenses or registration, concerning or related to a Covered Entity which may have, in its reasonable opinion, material effect on the Covered Entity.
- 4) *Exchange of Information.* To supplement informal consultations, each Authority intends to provide the other Authority, upon written request, with assistance in obtaining information not otherwise available to the Requesting Authority, and, where needed, interpreting such information so as to enable the Requesting Authority to assess compliance with its laws and regulations. The information covered by this paragraph includes, without limitation, information such as:
- a) Information that would permit the Requesting Authority to verify that the Covered Entities covered by this MoU comply with the relevant obligations and requirements of the national law of the Requesting Authority.
  - b) Information relevant for monitoring and responding to the potential implications of the activities of an individual Manager, or Managers collectively, for the stability of systemically relevant financial institutions and the orderly functioning of markets in which Managers are active.
  - c) Information relevant to the financial and operational condition of a Covered Entity, including, for example, reports of capital reserves, liquidity or other prudential measures, and internal control procedures;
  - d) Relevant regulatory information and filings that a Covered Entity is required to submit to an Authority including, for example: interim and annual financial statements and early warning notices;
  - e) Regulatory reports prepared by an Authority, including for example: examination reports, findings, or information drawn from such reports regarding Covered Entities.

#### **Article 4. Cross-border on-site visits**

- 1) Authorities should discuss and reach understanding on the terms regarding cross-border on-site visits, taking into full account each other's sovereignty, legal framework and statutory obligations, in particular, in determining the respective roles and responsibilities of the Authorities.

The Authorities will act in accordance with the following procedure before conducting a cross-border on-site visit.

- a) The Authorities will consult with a view to reaching an understanding on the intended timeframe for and scope of any cross-border on-site visit. The local authority shall decide whether the visiting officials shall be accompanied by its officials during the visit.
- b) When establishing the scope of any proposed visit, the Authority seeking to conduct the visit will give due and full consideration to the supervisory activities of the other Authority and any information that was made available or is capable of being made available by that Authority.
- c) The Authorities will assist each other in reviewing, interpreting and analysing the contents of public and non-public documents and obtaining information from directors and senior management of Covered Entities or any other relevant person.

#### **Article 5. Execution of requests for assistance**

- 1) To the extent possible, a request for written information pursuant to Article 3.4 should be made in writing, and addressed to the relevant contact person identified in Appendix A. A request generally should specify the following:
  - a) The information sought by the Requesting Authority, including specific questions to be asked and an indication of any sensitivity about the request;
  - b) A concise description of the facts underlying the request and the supervisory purpose for which the information is sought, including the applicable regulations and relevant provisions behind the supervisory activity; and
  - c) The desired time period for reply and, where appropriate, the urgency thereof.
- 2) In Emergency Situations, the Authorities will endeavour to notify each other of the Emergency Situation and communicate information to the other as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation. During Emergency Situations, requests for information may be made in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification.

#### **Article 6. Cooperation on enforcement**

- 1) The Requested Authority should, as far as its national law permits, assist the requesting Authority where it is necessary to enforce the AIFMD, its implementing measures or the national legislation of an EU Member State or the Abu Dhabi Financial Securities Law breached by a Covered Entity established in its jurisdiction. In particular, this assistance should be provided by the Requested Authority in at least the following situations:
  - a) when the Requesting Authority has required a Covered Entity established in the jurisdiction of the Requested Authority to cease any practice that is contrary to the provisions adopted in the implementation of the AIFMD and its implementing measures or the Part 11 of the

Abu Dhabi Global Market Financial Services and Markets Regulations 2015, and, the Abu Dhabi Global Market FSRA Fund Rules.

- b) In this situation, and at the request of the Requesting Authority, the Requested Authority should provide information that would allow the Requesting Authority to verify the compliance of the request by the Covered Entity;
  - c) when the Requesting Authority has requested the freezing or the sequestration of assets of a Covered Fund that is established in the jurisdiction of the Requested Authority. In this situation the Requested Authority should either order the freeze or sequestration of the assets of the Covered Fund located in its jurisdiction, or inform and assist to the extent possible the Requesting Authority on the legal procedures that leads to that result;
  - d) when the Requesting Authority has requested the temporary prohibition of professional activity in relation to a Covered Entity established in the jurisdiction of the Requested Authority. In this situation, and at the request of the Requesting Authority, the Requested Authority should provide information that would allow the Requesting Authority to verify whether the temporary prohibition is being observed by the addressee of the measure;
  - e) when the Requesting Authority has adopted any type of measure to ensure that Covered Entities established in the jurisdiction of the Requested Authority continue to comply with the requirements of the AIFMD and its implementing measures or Part 11 of the Abu Dhabi Global Market Financial Services and Markets Regulations 2015, and, the Abu Dhabi Global Market FSRA Fund Rules. In this situation, and at the request of the Requesting Authority, the Requested Authority should provide information that would allow the Requesting to verify whether the addressee observes the measure adopted by the Requesting Authority;
  - f) when, in the interest of the investors or of the public, the Requesting Authority has required the suspension of the issue, repurchase or redemption of units or shares of Covered Funds established in the jurisdiction of the Requested Authority. In this situation, and at the request of the Requesting Authority, the Requested Authority should provide information that would allow the Requesting to verify that the Covered Fund complies with the request of suspension.
- 2) The assistance referred to in this Article should be provided in accordance with the provisions of the IOSCO MMoU concerning consultation and cooperation and the exchange of information of 2002.

**Article 7. Permissible uses of information.**

- 1) The Requesting Authority may use non-public information obtained under this MoU solely for the purpose of supervising Covered Entities and seeking to ensure compliance with the laws or regulations of the Requesting Authority, including assessing and identifying systemic risk in the financial markets or the risk of disorderly markets.

- 2) This MoU is intended to complement, but should not alter the terms and conditions of the existing arrangements between Authorities concerning cooperation in securities matters, including the IOSCO MMoU. The Authorities recognize that while information is not to be gathered under this MoU for enforcement purposes, subsequently the Authorities may want to use the information for law enforcement purposes. In such cases, further use of the information should be governed by the terms and conditions of the IOSCO MMoU or another MoU providing an equivalent degree of cooperation in enforcement matters.

**Article 8. Confidentiality and onward sharing of information.**

- 1) Except for disclosures in accordance with the MoU, including permissible uses of information under the previous points, each Authority will keep confidential to the extent permitted by law information shared under this MoU, requests made under this MoU, the contents of such requests, and any other matters arising under this MoU. The terms of this MoU are not confidential.
- 2) To the extent legally permissible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand from a third party for non-public information that has been furnished under this MoU. Prior to compliance with the demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.
- 3) In certain circumstances, and as required by law, it may become necessary for the Requesting Authority to share information obtained under this MoU with other Governmental Entities in its jurisdiction. In these circumstances and to the extent permitted by law:
  - a) The Requesting Authority will notify the Requested Authority.
  - b) Prior to passing on the information, the Requested Authority will receive adequate assurances concerning the Governmental Entity's use and confidential treatment of the information, including, as necessary, assurances that the information will not be shared with other parties without getting the prior consent of the Requested Authority.
- 4) Except as provided in paragraph 2, the Requesting Authority must obtain the prior consent of the Requested Authority before disclosing non-public information received under this MoU to any non-signatory to this MoU. If consent is not obtained from the Requested Authority, the Authorities will discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use by the Requesting Authority might be allowed.
- 5) The Authorities intend that the sharing or disclosure of non-public information, including but not limited to deliberative and consultative materials, pursuant to the terms of this MoU, will not constitute a waiver of privilege or confidentiality of such information.

**Article 9. Special rules on onward sharing of information in the EU internal market.**

- 1) Article 8 paragraph 4 does not apply in all cases where the EU competent authorities are required to share information with other EU competent authorities as defined in Article 1(d), the ESRB and ESMA under the AIFMD. In particular, Article 8 paragraph 4 does not apply in the following circumstances:

- a. In accordance with Article 25(2) of the AIFMD, an EU competent authority may need to share information received from the Abu Dhabi Financial Services Regulatory Authority with other EU competent authorities where a Manager under its responsibility or a Covered Fund managed by that Manager could potentially constitute an important source of counterparty risk to a credit institution or other systemically relevant institutions in other EU Member States.
- b. In accordance with Article 50(4) of the AIFMD, the EU competent authority of the Member State of reference of a non-EU Manager<sup>2</sup> shall forward the information received from the Abu Dhabi Financial Services Regulatory Authority in relation to that non-EU Manager to the competent authority of the host Member States, as defined in Article 4(1)(r) of the AIFMD.
- c. In accordance with Article 53 of the AIFMD, an EU competent authority shall communicate information to other EU competent authorities, the ESRB or ESMA, where this is relevant for monitoring and responding to the potential implications of the activities of individual Manager or Managers collectively for the stability of systemically relevant financial institutions and the orderly functioning of markets on which the Managers are active.

2) In the cases mentioned in paragraph 1, the following conditions would apply:

- a. In accordance with Article 47 (3) of the AIFMD, all the information exchanged between the EU competent authorities, the ESRB and ESMA shall be considered confidential, except where the Requested Authority states at the time of communication that such information may be disclosed or where such disclosure is necessary for legal proceedings.
- b. The EU competent authorities, ESMA and the ESRB shall only use the information for the purposes envisaged in the AIFMD and in accordance with the founding regulations of ESMA and the ESRB.

#### **Article 10. Termination of the MoU; Successor authorities**

- 1) If a signatory wishes to terminate the MoU, it shall give written notice to the counterparty. ESMA would coordinate the action of EU authorities in this regard. Cooperation in accordance with this MoU will continue until the expiration of 30 days after an Authority gives written notice to the others. If either Authority gives such notice, cooperation will continue with respect to all requests for assistance that were made under the MoU before the effective date of notification until the Requesting Authority terminates the matter for which assistance was requested. In the event of termination of this MoU, information obtained under this MoU will continue to be treated in a manner prescribed under Article 7 to 9.
- 2) Where the relevant functions of a signatory to this MoU are transferred or assigned to another authority or authorities, the terms of this MoU shall apply to the successor authority or authorities

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<sup>2</sup> The Member State of reference is the EU Member State in charge of the authorisation of a non-EU Manager in accordance with Article 37 of the AIFMD.



performing those relevant functions without the need for any further amendment to this MoU or for the successor to become a signatory to the MoU. This shall not affect the right of the successor authority and its counterparty to terminate the MOU as provided hereunder if it wishes to do so.

#### **Article 11. Entry into force**

This MoU enters into force at the date of signature.

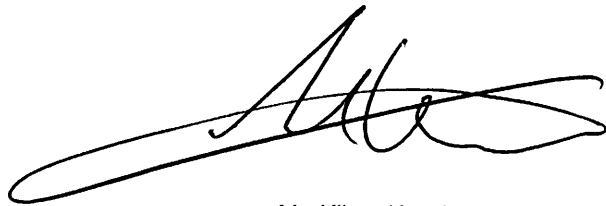
#### **Signatures**



**Mr. Richard Teng**

**Chief Executive Officer**

**Abu Dhabi Financial Services Regulatory Authority**



**Mr. Kilvar Kessler**

**Chairman of the Management Board**

**The Estonian Financial Supervisory Authority  
(EFSA)**

**Date of signature:**

*April 10, 2018*

## **Appendix 1 – Extract from Abu Dhabi Law no 4 of 2013**

### **Article 14**

#### **Licensed Global Market's Establishments**

Licensed Financial Global Market Establishments shall exercise one or more of the following financial activities and services according to what is authorised in the license issued to it or under the provisions of its registration:

1. Banking and financial services and activities including funding services and activities, provision of short, medium and long term secured and unsecured financing and loan facilities.
2. Investment business, commercial, investment and private banking, finance and investment companies, wholesale trading and electronic banking activities, and managing, dealing and arranging investments.
3. Accepting deposits (with the exception of taking deposits from the State market or dealing in UAE Dirhams), opening and maintaining bank accounts of all types for third parties.
4. Trading in and dealing with all types of financial instruments, currencies, commodities, metals and derivatives of all types (including trading and dealing on margin with spot and forward contracts or through the offering, buying and selling of financial futures and options of all types) and short selling to the extent permitted by the Financial Services Regulation Bureau.
5. Storage, processing and delivery of all types of commodities and metals whether through actual delivery or the delivery of instruments representing such commodities and metals, and related complimentary services.
6. Financial and monetary brokerage including prime brokerage activities.
7. Market-making through providing sale and purchase offers of all types of currencies, commodities, metals, financial instruments, commercial paper, bonds, sukuk and derivatives.
8. Provision of Islamic financing, Islamic Banking and related activities.
9. Establishment, creation, operation, management and marketing of assets, funds, investment funds, pension funds, collective investment funds, hedge funds and all other types of investment funds and portfolios, trust and fiduciary services, discretionary and non-discretionary asset management and all activities relating thereto.
10. Custody, settlement, clearing and depository activities and services.
11. Financing projects and providing capital for companies and establishments in all fields of investment.
12. Transportation and shipping including sea, air, and rail shipping. In addition to the clearance of commodities, metals, and all other logistics relating thereto, within the scope of matters relating to the activities and businesses that will be licensed in the Global Market, or that will enable the Global Market to realize its objectives.

13. Selling, buying and issuing of shares, bonds, sukuk, other financial instruments, financial products of all types, currencies, commodities, metals of all kinds and derivatives including any of its related future contracts and options, borrowing against offering any of it as security to provide liquidity and enable all other activities and services relating to the money market.

14. Providing, owning, managing and operating of financial market infrastructure services, including the provision of trading platforms, clearing services, custody, settlement and depository services for securities, metals, commodities and financial derivatives of all types.

15. Owning, managing and operating exchanges and financial markets for shares, bonds, currencies, sukuk, securities, metals, commodities, forward and future contracts, options and derivatives, of all types.

16. Without prejudice to the provisions of the Federal Law No. (8) of 2004, insurance, re-insurance and insurance brokerage services including property, life and casualty insurance and other kinds of insurance and any other related services.

17. Financial, investment and banking advisory services.

18. Auditing, accounting and legal services and any other services ancillary to financial and banking businesses and activities.

19. Supporting and assisting works and services, rating services and information services for financial and banking business and activities.

20. Any other additional financial activities and services as may be specified and added by a decision issued by the Board of Directors.

The activities and Financial Services stipulated in this Article are permissible, legal and in conformity with the provisions of the applicable laws of the State.

## **Appendix 2 – Extracts from ADGM Financial Services and Markets Regulations 2015**

### **1) Part 11**

#### **Chapter 1 Interpretation**

#### **Section 106. Collective Investment Funds**

1. In this Part, "Collective Investment Fund" means any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

2. The arrangements must be such that the persons who are to participate ("Unitholders") do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions.

3. The arrangements must also have either or both of the following characteristics—

- (a) the contributions of the Unitholders and the profits or income out of which payments are to be made to them are pooled;
- (b) the property is managed as a whole by or on behalf of the Fund Manager.

4. If arrangements provide for such pooling as is mentioned in subsection (3)(a) in relation to separate parts of the property, the arrangements are not to be regarded as constituting a single Collective Investment Fund unless the Unitholders are entitled to exchange rights in one part for rights in another.

5. The Regulator may by Rules provide that arrangements do not amount to a Collective Investment Fund—

- (a) in specified circumstances; or
- (b) if the arrangements fall within a specified category of arrangement.

2) Part 22 Section 258

<b>Fund Manager</b>	means the person who is responsible for the management of the property held for or within a Fund and who otherwise operates the Fund and, in relation to a Domestic Fund, is authorised under a Financial Services Permission granted by the Regulator to operate the Fund.
<b>Eligible Custodian</b>	<p>means, in relation to a Fund, a person who is a separate legal entity from the Fund Manager and who also meets one of the following criteria—</p> <ul style="list-style-type: none"> <li>(a) an Authorised Person whose Financial Services Permission authorises it to Provide Custody;</li> <li>(b) an Authorised Person that is a Bank;</li> <li>(c) a Recognised Body;</li> <li>(d) a legal entity that is authorised and supervised by a Non-Abu Dhabi Global Market Regulator in a Recognised Jurisdiction for Providing Custody in respect of a Fund and is subject to a minimum capital requirement of 4 million US Dollars or its equivalent in any other currency at the relevant time and has had surplus revenue over expenditure for the last two financial years;</li> <li>(e) a legal entity where it, or its holding company is— <ul style="list-style-type: none"> <li>(i) in respect of its financial strength, rated or graded as at least "investment grade" by Moody's, Fitch or Standard &amp; Poor's or such other international rating agency as may be recognised by the Regulator;</li> </ul> </li> </ul> <p>and</p> <ul style="list-style-type: none"> <li>(ii) authorised and supervised by a Non-Abu Dhabi Global Market Regulator in another jurisdiction which is a Zone 1 country; or</li> <li>(f) a legal entity that is authorised or recognised by a Non-Abu Dhabi Global Market Regulator to operate as an exchange or a clearing house in a Recognised Jurisdiction;</li> <li>(g) a legal entity that is and remains— <ul style="list-style-type: none"> <li>(i) controlled and wholly owned by one or more of the national governments of the six member states of the Gulf Cooperation Council;</li> <li>(ii) authorised and supervised by a financial services regulator or central bank of at least one of the said national governments; and</li> <li>(iii) rated or graded as at least "investment</li> </ul> </li> </ul>

	grade" by Moody's, Fitch or Standard & Poor's or such other international rating agency as may be recognised by the Regulator; or (h) any other legal entity otherwise acceptable to the Regulator.
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### **Appendix 3 – Extracts from ADGM Fund Rules**

#### **1) Section 12.3.8 Eligible Custodian**

12.3.8 For the purposes of these Rules, an Eligible Custodian is a Person who is a separate legal entity from the Fund Manager and who also meets one of the following criteria:

- (a) an Authorised Person whose Financial Services Permission authorises it to Provide Custody Services;
- (b) an Authorised Person that is a Bank;
- (c) a Recognised Body;
- (d) a legal entity that is authorised and supervised by a Financial Services Regulator in a Recognised Jurisdiction for providing custody services in respect of a Fund and is subject to a minimum capital requirement of \$4 million or its equivalent in any other currency at the relevant time and has had surplus revenue over expenditure for the last two financial years;
- (e) a legal entity where it, or its holding company, is
  - (i) in respect of its financial strength, rated or graded as at least "investment grade" by Moody's, Fitch or Standard & Poor's or such other international rating agency as may be recognised by the Regulator; and
  - (ii) authorised and supervised by a Financial Services Regulator in another jurisdiction which is a Zone 1 country; or
- (f) a legal entity that is authorised or recognised by a Financial Services Regulator to operate as an exchange or a clearing house in a Recognised Jurisdiction;
- (g) a legal entity that is and remains:
  - (i) controlled and wholly owned by one or more of the national governments of the six member states of the Gulf Cooperation Council;
  - (ii) authorised and supervised by a Financial Services Regulator or Central Bank of at least one of the said national governments; and
  - (iii) rated or graded as at least "investment grade" by Moody's, Fitch or Standard & Poor's or such other international rating agency as may be recognised by the Regulator; or
- (h) any other legal entity otherwise acceptable to the Regulator.

## **2) Section 12.12**

### **Delegation and outsourcing**

#### **Guidance**

1. This Chapter sets out the general requirements that apply to a Fund Manager, or where appointed the Trustee, of a Domestic Fund where it delegates or outsources any Regulated Activity or function to another Person. Such a Person is defined as a "Service Provider" for the purposes of these Rules.

2. A Fund Manager or, where appointed, the Trustee of a Fund respectively may, subject to any restriction in the Constitution of the Domestic Fund and any provisions of these Rules, delegate any of its Regulated Activities or outsource any of its functions to a Service Provider, which may be located in or outside the Abu Dhabi Global Market.

3. Fund Managers of Domestic Funds structured other than as an Investment Trust are required under Rule 12.3.2(2) to delegate the Regulated Activity of Providing Custody to an Eligible Custodian. This obligation does not apply where there are adequate alternative arrangements. This Chapter sets out the circumstances in which the obligation under Rule 12.3.2(2) does not apply.

4. A Fund Manager or Trustee 'outsources' a function relating to the operation of the Fund where the function, whether or not relating to a Regulated Activity, is contracted to be performed by a Service Provider. Where the extent of any such function or functions is such that they effectively constitute the carrying on of a Regulated Activity, the Regulator will consider this to comprise a 'delegation' of the Regulated Activity.

5. These Rules permit the use of a Service Provider do not relieve the Fund Manager or the Trustee from their obligations, including any restrictions on delegation or outsourcing arising from the Fund's Constitution or Prospectus.

6. GEN Rules 3.3.31 and 3.3.32 also govern outsourcing of functions and activities by an Authorised Person. Those Rules are not disapplied by this Chapter.

#### **Fund Manager**

**12.12.1** In accordance with the Delegation Agreement, the Fund Manager:

- (a) must (save as otherwise permitted by these Rules) register the legal title of the Fund Property with the Eligible Custodian; and
- (b) may give instructions to the Eligible Custodian to deal with the Fund Property.

#### **Guidance**

See Rule 12.3.8 for the definition of an Eligible Custodian.

**12.12.2 (1)** Subject to the requirements in Rule 12.12.5, a Fund Manager may delegate one or both



of the Regulated Activities of Acting as the Administrator of a Collective Investment Fund and Managing Assets to a Service Provider.

(2) For the purposes of (1), and in relation to Acting as the Administrator of a Collective Investment Fund for a Public Fund, the Service Provider must be:

(a) a Person authorised by the Regulator to carry on the Regulated Activity of Acting as the Administrator of a Collective Investment Fund; or

(b) a Person who is lawfully entitled in a Zone 1 jurisdiction or Recognised Jurisdiction to carry on in that jurisdiction the activities of:

(i) asset pricing and Fund valuation;

(ii) issuing and redemption of Units; and

(iii) record keeping and maintaining the Unitholders register.

(3) For the purposes of (1), and in relation to Managing Assets, the Service Provider must be:

(a) a Person authorised by the Regulator to carry on the Regulated Activity of Managing Assets; or

(b) a Person who is authorised by, or registered with, a Financial Services Regulator in a Zone 1 jurisdiction or Recognised Jurisdiction to carry on an equivalent activity in that jurisdiction.

#### **Guidance**

As Rule 12.12.2(2) only applies in relation to a Public Fund, a Fund Manager of an Exempt Fund or Qualified Investor Fund may make other appropriate arrangements in respect of the carrying out of the Regulated Activity of Acting as the Administrator of a Collective Investment Fund.

#### **Trustee**

**12.12.3** (1) Subject to Rules 12.12.5 to 12.12.8, a Trustee may, with the prior written consent of the Fund Manager, delegate one or both of the Regulated Activities of Acting as the Administrator of a Collective Investment Fund and Providing Custody to a Service Provider.

(2) For the purposes of (1), and in relation to Acting as the Administrator of a Collective Investment Fund for a Public Fund, the Service Provider must be:

(a) a Person authorised by the Regulator to carry on the Regulated Activity of Acting as the Administrator of a Collective Investment Fund; or

(b) a Person who is lawfully entitled in a Zone 1 jurisdiction or Recognised Jurisdiction to carry on in that jurisdiction the activities of:

(i) asset pricing and Fund valuation;

(ii) issuing and redemption of Units; and

(iii) record keeping and maintaining the Unitholders register.

(3) For the purposes of (1), and in relation to the Regulated Activity of Providing Custody, the Service Provider must be an Eligible Custodian.

**12.12.4** (1) When outsourcing any of its functions, the Trustee must ensure that the Service Provider is independent of the Fund Manager as provided in (2).

(2) A Service Provider is not independent of the Fund Manager for the purposes of (1) if it:

(a) is, or has been in the previous 2 years, an employee of the Fund Manager or a body corporate in the same group (a "related body corporate");

- (b) is, or has been in the previous 2 years, an executive officer of a related body corporate;
  - (c) is, and has been in the previous 2 years, involved in material business dealings, or in a professional capacity (excluding acting as Trustee of another Investment Trust which the Fund Manager or a related body corporate manages), with the Fund Manager or a related body corporate;
  - (d) is a member of a partnership or a trustee of a trust that is, or has been in the previous 2 years, substantially involved in business dealings, or in a professional capacity (excluding acting as Trustee of another Investment Trust which the Fund Manager or a related body corporate manages), with the Fund Manager or in a related body corporate;
  - (e) has a material interest in the Fund Manager or a related body corporate; or
  - (f) is a relative or de facto spouse of a person who has a material interest in the Fund Manager or a related body corporate of a kind described in (a) to (e) of this Rule.
- (3) Where the Trustee engages a Service Provider, the Trustee remains liable to the Unitholders for any acts or omissions of the Service Provider even if such Service Provider was acting fraudulently or outside the scope of its authority or engagement.

#### **Delegation and outsourcing process and requirements**

**12.12.5 (1)** When delegating, a Fund Manager or Trustee must:

- (a) carry out due diligence on a proposed Service Provider to ensure eligibility prior to effecting a delegation of a Regulated Activity; and
  - (b) comply with the requirements in Chapter 3 of GEN and APP 1 and ensure that any delegation is made in a written Delegation Agreement as prescribed in APP 1.
- (2) Delegation to a Service Provider does not relieve the Fund Manager or Trustee from accountability for the proper conduct of a delegated activity.
- (3) The Regulator may, as a condition on a Fund Manager's or Trustee's Financial Services Permission, require the delegation of one or more specified Regulated Activities to a Service Provider.
- (4) When delegating a "critical management" function, such as portfolio and/or risk management or other functions which are critical for the performance or management of the Fund, the Fund Manager must notify the Regulator, using such form as the Regulator may prescribe, at least seven calendar days prior to such delegation taking effect.

#### **Guidance**

The Regulator may impose a condition under Rule 12.12.5(3) when, for example, it considers that a Fund Manager is unable to conduct the activity under its own Financial Services Permission.

#### **12.12.6**

- (1) When a Fund Manager or Trustee outsources any function to a Service Provider, it must:
- (a) comply with any relevant requirements in Chapter 3 of GEN;
  - (b) enter into an Outsourcing Agreement which complies with the requirements in APP 1; and
  - (c) before entering into such agreement, carry out due diligence on the proposed Service Provider to conclude on reasonable grounds that the Person is suitable to perform the relevant functions.

(2) Outsourcing to a Service Provider does not relieve the Fund Manager or Trustee from accountability for the proper conduct of the outsourced activity.

### **Systems and controls**

**12.12.7** If a Fund Manager or Trustee delegates any activity or outsources any function under this Chapter, it must take reasonable steps to ensure that it implements and maintains systems and controls to monitor the Service Provider.

#### **Guidance**

This Rule supplements the requirements under GEN Section 3.3.

#### **Review**

##### **12.12.8**

(1) A Fund Manager or the Trustee of a Public Fund, which has delegated any Regulated activities or outsourced any functions, must conduct a review of the carrying out of the relevant activities or functions by the Service Provider and present the findings of the review to either:

- (a) the Fund's Governing Body every 6 months at the Fund's board meeting; or
- (b) in the case of a Fund structured as an Investment Trust, to the Trustee.

(2) Notwithstanding the requirement in (1), if a Fund Manager or the Trustee discovers non-compliance in regard to a term of the Delegation Agreement or Outsourcing Agreement, the Fund Manager or the Trustee, as the case may be, must take immediate action to remedy the matter and also notify the Regulator and, as applicable, its Governing Body or the Trustee forthwith.

(3) For the purposes of (2), the Fund Manager or the Trustee must notify the Regulator only where the non-compliance is material.

### **3) Section 13.3**

#### **Oversight arrangements for Public Funds Guidance**

This Rule sets out the general requirements relating to the oversight arrangements which a Public Fund must have, including the powers and duties of the Persons appointed to a Public Fund to provide the oversight function.

This Rule shall, where the Trust Deed confers on the Trustee the oversight function of the Investment Trust, apply to a Trustee who shall (rather than the Fund Manager) comply with the requirements expressed in this Rule to apply to the Fund Manager. To the extent that the oversight function is carried out by a Person other than the Trustee, the Trustee shall provide to those persons any assistance that is reasonably required by them to enable them to carry out the oversight function.

#### **4) Section 15.3**

##### **15.3 Custody of Fund Property**

###### **15.3.1**

(1) The Fund Manager of a Qualified Investor Fund that is not an Investment Trust must ensure that the legal title to Fund Property is registered with an Eligible Custodian.

(2) The requirement in (1) does not apply in relation to Fund Property where it is impracticable and disproportionate to comply with that Rule given the nature of the Fund and its assets, provided that the Fund Manager has in place effective arrangements which ensure that the Fund Property is not available to creditors in the event of the insolvency of the Fund Manager.

###### **Guidance**

Regardless of who holds title to Fund Property, the Fund Manager must always ensure that, in accordance with Rule 12.2.2(2)(f), Fund Property is clearly identified as such and held separately from property of the Fund Manager and any other Funds.

## **5) APP 1 DELEGATION AND OUTSOURCING**

### **A1.1 Application**

A1.1.1 (1) This Appendix (APP 1) applies to a Fund Manager and, if appointed, the Trustee in relation to every:

- (a) Delegation Agreement; and
- (b) Outsourcing Agreement.

made or entered into pursuant to these Rules.

(2) This Appendix does not apply to a Qualified Investor Fund.

### **A1.2 Mandatory provisions**

A1.2.1 (1) A Fund Manager or Trustee must ensure that any agreement specified in Rule A1.1.1(1):

- (a) sets out the functions or activities and service standards that will be applied to the carrying out of such functions or activities;
- (b) provides that the Service Provider cannot in turn delegate any activities delegated to it, or outsource any functions outsourced to it, without prior approval of the Fund Manager or Trustee as applicable;
- (c) requires the Service Provider to:
  - (i) maintain records to show and explain transactions in relation to each activity or function performed in relation to the Fund;
  - (ii) maintain such records in a manner to enable the Fund Manager or Trustee to prepare accounts in compliance with these Rules and any other applicable legislation;
  - (iii) retain the records for at least six years from the date to which they relate;
  - (iv) keep the records, at all reasonable times, open to inspection by the Regulator, the Fund's Auditor and any Person providing the oversight function for the Fund; and
  - (v) ensure that the records are, if requested by the Regulator, capable of reproduction within a reasonable period not exceeding 3 days, in hard copy and in English.

(2) A Fund Manager or Trustee must ensure that a Delegation Agreement contains an undertaking by the Service Provider to:

- (a) comply with any Regulator Rules applicable to the activity; and
- (b) disclose to the Regulator and to the Fund Manager or Trustee, as the case may be, any material information that it would disclose to its Financial Services Regulator, if relevant, in relation to the conduct of the activity.

(3) A Fund Manager or Trustee must maintain records of all agreements, and any instructions given to a Service Provider under the terms of an agreement, for at least six years.

### **Guidance**

1. Other Rules may also impact on the contents of a Delegation Agreement or Outsourcing Agreement. For instance, consideration should be given to GEN Rules 3.3.31 and 3.3.32 and accompanying Guidance.

2. Without limiting the application of any Rules, the Regulator expects that any agreement relating to a material delegation would include as a minimum:

- (a) unambiguous descriptions and definitions of the activities or functions to be provided by the Service Provider and the duties of both parties;

- (b) an agreed standard between the parties or resources and services supported as necessary by performance measures in accordance with the applicable Rules;
- (c) the requirement for regular detailed reporting to a specified frequency from the Service Provider in respect of its duties and activities;
- (d) provisions relating to the reporting of relevant events such as technological changes or error reporting and, in particular, any event which undermines the ability of the Service Provider to fulfil its duties; and
- (e) the requirement for an annual review (at a minimum) of the performance of the Service Provider.

### **Section A1.3**

#### **Provisions relating to Eligible Custodians**

(1) A Fund Manager or Trustee must ensure that a Delegation Agreement in relation to Providing Custody will:

- (a) require that the title of any account of the Eligible Custodian to hold Fund Property sufficiently distinguishes that account from any account containing Investments belonging to the Eligible Custodian, and is in the form requested by the Fund Manager or Trustee;
- (b) require that the Fund's Investments will only be credited and withdrawn in accordance with the instructions of the Fund Manager or Trustee;
- (c) require, subject to (2), that the Eligible Custodian will hold the Fund's Investments separately from assets belonging to the Eligible Custodian;
- (d) set out the arrangements for recording and registering the Funds, claiming and receiving dividends and other entitlements and interest and the giving and receiving of instructions;
- (e) require the Eligible Custodian to deliver a statement to the Fund Manager or Trustee (including the frequency of such statement), which details the Fund's Investments deposited to the account;
- (f) require, subject to (2), that all the Investments standing to the credit of the account are held by the Eligible Custodian as the agent of the Fund Manager or the Trustee and the Eligible Custodian is not entitled to combine the account with any other account or to exercise any charge, mortgage, lien, right of set-off or counterclaim against Investments in that account in respect of any sum owed to the Eligible Custodian on any other account of the Fund Manager, Trustee or any other Person; and
- (g) detail the extent of liability of the Eligible Custodian in the event of default.

(2) Neither the Fund Manager nor the Trustee is required to meet the requirements in (1)(c) and (f), where either the Eligible Custodian or any other Person acting as the prime broker of the Fund does so in compliance with the requirements in Rule 12.3.9.

#### **A1.4 Provisions relating to Acting as the Administrator of a Collective Investment Fund**

A1.4.1 A Fund Manager or Trustee must ensure that a Delegation Agreement in relation to Acting as the Administrator of a Collective Investment Fund requires that the Service Provider must not hold or control

monies or assets belonging to third parties in connection with such administration except in the following circumstances:

(a) holding cheques to the order of a Fund's bank account, provided such cheques are securely held for a maximum of three business days prior to being deposited into the relevant Fund's bank account or returned to the drawer of the cheque; or

(b) where the Service Provider has control over bank accounts kept for the purposes of the Fund, the accounts must be conducted strictly in accordance with the Fund Manager's instructions and any agreed mandate with the bank.