

16 January 2024

Anamcara Fund I. L.P
DD-14-124-052
Level 14, Wework Hub71
Al Khatem Tower
Abu Dhabi Global Market Square
Al Maryah Island
Abu Dhabi
United Arab Emirates

Attention:

[REDACTED]

Sent by e-mail:

[REDACTED]

Dear Sirs

AMENDMENT OF DECISION IN RELATION TO PENALTY IMPOSED FOR CONTRAVENTIONS OF THE COMMON REPORTING STANDARD REGULATIONS 2017

1. The Financial Services Regulatory Authority (“FSRA”) of the Abu Dhabi Global Market (“ADGM”) hereby confirms its decision to impose an amended penalty on Anamcara Fund I L.P (“AF”) pursuant to subsection 9(1) of the *Common Reporting Standard Regulations 2017* (the “Regulations”). This notice is issued pursuant to Article 7(5) of Cabinet Resolution No. 93 of 2021 (“Cabinet Resolution”), which applies pursuant to the Regulations, following due consideration of an appeal submitted by AF on 24 October 2023 in response to a notice from the FSRA dated 28 September 2023.

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 considers that AF, having classified itself as a Reporting Financial Institution (“RFI”) for the purposes of the Regulations, failed to report information as required by the Regulations in a complete and accurate manner by failing to report one (1) Reportable Account, in contravention of

FINANCIAL SERVICES REGULATORY AUTHORITY
سلطة تنظيم الخدمات المالية

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subsection 3(1) and Schedule 1, Part 1, paragraph A of the Regulations in force at the time of the contravention (“2022 Regulations”)¹.

4. Following due consideration of AF’s appeal, submitted pursuant to subsection 9(2) of the Regulations, the FSRA has decided to impose a total penalty of AED 5,000 on AF, pursuant to subsection 9(1) of the Regulations.

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 CRS 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 RFIs.
7. Appropriate legislation to support the implementation of the CRS in the UAE has been issued at both a federal level in the UAE and in the ADGM. This includes the enactment of the Regulations by the Board of Directors of ADGM in 2017. The Regulations apply the Cabinet Resolution in the ADGM pursuant to subsection 2(1) of the Regulations, and the CRS and any explanatory material and commentary published by the OECD in relation to the CRS pursuant to subsection 3(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 the CRS across all jurisdictions within the UAE.
9. On 26 May 2021, AF was registered as a limited liability partnership to carry on the business activity of an ‘Investment Partnership’.
10. On 18 August 2021, the FSRA sent an email to Senior Executive Officers (“SEOs”) and Money Laundering Reporting Officers (“MLROs”), attaching Notice 19 of 2021, informing them that the UAE was under review by the OECD regarding the implementation of the CRS and all Relevant Persons were instructed to complete the CRS Risk Based Questionnaire by 26 August 2021. Relevant Persons were reminded that failure to comply may constitute a breach of Cabinet Resolution (5/11) of 2020 (which was subsequently replaced by the Cabinet Resolution) and that the FSRA may take appropriate action for contraventions of federal laws and FSRA requirements.
11. On 21 September 2021, the FSRA published Notice No. 25 of 2021 – ‘CRS Compliance Programme’, enclosing Notice No. 19 of 2021, to assist SEOs and MLROs to understand the CRS Compliance Programme and actions that the RFI would need to adopt and implement, and 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.

¹ See:

[https://en.adgm.thomsonreuters.com/sites/default/files/net_file_store/CRS_Regulations_2017_\(Consolidated_January_2022\)_v4.pdf](https://en.adgm.thomsonreuters.com/sites/default/files/net_file_store/CRS_Regulations_2017_(Consolidated_January_2022)_v4.pdf)

12. On 28 September 2021, the FSRA sent an email to SEOs and MLROs enclosing Notice No. 26 of 2021 and a 'UAE FATCA and CRS Entity Self-Certification Form' ("Entity Self-Certification Form") for completion and return to the FSRA by 7 October 2021.
13. On 7 October 2021, AF sent an email to the FSRA enclosing AF's Entity Self-Certification Form. In the form, AF classified itself as an 'Investment Entity', and thus an RFI.
14. On 17 May 2022, the Ministry of Finance announced the go-live of the Automatic Exchange of Information ("AEOI") reporting portal for submission of returns relating to CRS, and the Foreign Account Tax Compliance Act as implemented in the UAE.
15. On 20 June 2022, the FSRA sent an email to SEOs and MLROs enclosing Notice No. 20 of 2022 stating that the AEOI portal would be open for submission of the annual information return relating to CRS ("CRS Return") for the 2021 calendar year on 20 June 2022, and that submissions must be made by 20 July 2022.
16. On 23 June 2022, the FSRA sent an email to AF stating that, based on the Entity Self-Certification Form provided by AF referred to in paragraph 13 above, AF had been identified as an RFI and accordingly reminding AF of the requirements of Notice No. 20 of 2022 referred to in paragraph 15 above.
17. On or around 15 July 2022, AF registered on the AEOI portal and filed its annual information return relating to CRS for the 2021 calendar year via the AEOI portal.
18. The Ministry of Finance extended the deadline for submission of CRS Returns for the 2021 calendar year to 15 August 2022.
19. On 9 November 2022, the FSRA sent an email to AF enclosing Notice No. 46 of 2022, and the CRS Questionnaire ("Questionnaire"). The FSRA informed AF that it had been selected for an audit review for compliance with the Regulations in respect of the 2021 calendar year ("Review"), and that the Review would be based on its CRS Return submitted on the AEOI portal.
20. On 23 November 2022, the FSRA sent an email to AF stating that the Ministry of Finance had informed the FSRA that the Questionnaire needed to be submitted manually by 15 December 2022.
21. On 23 December 2022, the FSRA sent an email to AF advising that the FSRA had not yet received the completed Questionnaire. AF was advised that failure to comply and return the Questionnaire by the extended deadline of 31 December 2022 may constitute a breach of the Regulations.
22. On 27 December 2022, AF sent an email to the FSRA attaching the completed Questionnaire.
23. On 16 January 2023, the FSRA sent an email to AF informing AF that the Review would be conducted on 1 February 2023. The FSRA asked AF to confirm its availability for the Review, and to provide the required information and documents by 23 January 2023.
24. On 23 January 2023, AF sent an email to the FSRA attaching the requested documents for the Review in advance of the Review.
25. On 1 February 2023, the FSRA conducted the Review.

ALLEGED FAILURE TO CONDUCT DUE DILIGENCE PROCEDURES

26. Subsection 6(1) of the 2021 Regulations required every RFI to keep records of the steps undertaken and any evidence relied upon for the performance of the due diligence procedures and the measures to obtain those records that the RFI obtained or created for the purpose of complying with the 2021 Regulations.
27. Schedule 1, Part 6, subparagraph A(1)(a) of the 2021 Regulations set out the procedures that RFIs must apply for New Entity Accounts to determine the residence of the Account Holder and, where applicable, its Controlling Persons². This included obtaining a self-certification that allowed the RFI to determine the Account Holder's residence(s) for tax purposes and the RFI confirming the reasonableness of such self-certification based on the information obtained by the RFI in connection with the opening of the account.
28. The Review was unable to establish, based on a review of the file of the Client identified as Client 1 in Annexure A to this notice, that AF had undertaken the required due diligence procedures to validate the self-certification provided for Client 1.
29. The FSRA therefore considered that AF had contravened subsection 6(1) and Schedule 1, Part 6, paragraph A(1)(a) of the 2021 Regulations. The 2021 Regulations apply because that was the version of the Regulations that was in force from the date of Client 1's self-certification form until the opening of Client 1's account on 27 October 2021.

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

30. Schedule 1, Part 1, subparagraph A of the 2022 Regulations set out the information that each RFI must collect and report each calendar year with respect to each Reportable Account.

Client 2

31. Schedule 1, Part 8, subparagraph D(1) of the 2022 Regulations defined a "Reportable Account" as a *"Financial Account that is maintained by a Reporting Financial Institution and is held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person..."*
32. Schedule 1, Part 8, subparagraph D(2) of the 2022 Regulations defined a "Reportable Person" as a *"Reportable Jurisdiction Person other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a Related Entity of a corporation described in clause (i); (iii) a Governmental Entity; (iv) an International Organisation; (v) a Central Bank; or (vi) a Financial Institution."*
33. A "Reportable Jurisdiction Person" was defined in Schedule 1, Part 8, subparagraph D(3) of the 2022 Regulations to mean an individual or Entity that is resident in a Reportable Jurisdiction, which was defined in the following subparagraph D(4) to mean for these purposes a jurisdiction other than the United States of America or the UAE.

² Where the Entity is a Passive NFE.

34. Schedule 1, Part 6, subparagraph A(2) of the 2022 Regulations set out that *“With respect to an Account Holder of a New Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons and determine the residence of such Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account.”*
35. The self-certification form provided to AF by Client 2 as identified in Annexure A to this notice, records Client 2 as an entity incorporated in Luxembourg and self-classified as a ‘Passive NFE’. The self-certification form of the Controlling Person of Client 2 identified as CP1 in Annexure A to this notice recorded that individual's jurisdiction of tax residence as Spain, which is a Reportable Jurisdiction. Accordingly, CP1 was a Reportable Jurisdiction Person and, as an individual, a Reportable Person. AF was therefore required to report this account as a Reportable Account because Client 2 self-classified as a ‘Passive NFE’ and CP1 was a Reportable Person.
36. AF did not include the account of Client 2 as a Reportable Account in its 2021 CRS Return. Therefore, the FSRA considers that AF contravened subsection 3(1) and Schedule 1, Part 1, paragraph A of the 2022 Regulations by failing to report the information that is required to be reported under the Regulations in a complete and accurate manner.

CONSIDERATION OF APPEAL

37. On 28 September 2023, the FSRA issued AF with a notice in which it imposed on AF a penalty of AED 30,000 and directed AF to take remedial steps in relation to compliance with the Regulations. The amount of the penalty included:
 - a. a penalty of AED 25,000 for an alleged failure to apply due diligence procedures in contravention of Schedule 1, Part 6, subparagraph A(1)(a) of the 2021 Regulations; and
 - b. a penalty of AED 5,000 for an alleged failure to report the information required to be reported under these Regulations in a complete and accurate manner, by failing to report one (1) Reportable Account, in contravention of subsection 3(1) and Schedule 1, Part 1, paragraph A of the 2022 Regulations.
38. Under subsection 9(2) of the Regulations and Article 7(1) of the Cabinet Resolution, AF had the opportunity to appeal against the FSRA's decision set out in the notice dated 28 September 2023.
39. On 24 October 2023, AF submitted its appeal against the penalty of AED 25,000 on the grounds that AF did not commit the violation attributed to it.
40. AF's appeal was acknowledged by the FSRA on 25 October 2023.
41. In its appeal AF asked the FSRA to take the following matters into consideration.
 - a. In relation to Client 1, that RFIs are required to perform due diligence procedures on all accounts held by an account holder (or a controlling person, in the case of a Passive NFE) who is resident for tax purposes in a jurisdiction other than the United States of America (“USA”). AF submitted that the W9 form dated 26 February 2019 and due diligence documents collected for AML purposes in relation to Client 1 were sufficient for AF to consider Client 1 as a tax resident of the USA. Accordingly due diligence pursuant to the Regulations was not required, as the account was reportable under FATCA.

- b. In relation to Client 2, that the reporting failure for CP1 was due to a clerical error, and that AF has ensured that Client 2 and CP1 are correctly reported in the return filed in relation to the 2022 calendar year.
42. The FSRA has considered the grounds and documents submitted in support of AF's appeal.
43. In relation to Client 1, whilst AF did not tick the box providing confirmation that the tax residence countries of Client 1 had been declared, AF had as part of its AML /KYC procedures obtained confirmation from Client 1 on 26 February 2019 that it was a US Person. Accordingly, the FSRA has decided to accept the appeal and revoke the fine in relation to Client 1.
44. In relation to Client 2, by AF's own admission the reporting failure in respect of CP1 was due to a clerical error. The FSRA expects all RFIs to correctly report information in accordance with the Regulations. The FSRA is unable to recognise changes made to prevent future failures in relation to the imposition of a penalty for failures that have already occurred.
45. In light of the foregoing, the FSRA has decided to vary its previous decision in this matter, as follows.
- a. The FSRA has decided not to impose a penalty of AED 25,000 on AF for an alleged failure to apply due diligence procedures in respect of Client 1.
 - b. The FSRA has decided to confirm its decision to impose a penalty of AED 5,000 on AF for its failure to report one (1) Reportable Account in respect of Client 2.

PENALTIES AND DIRECTIONS

46. The FSRA considers AF to have failed to report information as required by the Regulations in a complete and accurate manner, by failing to report one (1) Reportable Account, in contravention of subsection 3(1) and Schedule 1, Part 1, paragraph A of the 2022 Regulations.

The Penalty

47. The penalty for a failure to report information as required by the Regulations in a complete and accurate manner was set out in Schedule 2, Part A, paragraph 1.5 of the 2022 Regulations.
48. The total penalty imposed by the FSRA on AF is AED 5,000.

PROCEDURAL MATTERS

Manner and time for payment of penalty

49. Pursuant to Article 6(4) of the Cabinet Resolution, the penalty imposed pursuant to this notice is to be paid by AF within fifteen (15) business days from the date of this notice, i.e. on or before **6 February 2024**.
50. Payment of the penalty can be made by electronic funds transfer into the following account:

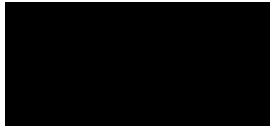
Account Name	[REDACTED]
Account Number	[REDACTED]
IBAN Number	[REDACTED]
Account Type	[REDACTED]
Bank Name	[REDACTED]
Swift Code	[REDACTED]
Reference	[REDACTED]

51. If the penalty 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

52. The FSRA will generally publish, in a manner we consider appropriate and proportionate, information and statements relating to enforcement action. Accordingly, the FSRA will publish relevant information about the decision in this notice, including the notice itself, as the FSRA considers appropriate. The publication of enforcement outcomes is consistent with the FSRA's commitment to open and transparent processes and our objectives.

Yours sincerely,



Mr. Adrian Bock
Director - Enforcement
Abu Dhabi Global Market Financial Services Regulatory Authority