

# EFFECTA'S ESSENTIAL INSIGHTS: A REGULATORY UPDATE

## UAE, October 2023

Welcome to EFFECTA's Essential Insights, a quarterly newsletter aimed at providing its readers with succinct overviews of some of the key regulatory issues currently faced by Firms in the UK and UAE.

The summer has not slowed the regulator down in relation to policy guidance through Dear CEO letters and Dear MLRO letters. There have been changes to regulation and enforcement actions taken, with some significant regulatory action being taken in relation to AML failings, Senior Management Conduct and Cybercrime, three key areas of focus for all regulators it would seem in 2023.

In addition, the FCA are now moving with much more purpose in relation to Diversity & Inclusion, setting out what the Regulator expects of firms and the impact these expectations are likely to have over the next couple of years.

The DFSA has issued its sectorial review of Representative Offices and the FSRA has released new rules around client classification.

As always, our newsletter reflects our consultants, diverse in background and knowledge base. We all enjoy assisting firms with their regulatory questions, but also hold very different areas of expertise, enabling us to cover a wide client base and bring more than one perspective to the table.

More information about our individual consultants can be found on our website, but rest assured whoever you speak with will always try and bring a pragmatic solution. If you would like to discuss any of the topics covered in this newsletter and what implications they may have to your business, please do reach out to us on [info@effectacompliance.com](mailto:info@effectacompliance.com).

To review Effecta UK's Newsletter, [please click here](#).

## 1. The Dubai Financial Services Authority ("DFSA") Issue 'Dear MLRO: Update re High Risk Jurisdictions' Letter

On 11th July, the DFSA issued a 'Dear MLRO: Update re High Risk Jurisdictions' letter. In the letter regulated firms are reminded of their obligation to verify and review their client lists against the UAE National Committee for Combating Money Laundering and Financing Terrorism and Illegal Organisations Committee (the "UAE NAMLCFTC") and Financial Action Task Force ("FATF") lists to ensure compliance with the DFSA's Anti-Money Laundering, Counter-Terrorist Financing and Sanctions module ("AML module").

**Has your Firm completed an analysis of your existing client base to ensure compliance with the DFSA's AML regime?**

## 2. The DFSA Issues Notice of Amendments to Legislation July 2023

On 11th July, the DFSA announced changes to the DFSA rulebooks following the responses to Consultation Paper 147 'Technology: Cyber Risk Management and Innovation Support' and Consultation Paper 150 'Proposals in Relation to Money Services, Crypto Token and Crowdfunding'.

**Has your Firm understood the rule changes and how these may affect your business?**

## 3. The DFSA Disclosures Thematic Review 2023

On 3rd August, the DFSA issued a 'Dear SEO' letter notifying Dubai International Financial Centre ("DIFC") firms of the forthcoming DFSA Disclosures Thematic Review 2023. Disclosures refer to all client communications, including but not limited to financial promotions.

**Does your Firm conduct intermittent reviews of client communications and financial promotions?**

## 4. Outcomes of the DFSA 2023 Representative Office Sectoral Review

The DFSA wrote to all Senior Executive Officers ("SEOs") to inform them of the Outcomes of the 2023 Representative Office ("Rep Office") Sectoral Review. The review assessed whether Rep Office; operate within the scope of their licence, have a sound understanding of their obligations under applicable DFSA Rules; and have implemented an appropriate control framework to monitor and ensure compliance with applicable DFSA Rules.

**Is your Firm a Rep Office and if so, have you reviewed the outcomes?**

## 5. The DFSA Issues AML Fine

On 1st August, the DFSA issued a fine of USD 3.9M to Mirabaud (Middle East) Limited ("Mirabaud") for having inadequate Anti-Money Laundering ("AML") controls between June 2018 and October 2021.

The fine includes disgorgement of USD 975,000, which represents Mirabaud's economic benefit from contraventions in the form of fees and commission. Mirabaud agreed to settle the matter, reducing the fine from USD 3,900,000.

**Has your Firm recently reviewed its AML controls to ensure they meet the current regulatory requirements?**

## 6. Amendments to Abu Dhabi Global Market ("ADGM") Financial Services Regulatory Authority ("FSRA") Regulations (Regulated Activity of Providing Custody and the Conduct of Business Rules)

On 15th August, the FSRA announced changes to its regulatory framework on client classification, client assets and conduct requirements regarding investment businesses. The amendments were enacted in response to Consultation Paper No.2 of 2023 to modernise the FSRA rulebook and to align with international best practices.

**Have you considered the impact of the rule changes on your firm?**



## 1. The DFSA Issue Dear MLRO Letter re High Risk Jurisdictions

### What was the content of the letter?

The letter was published on 12th July as a general reminder for all MLROs to keep abreast of any recent announcements made by the FATF, the UAE NAMLCFTC.

### What actions are Firms required to take now?

Firms are reminded to:

- review, assess and reassess clients in line with the 'black list' and 'grey list' issued by the FATF prior to establishing any business relationships and throughout the lifecycle of such relationships; and
- ensure that the correct level of due diligence is applied to customers, based on their assigned risk rating.

**If you require assistance with a review of your Firm's AML systems and controls for dealing with business in high-risk jurisdictions, please contact us at [info@effectacompliance.com](mailto:info@effectacompliance.com)**



## 2. The DFSA Issue Notice of Amendments to Legislation

### Background to the amendments in legislation

On 11th July, the DFSA announced changes to the DFSA rulebooks following the responses to Consultation Paper No. 147 'Technology: Cyber Risk Management and Innovation Support' and Consultation Paper No. 150 'Proposals in Relation to Money Services, Crypto Token and Crowdfunding'. As a result of these consultations, changes were made to the General Rulebook ("GEN"), Code of Business ("COB"), Auditor Module ("AUD"), Prudential – Investment, Insurance Intermediation and Banking Module ("PIB") and Authorised Market Institutions.

### Key highlights

DFSA Rulebook changes that came into force on the 1st August and include:

#### GEN:

There was mention of the DFSA being asked whether 'wrapper tokens', which are Crypto Tokens that have been wrapped to be used on another blockchain, would have to be recognised. The DFSA confirmed they would need to be recognised Crypto Tokens in the DIFC.

#### COB:

The new rules now require all Money Service Providers holding Client Money to reconcile Client Accounts at least daily and confirm the accuracy of their records and accounts.

The following additional changes will be effective from 1 January 2024:

#### GEN:

New rules have been added specific to cyber risk management, which serve to transpose previous DFSA Guidelines into rules. Firms will be required to create and maintain a cyber risk management framework and appropriate governance structure for identifying and assessing cyber risks. The rules are designed and protect the firms IT and networks from potential cyber-attacks.

### What should be the next steps?

Firms are advised to review the amendments to understand the potential impact and whether current processes and procedures need to be reviewed and updated.

**If you would like assistance with reviewing the upcoming amendments, please contact us at [info@effectacompliance.com](mailto:info@effectacompliance.com)**



### 3. The DFSA Disclosures Thematic Review 2023

#### What is the rationale for the Thematic Review?

On 3rd August, the DFSA issued a 'Dear SEO' letter notifying firms of the forthcoming DFSA Disclosures Thematic Review 2023. The term 'disclosures' refers to all client communications, including but not limited to financial promotions. As communications about financial services and products are designed to enable clients to make informed decisions, firms must have appropriate systems and controls in relation to their communications and financial promotions.

#### What will the review entail?

The DFSA conducted an initial review of information on public websites and followed up with a sample of authorised firms to assess their systems and controls. The purpose of the review to assess the following:

- general compliance with the DFSA's rules on financial promotions
- understanding of the regulatory status disclosure and the scope of licence
- understanding of the split of responsibilities between the group and the firm
- good and poor practices
- outliers and a material need for further action

#### Next Steps

Firms should review their systems and controls concerning client communications and financial promotions to determine that they are in line with current regulatory requirements and are ultimately clear, fair and not misleading. Firms are also encouraged to review the key findings once published by the DFSA.

**If you require an independent review of your systems and controls, please contact us at [info@effectacompliance.com](mailto:info@effectacompliance.com)**



## 4. Outcomes of the DFSA 2023 Representative Office Sectoral Review

### What did the Representative Office Sectoral Review cover?

This sectoral review considered whether Rep Offices were operating within the scope of their licence, had a sound understanding of their obligations under applicable DFSA Rules and had successfully implemented an appropriate control framework to monitor and ensure compliance with applicable DFSA Rules.

### What were the key findings?

The DFSA highlighted their disappointment in observing common findings across both the 2021/2022 and 2023 sectoral reviews.

#### Conduct Compliance

- Some Rep Offices were marketing open-ended property funds and digital asset funds despite such activities being prohibited.
- Business documents, including marketing material (physical and digital) and email signatures did not include the required regulatory disclosures or they were not prominent enough.
- Marketing material did not include the name of the Rep Office and on whose behalf, it was being communicated.
- Letterheads, email signatures and templates disclosed the Head Office details instead of the Rep Office.

#### Financial Crime Compliance

- Rep Offices did not have or conduct an AML Business Risk Assessment ("ABRA") and those with an ABRA did not assess the risks relevant to the DIFC entity.
- ABRA's did not take the 2019 UAE National Risk Assessment findings into consideration
- AML policies and procedures were not appropriately tailored to UAE Federal AML Legislation with respect to targeted financial sanctions and many relied on group policies and procedures.

- Principal Representatives did not comprehend their responsibilities as an MLRO and were unfamiliar with DFSA and UAE Federal requirements, suspicious activity reporting process and sanctions screening process.
- Some MLROs did not provide proof of GoAML registration and subscription to the EOCN notification system.
- Many Rep Offices failed to provide evidence of screening against the UAE Sanctions List and the United Nations Sanctions List.

### What should Rep Offices do now?

Rep Offices were encouraged to conduct a self-review and report gaps and remediation programmes to the DFSA by 30 October 2023.

**If you are a Rep Office and you have not conducted a self-review yet or you have and require support in remediating any gaps, please contact us at [info@effectacompliance.com](mailto:info@effectacompliance.com) for support.**



## 5. The DFSA Issues AML Fine to Mirabaud

### What was the background to the issuance of the fine?

On 1st August, the DFSA issued a fine of USD 3.9M to Mirabaud (Middle East) Limited ('Mirabaud') for inadequate AML controls between June 2018 and October 2021.

Weaknesses in the AML systems and controls meant that the Firm processed transactions for a group of nine interconnected client accounts managed by the same RM despite several clear red flags that should have led to suspicious of money laundering:

- the accounts of seemingly unconnected entities were being opened and operated by a small group of closely connected individuals
- funds were being deposited from third party accounts. One account received USD 58m over 13-month period originating from a number of external accounts not in the same name as the account holder
- transactions were overly complex and inconsistent with the nature and purpose of the accounts and the information known about the customers
- High-risk accounts were being used to make commercial payments without supporting evidence
- significant funds were being transferred overseas to third party entities with opaque ownership structures and bank accounts in jurisdictions different from those in which they were based
- funds were flowing repeatedly between connected entities with no credible rationale or challenge
- Acceptance of very high fees to keep investment accounts operational (despite investments making an overall loss) which made no commercial sense when current/savings accounts charged lower fees

These red flags highlighted significant weaknesses in the Firm's AML systems and controls.

### What should you be doing in response to this?

We recommend that firms undertake an independent review of their AML systems and controls, taking into consideration any onboarding policies and procedures, transaction monitoring protocols and ongoing due diligence procedures. Firms are strongly encouraged to provide training to relevant employees on the above findings and inherent AML risks.

**If you wish Effecta to conduct a review of your existing AML framework and/or provide technical support to remediate any weaknesses in your systems and controls, please contact us at [info@effectacompliance.com](mailto:info@effectacompliance.com).**



## 6. Amendments to the FSRA Regulatory Framework

### Background to the amendments

On 15th August, the FSRA announced changes to its regulatory framework on client classification, client assets and conduct of business requirements. The amendments were enacted in response to Consultation Paper No.2 of 2023 to align the FSRA rulebook with international best practices.

### What changes have been made?

Enhancements relating to client classification rules include for example:

- a. **"Assessed" Professional Clients:**  
Increasing the net asset threshold for individuals and own funds or called up capital requirement for undertakings from \$500,000 to \$1,000,000.
- b. **Service-Based Professional Clients:**  
The "Service-Based" Professional Client definition has been removed and certain undertakings may be classified Professional Clients only for the purposes of the Regulated Activities of Providing Credit, Advising on Investments or Credit, Arranging Credit or Arranging Deals in Investments for the purpose of Corporate Structuring and Finance.
- c. **Market Counterparties:**  
Under the old rules, a Market Counterparty was as an alternative to being a Professional Client. In the new rules, Market Counterparties have now been included as a sub-set of Professional Client. It must be noted however, that the new rules do not alter the qualifications required of a Market Counterparty or affect the classification of any existing Market Counterparty clients.
- d. **Obligations on Authorised Persons:**  
The FSRA introduced an additional obligation on Authorised Persons to inform each "Assessed" Professional Client of the need to keep the Authorised Person informed of any changes which may affect such client's classification, e.g., where a client may fall below the net assets threshold.

- e. **Status of Regulated Financial Institutions:**  
Under the previous rules, firms located outside ADGM and authorised to carry on financial services activities by foreign financial services regulators were not considered "Deemed" Professional Clients. With the introduction of the new rules, regulated financial institutions are now included in the "Deemed" Professional Client criteria.
- f. **Single-Family Offices:**  
Under the previous rules, Single Family Offices (the "SFOs") were included the "Deemed" Professional Client criteria. To acknowledge that SFOs may vary substantially in size and level of sophistication, SFOs must be considered under the "Assessed" Professional Client criteria.  
It must be noted though that SFOs which meet other "Deemed" Professional Client criteria, such as a Large Undertaking, shall continue to qualify as "Deemed" Professional Client without the need for additional assessment.  
Substantial enhancements have also been made to provisions for holding and controlling client assets.

### What are the next steps?

Firms are expected to:

- review the detailed updates and potential impact on business activities
- communicate updates to senior management
- update policies, procedural documents and forms to reflect the changes, where necessary
- provide training to relevant employees, where required
- incorporate changes in ongoing compliance monitoring programme

If you would like assistance with the next steps above, please contact us at [info@effectacompliance.com](mailto:info@effectacompliance.com)