

## Marketing and Promotion of Foreign Funds in the UAE

Corporate

### Introduction

The regulatory framework in the United Arab Emirates (“UAE”) applicable to foreign domiciled investment funds (“Foreign Funds”) marketed onshore in the UAE<sup>1</sup> has been subject to continuous developments over the past few years.

The UAE Securities and Commodities Authority (“SCA”), the onshore regulator responsible for the licensing and marketing of Foreign Funds onshore has introduced a raft of rules and regulations that govern the marketing of Foreign Funds in the UAE. Essentially, the marketing of Foreign Funds is prohibited, unless they are registered with the SCA, marketed by and distributed through a local SCA-licensed agent.

### Regulatory Framework

The SCA Board of Directors’ Chairman Decision No. (9/R.M) of 2016 Concerning the Regulations as to Mutual Funds (the “2016 Regulations”) and the Chairman of the SCA Board of Directors’ Resolution No. 3 R.M of 2017 Concerning the Organization of Promotion and Introduction activities (the “2017 Regulations”) (collectively the “2016 and 2017 Regulations”) are the main pieces of legislation governing the marketing of Foreign Funds onshore in the UAE.

### Rules Relating to the Marketing of Foreign Funds

The 2016 and 2017 Regulations regulate the “*announcement, publication or dissemination of data, information or advertising materials related to Financial*

*Products by any means*”. ‘Financial Products’ include foreign securities such as “units of investment funds issued by foreign issuers”.

### The General Prohibition

The 2016 and 2017 Regulations prohibit the marketing of Foreign Funds unless the Foreign Funds are:

1. approved by the SCA;
2. registered with the SCA; and
3. a licensed local promoter is appointed to distribute the Foreign Funds.

### The Registration Process

The representatives of the Foreign Fund are required to submit an application for the registration of the Foreign Fund to the SCA in the prescribed manner together with the requisite supporting documents, which includes the Foreign Fund’s prospectus. Upon the submission of the application for registration of the Foreign Fund, the SCA shall issue a decision on the registration within 30 business days from the date of submission. The term of approval is for one year and expires at the end of December each year; so subsequent renewal applications are required to be made.

### Exemptions Available to Foreign Funds under the 2016 and 2017 Regulations

The Foreign Fund may evade the requirements set out in the General Prohibition set out above if certain situations exist.

The 2016 Regulations do not apply in the following situations:

1. **Reverse Solicitation** – where an investor based in the UAE has initiated the request to purchase or to receive the interests in the

<sup>1</sup> The 2016 and 2017 Regulations only apply to onshore investment funds and excludes those based or promoted to potential investors in the Dubai International Financial Centre and the Abu Dhabi Global Market.

Foreign Fund, and the solicitation by the relevant investor is not based on the marketing activities conducted by the Foreign Fund;

2. **Federal or Local Governmental Agencies (Sovereign or Wealth Funds)** – where the marketing of the Foreign Fund is carried out to a federal or governmental agency or their respective wholly owned subsidiaries in the UAE; or
3. **Discretionary Investment Account** – accumulation of money for the purposes of investment in a joint bank account, the conclusion of group insurance agreements, participation in social security, employee incentive programs or investment plans associated with insurance contracts (unless the investment are directed from such plan towards a mutual fund).

The 2017 Regulations supplement the 2016 Regulations and provide for additional situations in which the scope of the 2016 and 2017 Regulations would not apply; these include:

1. **Reverse Solicitation** – the 2017 Regulations has been retained the reverse solicitation exemption as set out in the 2016 Regulations;
2. **Qualified Investor** – private placements to ‘Qualified investors’ are not subject to General Prohibition. A ‘Qualified Investor’ is defined in the 2017 Regulations as:
  - (a) the federal government, local governments, governmental institutions and agencies, or the companies fully owned by any of them;
  - (b) international agencies and organizations: ‘international agencies and organizations’ entities who are capable of deciding whether or not to invest in the Foreign Funds through their own respective investigations;
  - (c) a person licensed to practice a commercial activity in the UAE, and that undertaking investment activities is one of its purposes;
  - (d) a high net worth individual; and
  - (e) the investor represented by an investment manager licensed by the SCA.
3. **Financial Products that are listed on a SCA Licensed Market** – this exemption is available when an entity is promoting Financial Products, which are listed on any of the Markets. The definition of Market only refers to an SCA licensed exchange;
4. **Introductions by Legal, Analysts and/or Financial Advisors** – introductions are exempt from the licensing requirements if they form part of the professional’s entity’s consultation. However, the introducer has certain obligations in respect of making certain disclosures;; and
5. **Introductions and Promotions amongst the Group Company** – an entity is exempt from the prohibitions set out above if they make promotions or introductions to a “parent company, affiliate company, sister company and

allied company, or related parties, or within the members of a group”.

In respect of Qualified Investors who are ‘high-net-worth individuals’ in the UAE; the licensing requirements will need to be adhered to in order to promote Foreign Funds to them; and the funds will need to be registered with the SCA.

## Summary

The 2016 Regulations and 2017 Regulations provide a host of exemptions to Foreign Funds, however, if any of the exemptions under the 2016 and 2017 Regulations do not apply then the entities proposing to market Foreign Funds to potential investors in the UAE will require the Foreign Fund to be registered with the SCA and an SCA licensed distributor will need to be appointed accordingly.

*The information mentioned in this article is current at the date of publication of this article and available from public sources. Nothing in this article constitutes legal advice and should not be construed as any form of advice.*

*For further information and assistance with any aspect of the UAE, DIFC and ADGM regulatory framework and licensing process, please do not hesitate to contact us.*

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