

28 January 2025

Olive Rock Partners Fund I LP
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24th floor, Al Sila Tower
Abu Dhabi Global Market Square
Al Maryah Island
Abu Dhabi
United Arab Emirates

Attention: [REDACTED]

Sent by e-mail: [REDACTED]

Dear Sirs

AMENDMENT OF DECISION IN RELATION TO PENALTY IMPOSED FOR CONTRAVENTIONS OF THE COMMON REPORTING STANDARD REGULATIONS 2017 AND THE FOREIGN ACCOUNT TAX COMPLIANCE REGULATIONS 2022

1. The Financial Services Regulatory Authority (“FSRA”) of the Abu Dhabi Global Market (“ADGM”) hereby confirms its decision to impose an amended penalty on Olive Rock Partners Fund I LP (“ORPF”) pursuant to subsection 9(1) of the *Common Reporting Standard Regulations 2017* (the “CRS Regulations”) and subsection 9(1) of the *Foreign Account Tax Compliance Regulations 2022* (the “FATCA Regulations”), together the “Regulations”. This notice is issued pursuant to Article 7(5) of Cabinet Resolution No. 93 of 2021 (“CRS Cabinet Resolution”) which applies pursuant to the CRS Regulations, and Article 9(5) of Cabinet Resolution No. 63 of 2022 (the “FATCA Cabinet Resolution”), which apply pursuant to the FATCA Regulations, following due consideration of an appeal submitted by ORPF dated 7 November 2024 in response to a notice from the FSRA dated 11 October 2024 (“October Notice”).

Defined Terms

2. Terms defined in the notice are defined at the first instance the term is used in parentheses. Other capitalised terms are defined in the Regulations and shall bear the same meaning in this notice, unless the context otherwise requires.

SUMMARY

3. The FSRA considers that ORPF has:
 - a. classified itself as a Reporting Financial Institution for the purposes of the CRS Regulations (“CRS RFI”), and opened one (1) account without collecting a self-certification form from the Account Holder;
 - b. classified itself as a Reporting UAE Financial Institution for the purposes of the FATCA Regulations (“FATCA RFI”) and:
 - i. opened an account without collecting a self-certification form from one (1) entity; and

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- ii. failed to provide information in a complete and accurate manner by failing to report a Controlling Person of an entity.
4. Following due consideration of ORPF's appeal submitted pursuant to subsection 9(2) of the Regulations, the FSRA has decided to impose a total penalty of AED 7,000 on ORPF, pursuant to subsection 9(1) of the CRS Regulations and subsection 9(1) of the FATCA Regulations.

BACKGROUND

CRS Regulations

5. The Organisation for Economic Co-operation and Development ("OECD") developed the Common Reporting Standard ("CRS"), which came into force in October 2014. The CRS was established in the United Arab Emirates ("UAE") with effect from 1 January 2017 pursuant to the ratification of various conventions and declarations by the UAE, and publication of Federal Law No. 54 of 2018.
6. The CRS sets out the required information to be exchanged, the types of entities required to report, the different types of financial accounts and account holders in scope and the common due diligence procedures to be followed by RFIs.
7. Appropriate legislation to support the implementation of the CRS in the UAE has been issued at both a federal level in the UAE and in the ADGM. This includes the enactment of the CRS Regulations by the Board of Directors of ADGM in 2017. The CRS Regulations apply the CRS Cabinet Resolution in the ADGM pursuant to subsection 2(1) of the CRS Regulations, and the CRS and any explanatory material and commentary published by the OECD in relation to the CRS pursuant to subsection 3(1) of the CRS Regulations.
8. On 27 January 2017, the ADGM published the '*Notification of collection of information under the Common Reporting Standards*' prepared by the UAE's Ministry of Finance ("MOF"), setting out the requirements for implementation of the CRS across all jurisdictions within the UAE.

FATCA Regulations

9. The Foreign Account Tax Compliance Act ("FATCA") was introduced by the United States of America ("US") in 2010 to target non-compliance by US taxpayers using foreign accounts. FATCA requires financial institutions outside the US to report information on financial accounts held by their US customers to the Internal Revenue Service.
10. On 17 June 2015, the UAE signed a Model 1B Intergovernmental Agreement ("IGA") with the US to improve international tax compliance and to implement FATCA reporting by FATCA RFI's. The IGA was ratified by Federal Decree 9 of 2016.
11. Appropriate legislation to support the implementation of FATCA in the UAE has been issued at both a federal level in the UAE and in the ADGM. This includes the enactment of the FATCA Regulations by the Board of Directors of ADGM in 2022. The FATCA Regulations apply the FATCA Cabinet Resolution in the ADGM pursuant to subsection 2(1) of the FATCA Regulations.

RELEVANT FACTS

12. On 5 July 2021, ORPF was registered as a limited partnership.
13. On 24 April 2023, the FSRA published Notice No. 10 of 2023 informing Senior Executive Officers ("SEOs"), Money Laundering Reporting Officers ("MLROs") and ADGM Licensed Persons ("LPs") of the MOF's new Automatic Exchange of Information ("AEOI") portal for submission of information returns for the purposes of CRS and FATCA (together "Annual Returns") by CRS RFIs and FATCA

RFIs (together “RFIs”) for the 2022 calendar year, with training scheduled on 28 April 2023 and 4 May 2023.

14. On 25 May 2023, the FSRA published Notice No. 16 of 2023 in which it invited all RFIs to attend a mandatory training session on the AEOI portal. The training was to provide a comprehensive review of the new portal and guide RFIs on completing and submitting Annual Returns, including a Nil Return (as that term is defined in CRS Cabinet Resolution) or Nil Report (as that term is defined in the FATCA Cabinet Resolution) as applicable.
15. On 8 June 2023, the FSRA published Notice No. 18 of 2023 addressed to SEOs, MLROs and LPs to notify them that the new AEOI portal was operational and open for registration in advance of submission of Annual Returns in respect of the 2022 calendar year, with instructions on how to do so.
16. On 19 June 2023, ORPF registered as a CRS RFI and FATCA RFI on the AEOI portal.
17. On 26 June 2023, the FSRA published and sent by email ‘FCCP FSRA Notice No. 21 of 2023 – FATCA and CRS System Live’ informing SEOs, MLROs and LPs that the functionality for submission of Annual Returns was enabled on the AEOI portal, and that all RFIs were required to fulfil their obligations for the 2022 calendar year by the deadline of 31 July 2023.
18. On 5 July 2023, the FSRA published Notice No. 22 of 2023 informing RFIs that the MOF would be conducting training and web-based sessions starting from 10 July 2023 until 31 July 2023.
19. On 21 July 2023, ORPF submitted Annual Returns for FATCA and CRS.
20. On 17 August 2023, the FSRA sent an email to ORPF and its agent (“Agent”) informing ORPF that it had been selected for an audit review for compliance with the Regulations in respect of the 2022 calendar year (“Review”), and that the Review would be based on its Annual Returns submitted on the AEOI portal. The FSRA requested ORPF to complete the FATCA and CRS audit questionnaires (“Questionnaires”) by 20 September 2023, and to acknowledge the FSRA’s email by 22 August 2023.
21. On 19 September 2023, the Agent sent an email to the FSRA attaching the completed Questionnaires.
22. On 21 September 2023, the FSRA sent a letter to the Agent informing ORPF that the Review would be conducted on 29 November 2023, and requesting that ORPF submit documents requested by the FSRA by 29 September 2023.
23. On 29 November 2023, the FSRA conducted the Review. On the same day, ORPF sent an email to the FSRA responding to the questions from the FSRA earlier that day.

FAILURE TO COLLECT SELF-CERTIFICATION FOR CRS

24. Subsection 6(1) of the CRS Regulations requires CRS RFIs to collect and report all information in accordance with the CRS Regulations and the CRS Cabinet Resolution.
25. Section VI subparagraph A(1)(a) of the CRS requires a CRS RFI to obtain a self-certification from an Account Holder at account opening (“Self-Certification Form”).

26. The Review found that ORPF had opened an account for Client 1 as identified in Annexure A of the October Notice. However, the Review found that the Self-Certification Form for Client 1 was not collected at account opening and was only collected on or around 18 July 2023.
27. Accordingly, the FSRA considers that ORPF has contravened subsection 6(1) of the CRS Regulations.

ALLEGED FAILURE TO REPORT IN A COMPLETE AND ACCURATE MANNER

28. Subsection 6(1) of the CRS Regulations requires CRS RFIs to collect and report all information in accordance with the CRS, the CRS Regulations and the CRS Cabinet Resolution.
29. Section I subparagraph A(1) of the CRS requires each CRS RFI to report for each Reportable Account the name, address, jurisdiction(s) or residence, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder.
30. In its Self-Certification Form, Client 1 had self-classified its jurisdiction of tax residence as the Kingdom of Saudi Arabia. According to the OECD Information on Tax Identification Numbers, the TIN structure for Saudi Arabia should contain ten (10) digits. However, the Review found that the TIN reported by ORPF for Client 1 contained fifteen (15) digits and was therefore inaccurate.
31. Accordingly, the FSRA considered that ORPF has contravened subsection 6(1) of the CRS Regulations.

FAILURE TO COLLECT SELF-CERTIFICATION FOR FATCA

32. Subsection 6(1) of the FATCA Regulations requires FATCA RFIs to collect and report all information in accordance with the FATCA Regulations and the FATCA Cabinet Resolution. The FATCA Cabinet Resolution defines a Self-Certification Form as “...*the form required to be collected and validated... establishing where an Account Holder or Controlling Person is resident for tax purposes.*” Article 5 of the FATCA Cabinet Resolution requires each FATCA RFI to collect and validate a Self-Certification Form for each New Entity Account.
33. The purpose of the FATCA Cabinet Resolution is to implement the IGA in the UAE. Annex 1, subsection V(B)(3)(b) of the IGA requires that, if the Account Holder is a Passive NFFE (as defined in the IGA), the FATCA RFI must identify the Controlling Person(s) and determine whether any such person is a U.S. citizen or resident on the basis of a Self-Certification Form from the Account Holder or such person.

Client 1

34. As set out in paragraph 26 above, ORPF opened an account for Client 1 on 26 October 2022 but the Self-Certification Form for FATCA for Client 1 was not collected by ORPF at the time of account opening, and was only obtained by ORPF on or around 18 July 2023.
35. Accordingly, the FSRA considers that ORPF has contravened subsection 6(1) of the FATCA Regulations.

Alleged failure in relation to Client 2

36. The Review found that ORPF had opened an account for Client 2 as identified in Annexure A of the October Notice on 26 October 2022. In its Self-Certification Form, Client 2 had self-classified as a ‘Passive NFFE’. However, the Review found that ORPF failed to collect a Self-Certification

Form in relation to each of the three (3) Controlling Persons of Client 2 identified as CP1, CP2 and CP3 in Annexure A to the October Notice.

37. During the Review, the Agent explained that the reason that Self-Certification Forms were not collected for CP1, CP2 and CP3 was because Client 2 had no source income or holdings in the United States of America. However, this is not relevant for the purposes of the requirement to identify Controlling Persons in accordance with the IGA.
38. Accordingly, the FSRA considered that ORPF had contravened subsection 6(1) of the FATCA Regulations.

FAILURE TO REPORT IN A COMPLETE AND ACCURATE MANNER

39. Subsection 6(1) of the FATCA Regulations requires FATCA RFIs to collect and report all information in accordance with the FATCA Regulations and the FATCA Cabinet Resolution.
40. Article 5(3)(e) of the FATCA Cabinet Resolution sets out that FATCA RFIs are required to provide the FSRA or MOF with any information, records or documents required to be submitted in accordance with the FATCA Cabinet Resolution, the IGA or any Decisions issued by MOF in a complete and accurate manner.
41. In its Self-Certification Form, Client 3 (as identified in Annexure A to the October Notice) had self-classified as a Passive NFFE, with CP4 as its Controlling Person. However, the Review found that ORPF failed to report CP4 as Client 3's Controlling Person.
42. Accordingly, the FSRA considers that ORPF has contravened subsection 6(1) of the FATCA Regulations and Article 5(3)(e) of the FATCA Cabinet Resolution.

CONSIDERATION OF APPEAL

43. In the October Notice, the FSRA imposed a penalty of AED 15,000 on ORPF.
44. Under subsection 9(2) of the CRS Regulations and Article 7(1) of the CRS Cabinet Resolution, and subsection 9(2) of the FATCA Regulations and Article 9(1) of the FATCA Cabinet Resolution, ORPF had the opportunity to appeal against the FSRA's decision as set out in the October Notice.
45. On 7 November 2024, ORPF submitted its appeal to the FSRA (the "Appeal").
46. In its Appeal, ORPF asked the FSRA to take certain matters into consideration, as follows:
 - a. In relation to Client 1, at the time of validation ORPF was not able to verify the Account Holder's TIN using the OECD's and other public resources. There was no clear indication as to the length of the TIN, whether it was alphanumeric or only digits. Reasonableness checks conducted by ORPF to verify included reference to local government websites and Saudi Arabia's Taxpayer Lookup website. As clients were best suited to know their TIN, the self-certification was accepted and reporting was conducted based on the submission. Upon checking with the client, they later confirmed a 10-digit number and ORPF is working with the client to obtain an updated self-certification to ensure future reporting obligations are accurate.
 - b. In relation to Client 2, ORPF stated that the self-certification provided to the FSRA during review contained information in relation to each Controlling Person, and that there may have been a miscommunication requiring the IRS form collection for FATCA purposes.

- c. In relation to Client 3, Client 3 was reported as a Specified US Person. There was no individual who had direct ownership of the entity, therefore CP4 was identified by applying the controlling persons test.
47. The FSRA has considered each of the representations made in support of the Appeal and summarises its decision in relation to the Appeal as follows:
 - a. In response to paragraph 46(a) above, the OECD's Information on Tax Identification Numbers has set out a 10 digit TIN structure for Saudi Arabia since 2018¹. Once a Self-Certification Form had been obtained by ORPF from Client 1, ORPF was required to confirm its reasonableness, including the TIN. While ORPF failed to identify that the TIN structure was invalid using the available OECD resources, ORPF demonstrated that it had taken reasonable steps to seek to validate the TIN to the extent required by the CRS. Accordingly, the FSRA has decided to accept the appeal and revoke the fine in relation to CRS for Client 1.
 - b. In response to paragraph 46(b) above, the FSRA is, on this occasion, prepared to accept ORPF's submissions in relation to the Controlling Persons of Client 2 identified as CP1, CP2 and CP3 in Annexure A of the October Notice.
 - c. In response to paragraph 46(c) above, having identified CP4 as a Controlling Person of Client 3, ORPF was required to report CP4.
48. The FSRA notes that ORPF has accepted the contraventions set out in paragraphs 26 and 34 above in relation to Client 1.
49. In light of the foregoing, the FSRA has decided to vary its previous decision in this matter, as follows:
 - a. The FSRA has decided not to impose the penalties totalling AED 8,000 on ORPF for:
 - i. an alleged failure to report information required to be reported in a complete and accurate manner pursuant to the CRS Regulations in relation to Client 1; and
 - ii. the alleged opening of a new Entity Account without collecting the required Self-Certification Form(s) for three (3) Controlling Persons for Client 2 as required by the FATCA Regulations.
 - b. The FSRA has decided to confirm its decision to impose penalties totalling AED 7,000 on ORPF for its failure to:
 - i. obtain a self-certification form for Client 1 for the purposes of the CRS Regulations and FATCA Regulations respectively; and
 - ii. provide information in a complete and accurate manner by failing to report the Controlling Person of Client 3 where required to do so pursuant to the FATCA Regulations.

¹ <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/aeoi/saudi-arabia-tin.pdf>

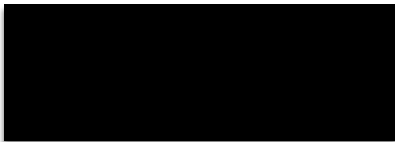
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56. If the penalty or any part of it remains outstanding on the date by which it must be paid, the obligation to make the payment is enforceable as a debt by the FSRA.

Publicity

57. The FSRA will generally publish, in a manner we consider appropriate and proportionate, information and statements relating to enforcement action. Accordingly, the FSRA will publish relevant information about the decision in this notice, including the notice itself, as the FSRA considers appropriate. The publication of enforcement outcomes is consistent with the FSRA's commitment to open and transparent processes and our objectives.

Yours sincerely,



Executive Director – Enforcement
Abu Dhabi Global Market Financial Services Regulatory Authority