

Guidance & Policies Manual (GPM)

*In this attachment underlining indicates new text and striking through indicates deleted text.



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1.1.3 The GPM is not meant to be all of our guidance and policies on how we will operate and exercise our powers and we are not bound to follow it on all occasions. It is merely an informative document, which sets out how we may act when exercising our powers.

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General Prohibition and by way of business

2.1.3 FSMR imposes a prohibition on all persons who carry on an activity regulated by us in ADGM "by way of business" unless the person is an Authorised Person or an Exempt Person. This is known as the General Prohibition.

2.1.4 Whether or not an activity is carried on by way of business is a question of fact that takes into account several factors, including:

- (a) how often the activity is conducted;
- (b) whether there is a commercial element involved;
- (c) the size and proportion of non-regulated activities carried on by the same person; and
- (d) the nature, context and circumstances of the activity that is carried on.

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The need for a Financial ~~Service~~ Services Permission or Recognition Order

2.1.6 Schedule 1 to FSMR contains a complete list of Regulated Activities. When determining whether an applicant will require a Financial Services Permission to engage in a specific Regulated Activity, the applicant should first, determine that such Regulated Activity will be carried on in or from the ADGM 'by way of business' as described in paragraph 2.1.4. If they are then the applicant will need to consider whether any of the applicable exclusions apply, either: (i) specified following the description of the relevant Regulated Activity; or (ii) amongst the general exclusions contained in Chapter 18 of Schedule 1 of FSMR.

2.1.7 Alternatively, an applicant may need to consider if it constitutes an Exempt Person (or would do, should it receive the required Recognition Order).

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Application of conditions, restrictions or limitations

2.1.12 The Regulator may grant a Financial Services Permission subject to any conditions, restrictions or limitations that are appropriate, having regard to the Regulator's objectives and need for applicants to satisfy and continue to satisfy the Regulator's requirements for authorisation, including the Threshold Conditions.

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2.3.5 In determining whether an individual has met the fitness and propriety criteria with respect to their integrity, the following matters may be taken into account:

(a) the propriety of an individual's conduct whether or not such conduct may have resulted in the commission of a criminal offence, the contravention of a law or the institution of legal or disciplinary proceedings of whatever nature;

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(n) whether the individual has been censured, disciplined, or publicly criticised by, or has been the subject of a court order at the instigation of, the ~~FSRA~~ Regulator or another regulatory authority or any officially appointed inquiry; and

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2.5 **Start-up entities in ADGM Our risk-based approach to authorisation**

What are "start-up" entities?

2.5.1 This paragraph serves as a guide to assist start-up entities that are interested in applying for a Financial Services Permission to conduct Regulated Activities in ADGM. It sets out the information required to support an application and what criteria we may consider in the authorisation process. Start-ups, as with any applicants, will be required to satisfy all of our requirements prior to being granted a Financial Services Permission.

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2.5.9 We may request details of the background, history and ownership of the start-up and, where applicable, its Group. Similar details relating to the background, history and other interests of the directors of the start-up may also be required. Where ~~it considers~~ we consider it necessary to do so, we may undertake independent background checks on such material. A higher degree of due diligence will apply to individuals involved in a start-up and there would be an expectation that the start-up itself will have conducted detailed background checks, which may then be verified by us.

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2.11.3 Consent will usually only be given to the use of a particular name if the use of the name would not be misleading. A name would be considered misleading where ~~is~~ it does not accurately describe the actual activities or legal status of the firm or where the name implies that the firm has a particular status that it in fact does not have.

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External Auditor reports, statements and meetings

3.2.20 An auditor of a firm is required to provide reports to us addressing the matters outlined in section ~~191~~193 of FSMR and GEN Chapter 6. As part of an audit, we would expect an auditor to review any relevant correspondence between us and the firm (e.g., on matters of regulatory concern) and ensure that appropriate follow-up actions have been taken by the firm. We may also require the firm to commission the auditor to conduct a special purpose audit to certify and ensure that any risk mitigation plan has been appropriately

implemented. Further, we may from time to time, request tripartite meetings between the firm's senior management, the auditor, and ourselves.

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4.2.3 If an application is successful, we will issue its decision by means of a written Direction provided to the applicant.

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5.1.2 The range of powers available to us includes the power to:

- (a) require information or documents (FSMR sections 201 and 206);
- (b) require a report from a skilled person (FSMR section 203);
- (c) impose Requirements on a firm (FSMR section 35);
- (d) vary, suspend or cancel the Financial Services Permission of an Authorised Person (FSMR sections 33 and 233);
- (e) impose or vary conditions on an Approved Person or suspend Approval on our own initiative (FSMR section 48);
- (f) give a Direction to a Recognised Body (FSMR section 132); and
- (g) revoke a Recognition Order (FSMR section 134); and
- (h) issue directions for prudential purposes (FSMR section 202).

5.1.3 In exercising a power specified in this Chapter (except when requesting information and/or documents or a skilled person report), we will generally follow the decision-making procedures set out in Chapter 9 of this document and as specified in FSMR.

5.1.4 Where we are conducting an investigation and have reasonable grounds to believe that there has been misconduct that may form the grounds for exercise of our powers under section 33 of FSMR or to withdraw an individual's Approved Person status, we may suspend or vary that Financial Services Permission or suspend that Approval (as applicable) for the duration of the investigation and related proceedings.

5.1.4.5.1.5 For our general approach to publicity in certain circumstances, see Chapter 10.

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5.5 **Power to vary, suspend or cancel a Financial Services Permission**

At the request of a firm

5.5.1 We may vary or cancel a firm's Financial Services Permission on the application of the firm (in such form as we may prescribe) (see section 32 of FSMR).

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5.5.3 We may exercise our powers to vary, suspend or cancel a Financial Services Permission to carry on one or more Regulated Activities where it appears to us that one or more of the circumstances set out in section 33(1) of FSMR apply. In such cases, we may vary the Financial Services Permission by adding or removing a Regulated Activity from the Financial Services Permission or varying the description of a Regulated Activity where it does not widen the description. We may also vary the Financial Service Permission by including in it (as varied) any provision that could be included if a new Financial Service Permission were being sought.

5.5.4 We may suspend a Financial Services Permission as an interim measure in appropriate circumstances for a period not exceeding 12 months. In addition, where we are investigating and believe that there has been misconduct that would be grounds for exercise of our powers under section 33 of FSMR, we may suspend or vary a Financial Services Permission for the duration of the investigation and related proceedings. We may also cancel the a Financial Services Permission entirely.

5.5.45.5 Examples of circumstances where we might exercise our powers to vary, suspend or cancel a Financial Services Permission could include where:

- (a) we have serious concerns about the manner in which the business of the firm is being conducted;
- (b) we consider it necessary to protect other participants in the ADGM Financial System from adverse effects such as financial loss or the risk of significant financial loss;
- (c) the firm has failed to have or maintain adequate financial resources or failed to comply with regulatory capital requirements;
- (d) the firm has not submitted regulatory returns in a timely fashion or has provided false information in regulatory returns;
- (e) the firm no longer satisfies the Threshold Conditions to carry out a Regulated Activity (set out in the GEN Chapter 5);
- (f) the firm has contravened FSMR or the Rules:-;
- (g) we are conducting an investigation and have reasonable grounds to suspect misconduct warranting variation or suspension of a Financial Services Permission, as set out at paragraph 5.5.4.

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5.6.3 We may also, upon the application of the relevant Authorised Person (section 47 of FSMR) or at our own initiative (section 48 of FSMR), vary or suspend the Approval of an Approved Person by:

- (a) imposing a condition or conditions on the grant of Approved Person status;
- (b) varying or removing a condition or conditions; **or**

- (c) limiting the period for which the Approval may have effect (only where the variation is on our initiative under section 48 of FSMR);
- (d) suspending an Approval for up to 12 months.

5.6.4 There are various circumstances that may arise where we may exercise our own initiative power to vary or suspend the Approval of an Approved Person, including where:

- (a) the Approved Person has not exercised the expected level of skill, care and diligence in carrying out the Controlled Function(s);
- (b) the conduct of the Approved Person is inconsistent with the requirements and standards expected of a person in their role; or
- (c) we have concerns about the Approved Person's ability or suitability to carry out the Controlled Function(s) as originally approved (but not such as to warrant the withdrawal of an Approved Person's status on the basis of fitness or propriety pursuant to section 46 of FSMR as set out in paragraphs 5.6.1 and 5.6.2).

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5.10 Summary of Enforcement and Supervisory Powers under FSMR

(Excluding Part 6)

Powers in relation to Authorised Persons	
s 33 Variation, suspension or cancellation on initiative of FSRA the Regulator	Add or remove Regulated Activity, vary the description, <u>suspend</u> or cancel FSP on own initiative (s 42 procedure)
Powers in relation to Individuals	
s 48 Variation or Suspension of Approval on initiative of FSRA the Regulator	Vary, impose or remove condition, or limit period of Approval or <u>suspend</u> Approval (s 49 procedure)
Powers to require information	
s 201 Require information or documents	Where the <u>FSRA Regulator</u> reasonably considers that it requires information in connection with the exercise of any of its functions or powers
	Applies to any person subject to Rules, including from Authorised Persons, Recognised/Remote Bodies, Controllers, Approved Persons, or any person connected to such person and their employees

	May be exercised at the request of a Non-ADGM Regulator (s 217)
s 203 Report from skilled person	Where the <u>FSRA-Regulator</u> can require information or documents on a matter, it can request a report on the matter from the Person Concerned, or it can appoint a skilled person itself to provide a report
	"Person Concerned" - an Authorised Person, Recognised/Remote Body, member of the Group or a related Partnership
s 204 Collect/update information by skilled person	Require Authorised Person, Recognised Body or Remote Body to appoint a skilled person to collect and keep up to date information, or <u>FSRA</u> the <u>Regulator</u> may appoint the skilled person itself.

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6.2.4 Pursuant to section 218 of FSMR, a person commits a contravention if they:

- (a) do an act or thing that the person is prohibited from doing by or under FSMR or Rules;
- (b) fail to do an act or thing that the person is required or directed to do by or under FSMR or Rules;
- (c) fail to comply with a requirement or condition imposed by or under FSMR or Rules; or
- (d) otherwise contravene a provision of FSMR or Rules.

A person can commit a contravention of FSMR or Rules even if they are not an Authorised Person or Recognised Body. For example, carrying on a Regulated Activity in breach of the General Prohibition (see paragraph 2.1.3), engaging in conduct that is misleading, deceptive, fraudulent or dishonest (section 19A of FSMR) or falsely claiming to be authorised by the Regulator (section 20 of FSMR).

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6.3.6 Our assessment of the complaint may involve:

- (a) requesting further information or documents from the person making the complaint;
- (b) liaising internally with specialists within the FSRA-Regulator;
- (c) contacting the subject of the complaint, where necessary and appropriate, or other persons who may have information relevant to the matter; and/or

(d) contacting other regulatory authorities.

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6.5.2 Our information-gathering powers will be exercised by the person(s) appointed as Investigators for that purpose. These persons may be ~~non-FSRA~~~~non-Regulator~~ personnel who have been appointed to assist the investigation.

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6.7.3 However, they are not the only tools available to us, and there will be instances of non-compliance which we consider appropriate to address without the use of such tools. The ~~FSRA~~~~Regulator~~ will adopt a risk-based approach when considering what tools to use.

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6.12 Summary of Investigation Powers under FSMR

s 215 Cooperation with others	Take such steps as are considered appropriate to co-operate with other persons that have a function similar to those of the FSRA Regulator , or in relation to the prevention and detection of financial crime
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7.4.1 In addition to the power to cancel, suspend or vary a firm's Financial Services Permission (see section 5.5), under section 233(1) of FSMR, we may suspend, for such period as we consider appropriate, an Authorised Person's Financial Services Permission, or impose limitations or restrictions in relation to the carrying on of a Regulated Activity by an Authorised Person. We may exercise this power in circumstances where we consider that the Authorised Person has committed a contravention of FSMR.

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7.5.1 In addition to the power to withdraw ~~or~~, vary or suspend an Approved Person's Approval (see paragraph 5.6), under section 233(2) of FSMR, we may suspend, for such period as we consider appropriate, an Approval given in relation to the performance of a Controlled Function. The Regulator may exercise this power in circumstances where it considers that the Approved Person has committed a contravention of FSMR.

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9.3.6 In certain circumstances we do not have to give an affected person advance notice of our proposed action, or the chance to make prior representations, before the action takes effect. In such circumstances, we are still obliged to give the affected person a right of representation within a specified period from the date on which the decision is made and communicated to the affected person. We are obliged to consider any representations made by, or on behalf of, the affected person during that period. Decisions that might be made without giving the affected person a right to make representations before the decision takes effect include:

- (a) the exercise of our Own-Initiative Powers, applying the procedures in sections 42 and 124C of FSMR;
- (b) variation or suspension of Approval under section 48 of FSMR;
- (c) discontinuance or suspension of Listing of any Securities under section 53 of FSMR;
- (d) the issuing of a stop order under section sections 71 or 106B of FSMR; and
- (e) suspension of a Listed Entity's Securities from the Official List under section 180 of FSMR; and
- (f) where we conclude that delay would be prejudicial to the interests of users or the interests of the ADGM Financial System, as set out in section 246(3) of FSMR.

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9.4.1 The decisions which are made by us fall into the following categories:

- (a) decisions which are subject to the procedures in Part 21 of FSMR ("Part 21 Decisions"), e.g., a decision to impose a financial penalty, suspend or cancel a Financial Services Permission of an Authorised Person or withdraw Approval of an Approved Person, or exercise any of the other powers set out in section 246 of FSMR;
- (b) decisions which are not subject to the procedures set out in Part 21 of FSMR ("Non-Part 21 Decisions"), e.g., exercise of certain Own-Initiative Powers, revocation of a Recognition Order, objection to a new Controller of an Authorised Person, issuing directions for prudential purposes, withdrawal of a condition on a Financial Services Permission or where a person has requested or consented in writing to the making of the decision;

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9.5.1 Where we propose to exercise any of our powers as set out in section 246(1) of FSMR, we must follow the procedure set out in Part 21 of FSMR, with the exception of urgent circumstances as set out in paragraph 9.3.6 and provided for at section 246(3) of FSMR. In order to facilitate a consistent approach to decision-making, Part 21 of FSMR sets out the steps we are required to follow in relation to Part 21 Decisions.

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9.6.1 Certain decisions are not subject to the procedures set out in Part 21 of FSMR - for example, our powers relating to revoking a Recognition Order or suspending or varying Approval of an Approved Person.

9.6.2 Decisions in this category are subject to the relevant procedures specified in FSMR or applicable Rulebook. See, for example, the applicable procedures for:

- (a) the exercise of our Own-Initiative Powers, in sections 42 and 124C of FSMR;

- (b) the exercise of the power to vary or suspend an Approval of an Approved Person, in section 49 of FSMR;
- (c) the Discontinuance or Suspension of Listing of any Securities, in section 54 of FSMR;
- (d) revocation of a Recognition Order, in section 135 of FSMR; and
- (e) issuing directions for prudential purposes, in section 202 of FSMR;
- (ef) the objection to a new Controller of an Authorised Person, or conditional approval process, in Rule 8.8.7 of GEN-; and
- (g) decisions by the Regulator to withdraw a direction, requirement or restriction; withdraw a condition on a Financial Services Permission; or where the relevant person has requested or consented to the decision.

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