



9 June 2022

Aarna Capital Limited  
8th Floor, Al Khatem Tower  
ADGM Square  
Al Maryah Island  
Abu Dhabi  
United Arab Emirates

Attention: [REDACTED]

Sent by e-mail: [REDACTED]

Dear [REDACTED]

**PENALTIES & ADMINISTRATIVE FEE(S) IMPOSED FOR CONTRAVENTIONS OF THE COMMON REPORTING STANDARD REGULATIONS 2017**

1. This notice is issued by the Financial Services Regulatory Authority ("FSRA") of the Abu Dhabi Global Market ("ADGM") on Aarna Capital Limited ("ACL") pursuant to subsection 9(1) of the *Common Reporting Standard Regulations 2017* (the "Regulations").

**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 has decided to:
  - a. impose the penalty and Administrative Fee(s) of AED 45,000; and
  - b. direct ACL to undertake and complete remedial actions, as approved by the FSRA, to ensure compliance with the Regulations,
4. This is because the FSRA considers that ACL has failed to:
  - a. apply due diligence procedures as required by the Regulations, by not conducting reviews to confirm reasonableness of self-certifications received, in contravention of Schedule 1, Part 6, paragraph A of the Regulations;

FINANCIAL SERVICES REGULATORY AUTHORITY  
سلطة تنظيم الخدمات المالية

- b. document its due diligence procedures and keep records of the due diligence procedures performed, including the evidence relied upon as part of due diligence and the measures undertaken to obtain those records, in contravention of subsection 6(1) and Schedule 1, Part 2, paragraph A of the Regulations;
- c. report information as required by the Regulations in a complete and accurate manner, by failing to:
  - i. collect and report the Taxpayer Identification Number (“TIN”) for one (1) Reportable Account, and failing to accurately report the TINs of six (6) Reportable Accounts, in contravention of subsection 3(1) and Schedule 1, Part 1, paragraph A of the Regulations; and
  - ii. report three (3) Reportable Accounts, in contravention of subsection 3(1) and Schedule 1, Part 1, paragraph A of the Regulations,

and accordingly, subsection 7(1) of the Regulations applies.

## **BACKGROUND**

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 ratification of various conventions and declarations by the UAE, and publication of Federal Law No. 54 of 2018.
6. The OECD Standard 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 Reporting Financial Institutions (“RFIs”).
7. Appropriate legislation to support implementation of CRS in the UAE has been issued in both the UAE and in the ADGM. This includes the enactment of the Regulations by the Board of Directors of ADGM in 2017. The Regulations include the CRS and any explanatory material and commentary published by the OECD in relation to CRS pursuant to subsection 2(1) of the 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, setting out the requirement for implementation of CRS across all jurisdictions within the UAE.
9. On 8 June 2017, ACL was granted a Financial Services Permission by the FSRA under which it was permitted to undertake the Regulated Activities of “*Arranging Deals in Investments*”, “*Dealing in Investments as Agent*”, “*Dealing in Investments as Principal*” and “*Providing Custody*”.
10. ACL is classified as a RFI pursuant to Schedule 1, Part 8, subparagraph A(1) of the Regulations.
11. On 16 June 2021, ACL submitted its 2020 CRS Return.
12. On 25 June 2020, the FSRA published Notice No. 8 of 2020 addressed to Senior Executive Officers (“SEOs”) and Compliance Officers of RFIs to inform them of amendments to the Regulations which included two new sanctions and various miscellaneous amendments to the Regulations. The Notice also stated that, to ensure that all Account Holders and Controlling Persons have current self-certifications as required by the amendments, the FSRA required all RFIs to obtain new self-

certifications from all Account Holders and Controlling Persons within six months from the date of the notice and maintain records of the same on file.

13. On 21 September 2021, the FSRA published Notice No. 25 of 2021, informing SEOs and Money Laundering Reporting Officers (“MLROs”) of the UAE’s CRS Compliance Programme designed by the Ministry of Finance and communicated to the relevant UAE Regulatory Authorities (including the FSRA) at the end of August 2021 for implementation by those Regulatory Authorities, enclosing links to training materials. The FSRA stated that it would shortly be in contact to provide a “Self-Certification” form that would need to be completed by each entity licensed by ADGM.
14. On 28 September 2021, the FSRA sent Notice No. 26 of 2021 to SEOs and MLROs regarding the UAE’s CRS Compliance Programme, which required RFIs to complete and submit to the FSRA their Self-Certification form by 7 October 2021.
15. On 7 October 2021 ACL submitted its completed ‘UAE FATCA and CRS Entity Self-Certification Form’ to the FSRA.
16. On 10 October 2021, the FSRA sent a letter to ACL informing ACL of its proposed review of ACL’s activities and operations conducted in relation to CRS (the “Review”) which included an on-site inspection (the “Inspection”) at ACL’s offices scheduled on 31 October 2021. The FSRA requested that ACL complete the ‘CRS Compliance Programme Questionnaire’ (“CRS Questionnaire”) and submit it together with the additional information set out in the Appendix by no later than 21 October 2021.
17. On 21 October 2021 ACL submitted its response to the CRS Questionnaire.
18. On 25 October 2021, the FSRA sent an email to ACL informing ACL that it was required to submit the required documents, including the CRS Questionnaire,
19. On 3 November 2021 the FSRA undertook the Inspection on ACL as part of the Review, to assess its compliance with the Regulations.
20. During the Review and Inspection, the FSRA conducted a review of ACL’s compliance with the Regulations in relation to Reportable Accounts for the period from 1 January 2020 to 31 December 2020 and submitted in its 2020 CRS Return.

#### **FAILURE TO CONDUCT DUE DILIGENCE PROCEDURES & FAILURE TO KEEP RECORDS**

21. As an RFI, ACL is required to comply with Schedule 1, Part 6, paragraph A of the Regulations, which sets out the review procedures that RFIs must apply for New Entity Accounts to determine the residence of the New Entity and, where applicable its Controlling Persons<sup>1</sup>. This includes obtaining a self-certification that allows the RFI to determine the Account Holder’s residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the RFI in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.
22. Subsection 6(1) of the Regulations requires every RFI to keep records of steps undertaken and any evidence relied upon for the performance of the due diligence procedures and the measures

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<sup>1</sup> Where the New Entity is a Passive NFE (i.e. non financial entity).

to obtain those records that the RFI obtains or creates for the purpose of complying with these Regulations.

23. The Inspection was unable to establish, based on a review of the client files provided by ACL and interviews with relevant ACL staff, that ACL had undertaken and documented any form of assessment of reasonableness of the self-certifications for any of the Reportable Accounts held with ACL. ACL did not have available for review any documents recording the steps undertaken to ascertain the reasonableness of the self-certifications received.
24. Therefore, the FSRA considers that ACL has contravened subsection 6(1) and Schedule 1, Part 6, paragraph A of the Regulations.

#### **FAILURE TO REPORT INFORMATION REQUIRED TO BE REPORTED IN A COMPLETE AND ACCURATE MANNER**

25. Schedule 1, Part 1, paragraph A of the Regulations provides that each RFI must collect and report to the UAE Competent Authority (whether directly or indirectly via the Regulatory Authority) information with respect to each Reportable Account.
26. Schedule 1, Part 8, subparagraph E(5) defines “TIN” as Taxpayer Identification Number or functional equivalent in the absence of a TIN.
27. The “*OECD Common Reporting Standard XMI Schema*” published by the OECD as CRS guidance provides that in a submission, the RFI should provide as an entity identification number a US GIIN, a TIN, company registration number, Global Entity Identification Number (EIN) or other similar identifying number specified by the tax administration. IBAN or account number are not included.
28. On 20 May 2021, the FSRA published its outreach presentation titled ‘FATCA/CRS reporting obligations for 2021’ that reiterated this information.
29. Accordingly, ACL should have been aware it was required to both collect and report TINs for Reportable Accounts, and that the reporting of an IBAN or Account Numbers in the entity identification field would not fulfil its obligation to report the Identification Number (including the TIN) for each Reportable Account.

#### *Clients 1-6*

30. The Inspection found, based on a review of self-certifications and the register of ACL’s Clients provided by ACL, that ACL had not reported the TINs for six (6) Reportable Accounts in its CRS Return 2020. This is despite the fact these were provided to ACL by those Client entities. For each of those six (6) Reportable Accounts, ACL reported the IBAN/account number in the relevant identification number field in its 2020 CRS Return. The relevant Clients are identified as Clients 1 to 6 in Annexure A to this Notice.
31. Therefore, the FSRA considers that ACL has contravened Schedule 1, Part 1, subparagraph A(1) of the Regulations by failing to correctly report the TINs for six (6) Reportable Accounts, and in doing so failed to report the information that is required to be reported under the Regulations in a complete and accurate manner.

#### *Client 7*

32. The Client identified as Client 7 in Annexure A to this notice provided its 'CRS Self-Certification Form for Entities' dated 24 September 2018 to ACL, wherein it identified itself as resident in India. Client 7 did not include its TIN as required by the relevant form.
33. Client 7's account was a Reportable Account for the purposes of the Regulations. The Inspection found no evidence that ACL collected the TIN for Client 7, as required by the Regulations.
34. Instead of reporting the TIN as required by the Regulations, ACL reported the IBAN/Account number for this Client in the identification number field in its 2020 CRS Return. As set out in paragraph 27 above, an IBAN/Account Number is not an acceptable submission in this field.
35. In addition, as set out in paragraph 12 above, the FSRA's Notice No. 8 of 2020 required all RFIs to obtain new self-certifications from all their Account Holders and Controlling Persons within six months from the date of the notice and maintain records of the same on file. It was identified during the Inspection that the new self-certification was not obtained for Client 7 within six months of 25 June 2020 or indeed as at the date of the Inspection in late 2021.
36. The FSRA considers that ACL has contravened Schedule 1, Part 1, subparagraph A(1) of the Regulations, by failing to collect and report information that is required to be reported under the Regulations in a complete and accurate manner in relation to Client 7.

#### *Client 8*

37. The Inspection found, from a review of the Client file of Client 8 as identified in Annexure A to this Notice, that the Client was an entity incorporated in Malta onboarded on 20 February 2020 according to ACL's records.<sup>2</sup>
38. In its 'CRS Self-Certification Form for Entities', Client 8 self-identified as an 'Active NFE' with its country of tax residence identified as Malta, which is a Reportable Jurisdiction. Client 8 was therefore a Reportable Person pursuant to Schedule 1, Part 8, subparagraph D(2) of the Regulations and accordingly Client 8's account with ACL was a Reportable Account under the Regulations. However, ACL failed to report Client 8's account in its 2020 CRS Return.
39. In the documents provided to the FSRA, ACL described Client 8 as "*Account approved for opening. Not set up or formally onboarded. No statements issued to client.*"
40. However, in information provided to the FSRA following the Inspection it was confirmed that on 10 February 2020, ACL:
  - a. sent an email to Client 8 stating "*We are pleased to inform you that your application to open a trading account with Aarna Capital Limited has been approved and is ready to receive funds... kindly send funds to the banking details supplied...*"; and

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<sup>2</sup> This date following the evidence in paragraph 40 below should, in the FSRA's view, be 10 February 2020

- b. sent a 'Welcome Letter' to Client 8 confirming the “*successful application for opening account with Aarna Capital Limited*” and attaching ACL’s bank details to arrange funding for the trading account.

41. Therefore, the FSRA considers that the account of this Client was opened and was a Reportable Account. Accordingly, the FSRA considers that ACL has failed to report information as required by the Regulations in a complete and accurate manner in contravention of subsection 3(1) and Schedule 1 Part 1, subparagraph A of the Regulations.

#### *Client 9*

42. The 'CRS Self-Certification Form for Entities' dated 2 November 2020 provided to ACL by the Client identified as Client 9 in Annexure A to this Notice records Client 9 as being an entity incorporated in Latvia (as Reportable Jurisdiction) and self-classified as a 'Passive NFE'. The 'CRS Self-Certification for Controlling Person' form for the Controlling Person of Client 9, also dated 2 November 2020, records that individual’s country of tax residence as Latvia.

43. Client 9’s account was a Reportable Account, as Client 9’s Controlling Person qualifies as a Reportable Person pursuant to Schedule 1, Part 8, subparagraph D(2) of the Regulations.

44. ACL failed to include Client 9’s account in its 2020 CRS Return. Therefore, the FSRA considers that ACL has failed to report information as required by the Regulations in a complete and accurate manner in contravention of subsection 3(1) and Schedule 1, Part 1, subparagraph A of the Regulations.

#### *Client 10*

45. The 'CRS Self-Certification Form for Entities' dated 10 December 2020 completed by the Client identified as Client 10 in Annexure A to this Notice and provided to ACL records this Client as being an 'Active NFE', with its country of tax residence identified as Switzerland. On 16 December 2020 ACL approved and classified Client 10 as a Professional Client.

46. As Switzerland is a Reportable Jurisdiction, Client 10’s account was a Reportable Account. Closure of Reportable Accounts during the relevant year must be reported, pursuant to Schedule 1, Part 1, subparagraph A(4) of the Regulations. ACL did not report Client 10 as a Reportable Account in its 2020 CRS return.

47. On 4 November 2021, ACL further advised the FSRA that it had implemented a process under which it would process the closure of dormant accounts at the point of its periodic compliance review of the client and that it had interpreted dormant accounts, with annual balances of zero or not exceeding USD 1000 as being “*Excluded Account-Dormant Accounts*” under OECD guidance and therefore not being subject to annual reporting requirements.

48. ACL has sought to justify its failure to report Client 10 as a Reportable Account on the basis that “*...most of the dormant accounts in our list had zero or annual balance that does not exceed USD 1000, it is our interpretation of OECD guidance that these accounts would then in fact fall into “Excluded Account-Dormant Accounts” category and not subject to annual reporting...*”.

49. However, Schedule 1, Part 8 subparagraph C17(g) of the Regulations clearly sets out that for an account to be an “Excluded Account” and therefore not a Reportable Account (on the basis that it is low risk) it needs to be:

*“... included in the list of Excluded Accounts referred to in Annex 2 of these Regulations, provided that the status of such account as an Excluded Account does not frustrate the purposes of these Regulations.”*

However, there are no Excluded Accounts set out in Annex 2 to the Regulations. The guidance the FSRA believes ACL is referring to is not applicable in this instance, as the legislative requirements to satisfy a “Low-risk Excluded Account” in respect of which the OECD have provided guidance has not been met.

50. Therefore, even though there was a lack of activity in the account of Client 10 which was opened on 16 December 2020 and/or ACL considers it to have been dormant, this does not render the account of Client 10 an “Excluded Account” for purposes of the Regulations and accordingly it is a Reportable Account.
51. ACL did not report Client 10 as a Reportable Account in its 2020 CRS return. Therefore, the FSRA considers that ACL has failed to report information as required by the Regulations in a complete and accurate manner in contravention of Schedule 1, Part 1, subparagraph A of the Regulations.

#### **PENALTIES, FEES AND DIRECTIONS**

52. The FSRA consider ACL to have contravened the Regulations as set out in paragraph 4 above. The level of penalties/Administrative Fees for contraventions of the Regulations are set out in Schedule 2 of the Regulations.
53. The total penalty/Administrative Fees imposed by the FSRA on ACL is AED 45,000.
54. The breakdown of the penalties/Administrative Fees imposed by the FSRA on ACL pursuant to the Regulations in effect as at 30 June 2021 is as follows:

<b>No</b>	<b>Contravention</b>	<b>Penalty/Late Reporting Fee</b>	<b>Penalty/Administrative Fee imposed by the FSRA on ACL</b>
1.2	A Reporting Financial Institution fails to keep records of the due diligence procedures performed under the Regulations, or fails to keep them for a period of six (6) years pursuant to the requirements of the Regulations.	AED 10,000 penalty	<b>AED 10,000</b>
1.3	A Reporting Financial Institution fails to apply the due diligence procedures specified in Schedule 1, Part 2 through to Part 7 in Schedule 1.	AED 25,000 penalty	<b>AED 25,000</b>
1.5	A Reporting Financial Institution fails to report the information required to be reported in terms of these Regulation in a complete and accurate manner.	<u>Minor non-compliance:</u> AED 1,000 Administrative Fee  and	<b>AED 1,000 x 10 = AED10,000</b>

		<p>AED 100 Administration Fee for every day the failure continues up to of AED 25,000 in Administrative Fees</p> <p><u>Significant non-compliance</u> AED 250,000 penalty</p>	
<b>Total penalty/Administrative Fee</b>			<b>AED 45,000</b>

### The Direction

55. The FSRA directs that ACL must, within a scope and timeframe to be approved by the FSRA:
- a. undertake a review of its systems, controls, policies and procedures relevant to compliance with the Regulations;
  - b. submit to the FSRA for its approval a plan of remedial actions required to ensure compliance with the Regulations; and
  - c. undertake and complete the remedial actions, as approved by the FSRA under b. above.
56. The directions under paragraph 55 above shall cease to have effect when ACL can demonstrate to the satisfaction of the FSRA that it has complied with the direction.

### PROCEDURAL MATTERS

#### Appeal in relation to the financial penalty/Administrative Fee(s) imposed

57. Under subsection 10(2) of the Regulations, ACL has until **5:00p.m.** on **29 June 2022** to make an appeal **in writing** to the FSRA, setting out the grounds of appeal, in relation to the penalty or Administrative fee, or both, imposed.
58. In accordance with subsection 10(1) of the Regulations as at 30 June 2021, ACL may appeal against any penalty or Administrative Fee, or both, on the following grounds:
- a. it disputes the grounds or reasons for the penalty or Administrative Fee, or both, provided by the FSRA;
  - b. it disputes the amount of the penalty or Administrative Fee, or both, imposed; or
  - c. it disputes the validity of any action ordered by the FSRA.

59. Any appeal made should be addressed to:

[REDACTED]  
Financial Services Regulatory Authority  
Abu Dhabi Global Market Square  
Al Maryah Island  
Abu Dhabi  
United Arab Emirates

Email: [REDACTED]

60. If an appeal within time is made to the FSRA, then the FSRA will consider the appeal and provide a written notice of its decision to ACL within forty (40) days of the appeal.

**Manner and time for payment of penalty/Administrative Fee(s)**

61. In the event that an appeal is not made to the FSRA, then the penalty/Administrative Fee(s) imposed pursuant to this notice is to be paid by ACL within twenty (20) days of the date of this notice, i.e. on or before **29 June 2022**.

62. Payment of the penalty/Administrative Fee(s) can be made by electronic funds transfer into the following account:

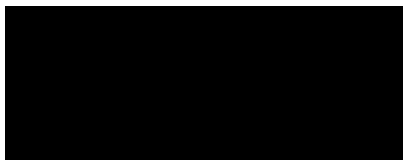
Account Name	[REDACTED]
Account Number	[REDACTED]
IBAN Number	[REDACTED]
Account Type	[REDACTED]
Bank Name	[REDACTED]
Swift Code	[REDACTED]
Reference	[REDACTED]

63. If the penalty/Administrative Fee(s) 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**

64. The FSRA will generally publish, in a manner we consider appropriate and proportionate, information and statements relating to enforcement action. The publication of enforcement outcomes is consistent with the FSRA's commitment to open and transparent processes and our objectives.

Yours sincerely,



Abu Dhabi Global Market Financial Services Regulatory Authority

## ANNEXURE A – CLIENT DETAILS

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]