



ABU DHABI GLOBAL MARKET
سوق أبوظبي العالمي

*CONSULTATION PAPER
NO. 4 OF 2021*

**PROPOSED MERGER OF FSRA
REGULATORY COMMITTEE AND
APPEALS PANEL**

3 November 2021

*Introduction****Why are we issuing this paper?***

1. Abu Dhabi Global Market (ADGM) has issued this Consultation Paper to invite public comment on its proposal to merge functions of the two independent review bodies of the Financial Services Regulatory Authority (FSRA), the Regulatory Committee and the Appeals Panel, into one amalgamated body.

Who should read this paper?

2. The proposals in this Consultation Paper will be of interest to individuals and organisations operating within the ADGM, as well as their legal advisors.

How to provide comments

3. All comments should be in writing and sent to the address or email specified below. If sending your comments by email, please use the Consultation Paper number in the subject line. ADGM reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments. Comments supported by reasoning and evidence will be given more weight by ADGM.

What happens next?

4. The deadline for providing comments on this proposal is **5 December 2021**. Once we receive your comments, we will consider whether any modifications are required to this proposal. We will then proceed to enact the proposed amendments. You should not act on these proposals until the relevant regulations are issued. We will issue a notice on our website when this happens.

Comments to be addressed to:

Consultation Paper No. 4 of 2021
Abu Dhabi Global Market
ADGM Square
Al Maryah Island
PO Box 111999
Abu Dhabi, UAE
Email: consultation@adgm.com

Background

1. Independent merits reviews of decisions made by regulators (merits review) are an important protective function for the providers of financial services who have been affected by a decision made by the regulator. Within ADGM, potential decisions by the FSRA that might fall within the scope of merits review include imposing conditions on, suspending or cancelling, the Financial Services Permission of an authorised entity.
2. Merits review involves taking a fresh look at the facts, law and policy relating to a particular decision, where the reviewer (preferably an independent body) can look at new information that was not available to the original decision-maker. The independent body will consider all the information before them and decide what the appropriate decision should be.
3. The current ADGM legal framework provides for two levels of independent review prior to judicial review by the ADGM Courts.
4. While having two review processes was appropriate when the ADGM was established, we consider that our stakeholders, including authorised entities, and the FSRA, will be better served by having a more streamlined and efficient process for the timely resolution of regulatory proceedings, with one independent external body conducting merits review.
5. The first level comprises the Regulatory Committee, with its principal role being to undertake full merits review of decisions made by the Regulator against affected persons.
6. The second level comprises the Appeals Panel, which undertakes a full merits review of decisions made by the Regulatory Committee.
7. Thereafter, appeals may be made to the ADGM Court of First Instance on the grounds that the decision was wrong in law or is in excess of the Appeal Panel's jurisdiction.
8. In addition to its full merits review function, the Regulatory Committee has a secondary role. Where necessary, it may make an executive (that is, first instance) decision referred to it by the FSRA. While this is a very limited role and this function has not been exercised to date, we propose to retain the function. This role may be needed in the event of an actual or perceived conflict of interest which cannot be resolved satisfactorily. In addition, other jurisdictions (such as the Financial Markets Tribunal of the Dubai Financial

Services Regulatory Authority and the Regulatory Decisions Committee of the Financial Conduct Authority in the UK) have a similar executive decision-making functions for their internal decision-making bodies.

9. We are proposing to merge these two bodies into one new amalgamated body, to be known as the Appeals Panel. In so far as is possible, we propose to retain as much of the existing legal and procedural framework in the proposed amendments, including the process of appointment of members and their qualifications. This also includes applications for judicial review of a decision of the Appeals Panel being made to the ADGM Court of First Instance on the grounds that the decision is wrong in law or is in excess of the Appeal Panel's jurisdiction.
10. The proposed amendments will improve efficiency and independent decision making and come at an appropriate time in the maturing growth of ADGM. The advantages of merging the two bodies include a streamlined and less complicated review process of our decisions and less expenses for litigants.
11. We perceive no real disadvantage to a merger, and note that other jurisdictions (such as the UK, Australia and the DIFC) offer only one single merits review of a decision of the Regulator.
12. As to the secondary (executive decision-making) role of the Regulatory Committee, the present position is that any decision made by it may be referred to the Appeals Panel for full merits review, following which appeals may be made to the ADGM Court of First Instance on the grounds that the decision was wrong in law or is in excess of the Appeal Panel's jurisdiction.
13. Under the proposals, an executive decision will be made by a single member of the Appeals Panel. A full merits review would then rest with a panel of three members. Appeals relating to decisions of the three-person panel could then be made to ADGM Court of First Instance on the grounds that the decision was wrong in law or is in excess of the Appeal Panel's jurisdiction.
14. There are a number of models employed in other jurisdictions for reviews of executive decision making, with no common or consistent model. We are proposing the model described above as the proposal:
 - a) reflects our present model, in that there will be a full merits review of executive decisions, following which there will be an appeal to the ADGM Court of First Instance; and
 - b) is consistent with the UK model where first instance decisions of the Regulatory Decisions Committee of the Financial Conduct Authority may be referred to the UK Upper Tribunal for a full merits review, and

thereafter may be appealed to the UK Court of Appeal on questions of law.

Question 1:

- (a) Do you have any comments on the proposed merger of the Regulatory Committee and the Appeals Panel in relation to decisions made by the new body?
- (b) Do you have any comments on the proposed merger of the Regulatory Committee and the Appeals Panel in relation to executive decisions?

- 15. The proposed framework will principally be implemented by amendments to the Financial Services and Markets Regulations 2015 (FSMR).
- 16. The Financial Services and Markets Regulations 2015 showing effect of proposed amendments are attached as **Annex A**.

Question 2:

Do you have any comments on the proposed amendments?

Panel size?

- 17. Currently, both the Regulatory Committee and the Appeals Panel have panels of three members, which is legislatively-mandated in FSMR for the Regulatory Committee. The requirement for the Appeal Panel to have panels of three appears in the Appeal Panel's Practice and Procedures Guidelines.
- 18. We consider that the President of the Appeals Panel should retain their discretion about how many members should comprise the panel considering a particular matter. For instance, complex matters may require a number of members, but straightforward matters may not. This is also consistent with other jurisdictions including the UK.

Private or public hearings?

- 19. The Regulatory Committee holds its hearings in private unless it decides otherwise. The Appeals Panel, on the other hand, holds its hearings in public, unless ordered otherwise or the rules of procedure provide otherwise. We propose to retain the same hearing model for merits review references heard by the new body, that is, public hearings unless ordered otherwise. However, we propose that executive decisions be made by the Appeals Panel (constituted by a single member) in private.

Question 3:

Do you have any comments on the proposal relating to either procedural matter described above?

20. It is proposed that the new body will commence operation on 1 January 2022. In the event there are any references before the Regulatory Committee, transitional provisions will deem those references as a matter before the (new) Appeals Panel, and the President will be empowered to reconstitute the panel hearing the reference if necessary.

Proposed Amendments

Annex A: Financial Services and Markets Regulations 2015 showing effect of proposed amendments