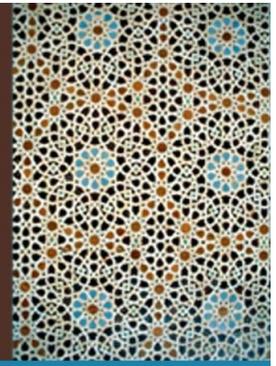


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Loss of Foreign Fund Private Placement Exemptions in the UAE

In August 2016, the Emirates Securities and Commodities Authority (SCA), the federal securities regulator of the United Arab Emirates (UAE), adopted new investment funds regulations (the **2016 Fund Regulations**), which repealed the prior funds regulations which were adopted in 2012 and amended in 2013 (the **2013 Fund Regulations**), clarified the formation process for the establishment of locally domiciled funds and introduced significant changes to the marketing of foreign domiciled investment funds in the UAE. The 2016 Fund Regulations impose substantial hurdles and costs for managers seeking to promote foreign funds in the UAE.

Managers and sponsors wishing to market foreign funds onshore in the UAE now have far fewer options: they can register the fund with SCA and enter into a distribution arrangement with a locally licensed placement agent, engage in reverse solicitation (where the investor inside the UAE initiates the transaction) or rely on an exemption when offering to certain sovereign entities. Funds established in a free zone inside the UAE, including funds established in the Dubai International Financial Centre (DIFC) or the Abu Dhabi Global Market (ADGM), are considered by SCA to be foreign funds.

However, it is widely expected that SCA will issue further clarification regarding additional exemptions, potentially reintroducing the private placement exemptions set out in the 2013 Fund Regulations and introducing additional exemptions for certain other classes of investors, such as multilateral institutions. SCA has not confirmed the timing for the issuance of the clarification or the reintroduction of any private placement exemptions.

Further, it is important to note the 2016 Fund Regulations do not apply to foreign funds wishing to offer in the DIFC or ADGM. Marketing of foreign fund interests and other securities in these free zones is subject

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to separate regulations and must be registered with the financial services regulator in the respective free zone without exception.

Background: 2013 Fund Regulations and Exemptions

The 2013 Fund Regulations introduced the first set of codified fund private placement exemptions in the UAE. Under the 2013 Fund Regulations, foreign funds that were privately placed with the following categories of investors in the UAE were exempt from registration with SCA:

- (a) investment portfolios owned by federal or local governmental agencies;
- (b) institutions or entities whose purpose is to invest in securities, provided that such institutions are acquiring the fund interests for their own account; and
- (c) investment managers with discretionary management authority.

The 2013 Fund Regulations were generally viewed positively as foreign managers were clearly permitted to approach certain types of institutional investors without engaging a local distributor or engaging in a lengthy registration process.

SCA also had adopted certain informal “tolerated” practices including offerings without registration if the foreign manager (i) was marketing to existing clients of the manager and (ii) was relying on reverse solicitation where the investor initiated the query. It is unclear whether the first “tolerated” exemption will continue to be permitted. The second “tolerated” exemption has been codified in the 2016 Fund Regulations as described below.

Requirement for Distribution by a SCA Licensed Placement Agent

The 2016 Fund Regulations provide that foreign funds may be promoted in the UAE only if:

- (a) the foreign fund is registered with SCA; and
- (b) the foreign fund is distributed through a SCA licensed placement agent,

unless the fund can qualify for a limited private placement exemption or rely on reverse solicitation.

The 2016 Fund Regulations provide that SCA shall issue a decision within 30 business days of the submission of the registration application. A foreign fund’s registration expires on 31 December each year and a renewal application must be submitted at least one month before expiry of the registration. Pursuant to SCA Board Decision No. 10 of 2016, the fee payable on the initial registration application is AED 35,000 (approximately US\$9,500). Thereafter a fee of AED 7,500 (approximately US\$2,050) is payable on each annual renewal application.

Reverse Solicitation

As mentioned above, one positive development in the 2016 Fund Regulations is the express ability of foreign managers to offer funds in the UAE under reverse solicitation where an investor initiates the interaction. Reverse promotion is defined as the following scenario: *“an initiative made by an investor in the [UAE] submitting an application to offer or buy specific units of foreign mutual funds out of the [UAE], which is not*

based on promotion by the foreign fund, its promoters or distributors of its units, provided this is substantiated by the concerned entity”.

It is expected that this will become the primary manner through which managers offer foreign funds unless SCA reintroduces additional private placement exemptions. It is critical that a foreign fund seeking to rely on the reverse promotion exemption must keep proper records in order to prove the offering of the concerned securities was initiated by the UAE investor.

Government Agency and Other Exemptions

The 2016 Fund Regulations exempts the promotion of foreign funds to federal or local governmental agencies and any companies wholly-owned by such an agency from the requirement to use a SCA licensed placement agent. As such foreign managers can continue to market foreign funds to and visit sovereign entities based in the UAE and other government related investors.

The following are also exempt from the operation of the 2016 Fund Regulations:

- (a) funds established by federal or local governmental agencies or companies wholly-owned by the government or such funds;
- (b) the accumulation of money for the purposes of investment in a joint bank account;
- (c) the conclusion of group insurance agreements;
- (d) social security programs;
- (e) employee incentive programs; and
- (f) investment plans associated with insurance contracts unless such investments or collected money are directed from such plans to funds.

Conclusion

While the 2016 Regulations do provide clarity regarding the offering process for funds in the UAE, the loss of foreign fund private placement exemptions greatly increases the challenge for foreign funds that wish to fundraise in the UAE. The introduction of the reverse solicitation exemption is a positive development; however, unless SCA issues the expected clarification and reintroduces the broader exemptions, foreign managers and issuers may reconsider the marketing of their products onshore in the UAE.

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