

## Overview of the Rules for Qualified Foreign Financial Institutions' Investment in Listed Shares in Saudi Arabia

On 22 July 2014, the Saudi Arabian Capital Market Authority (**CMA**) announced that it had been given approval<sup>1</sup> to permit qualified foreign financial institutions (**QFI**) to trade directly<sup>2</sup> in shares listed on the Saudi Arabian Stock Exchange (the **Tadawul**) and that the CMA expected the Tadawul to be open to QFI's at some point during the first six (6) months of 2015.

The CMA subsequently<sup>3</sup> issued Draft Rules for Qualified Financial Institutions in Listed Shares<sup>4</sup> (the **Draft Rules**) and invited interested parties to submit their comments and observations on the Draft Rules to the CMA not later than 27/01/1436 H / 20/11/2014. Having reviewed and considered the comments from interested parties about the Draft Rules, the CMA issued on 15/7/1436 H / 4 May 2015 the Rules for Qualified Foreign Financial Institutions Investment in Listed Shares<sup>5</sup> (the **Rules**). The purpose of this note is to provide an overview of the Rules.

### 1. REGISTRATION OF A QFI

A foreign financial institution that wishes to invest in shares listed on the Tadawul must first apply to the CMA to be registered as a QFI.

#### 1.1 Who Can Apply to be Registered as a QFI?

Only a Bank,<sup>6</sup> Brokerage and Securities Firm,<sup>7</sup> Fund Manager,<sup>8</sup> or Insurance Company<sup>9 10</sup> that:

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<sup>1</sup> See Council of Ministers' Resolution No. 388 dated 24/9/1435 H / 21/7/2014.

<sup>2</sup> Parties that are not resident in Saudi Arabia or that are not nationals of a GCC member state can currently trade indirectly in shares listed on the Tadawul via swaps. See CMA Circular No. 2132/5 dated 30/3/1431 H / 16/3/2010.

<sup>3</sup> See Resolution of the Board of the Capital Market Authority dated 25/10/1435 H / 21/8/2014.

<sup>4</sup> For an uncertified English-language translation of the Draft Rules, see <http://cma.org.sa/en/Documents/Draft%20Rules%20for%20Qualified%20Foreign%20Financial%20Institutions%20Investment%20In%20Listed%20Shares%20final%20pdf.pdf>.

<sup>5</sup> See Resolution of the Board of the Capital Market Authority No. 1-42-2015 dated 15/7/1436 H / 4 May 2015.

<sup>6</sup> Article 2(c) of the Rules defines a **Bank** as a financial institution that has a legal personality and that engages in banking business.

<sup>7</sup> Article 2(c) of the Rules defines a **Brokerage and Securities Firm** as a financial institution that has a legal personality and that engages in Securities Business. Article 3 of the Saudi Arabian Securities Business Regulations defines **Securities Business** as engaging in any Securities Activity (i.e., dealing, arranging,

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- (a) Is incorporated and licensed in a jurisdiction that applies regulatory and monitoring standards equivalent to those of the CMA or acceptable to the CMA;<sup>11</sup>
  - (b) Has assets under management<sup>12</sup> of a value of at least SAR 18,750,000,000 (approximately US\$ 5,000,000,000);<sup>13</sup> and
  - (c) Has been engaged in securities activities and investment for at least five (5) years,<sup>14</sup>
- (an **Applicant**) can apply to be registered as a QFI.

## 1.2 How to Apply to be Registered as a QFI?

- (a) The Draft QFI Assessment Agreement

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managing, advising, or custody services; see Article 2 of the Securities Business Regulations) by any person acting by way of business unless any of the exclusions specified in Chapter 2 of Part 1 of the Securities Business Regulations apply.

<sup>8</sup> Article 2(c) of the Rules defines a **Fund Manager** as a financial institution that has a legal personality and that manages the assets of an Investment Fund. Article 2(c) of the Rules defines an **Investment Fund** as any of the following legal persons: (i) a sovereign wealth fund that is fully owned by a government entity or by a legal person fully owned by a government entity; (ii) a pension fund the main objective of which is to collect fees or periodic contributions from participants, or for their interest, for the purpose of compensating them according to a specific mechanism; or (iii) a collective investment scheme aimed at providing investors therein with an opportunity to participate collectively in the profits of the scheme.

<sup>9</sup> Article 2(c) of the Rules defines **Insurance Company** as a financial institution that has a legal personality that engages in the insurance business.

<sup>10</sup> See Article 6(a)(1) of the Rules.

<sup>11</sup> See Article 6(a)(2) of the Rules.

<sup>12</sup> The Frequently Asked Questions on the Rules for Qualified Foreign Financial Institutions Investment in Listed Shares, as approved by Resolution of the Board of the Capital Market Authority No. 3-42-2015 dated 15/7/1436 H / 4 May 2015 (the **FAQ**), states in part that **assets under management** includes (i) assets owned by the Applicant or its Group for the purpose of investment; and (b) assets managed by the Applicant or its Group for the account of another person or persons. The Glossary of Defined Terms Used in the Regulations and Rules of the Capital Market Authority, as enacted by Resolution of the Board of the Capital Market Authority No. 4-11-2004 dated 20/8/1425 H / 4 October 2004, as amended (the **Glossary**) defines **group** as, in relation to a person, that person and each Affiliate of that person.

<sup>13</sup> See Article 6(b)(1) of the Rules. Note that Article 6(b)(1) of the Rules gives the CMA the authority to reduce the required value of assets under management to SAR 11,250,000,000 (approximately US\$ 3,000,000,000).

<sup>14</sup> See Article 6(c) of the Rules.

The first step to be undertaken by an Applicant that wishes to be registered as a QFI is to agree with an Assessing Authorized Person<sup>15</sup> (**AAP**) upon a draft QFI Assessment Agreement,<sup>16 17</sup> which must include at least certain specific representations, undertakings, and confirmations from the Applicant, each in the form as specified by the CMA.<sup>18</sup>

(b) Submitting the Application to be Registered as a QFI

After the draft QFI Assessment Agreement has been agreed between the Applicant and the AAP, the Applicant must submit to the AAP a completed standard form Qualified Foreign Investor Application for Registration Form (a **QFI Registration Form**) supported by the information and documents specified in Part 1 of Annex 2.1 of the Rules.<sup>19</sup> Part 1 of Annex 2.1 of the Rules requires an Applicant to submit in support of the QFI Registration Form:

- (i) Details of the Applicant's legal form and jurisdiction of establishment, supported by copies of relevant constitutional documents;
- (ii) A description of the Applicant's business activities, which may be extracted from the Applicant's annual report or equivalent corporate documents but which should include confirmation of the period for which the Applicant has been engaged in securities activities and investment therein;
- (iii) Evidence of the Applicant's regulatory status;

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<sup>15</sup> An **Authorized Person** is a Saudi legal entity that is licensed by the CMA to provide dealing, arranging, managing, advising, and/or custody services; see the Authorized Persons Regulations, as enacted by Resolution of the Board of the Capital Market Authority No. 1-83-2005 dated 17/5/1426 H / 28/6/2005, as amended, and the Securities Business Regulations, as enacted by Resolution of the Board of the Capital Market Authority No. 2-83-2005 dated 21/05/1426 H / 28/6/2005. Article 2(c) of the Rules defines an **Assessing Authorized Person** as an Authorized Person that has agreed with an Applicant to assess the Applicant's application for registration as a QFI or an Authorized Person who has executed a QFI assessment agreement with a QFI. Article 24(a) of the Rules specifies that an AAP must be an Authorized Person that is licensed to provide dealing services.

<sup>16</sup> Article 2(c) of the Rules defines a **QFI Assessment Agreement** as an agreement between the Assessing Authorized Person and the QFI meeting the requirements set out in Article 12 of the Rules.

<sup>17</sup> See Article 12 of the Rules.

<sup>18</sup> See Article 12(b) of the Rules. See also the CMA document entitled "The Minimum Requirements that must be included in the QFI Assessment Agreement Form as per Article 12 of the QFI's Rules" available at <http://www.cma.org.sa/En/Documents/The%20Minimum%20Requirements%20that%20must%20be%20included%20in%20the%20QFI%20Assessment%20Agreement%20Form.docx>.

<sup>19</sup> See Article 8(a) of the Rules.

- (iv) A list of all Controllers<sup>20</sup> of the Applicant, and provide details of the identity and ownership of each Controller (if applicable);
- (v) A copy of the most recent annual report and consolidated accounts of the Applicant and (where applicable) its group;
- (vi) The identity of any Affiliate;<sup>21</sup>
- (vii) Details of other account names or affiliations under which the Applicant or its Affiliates invest in the Kingdom, if any;
- (viii) Details of all Authorized Persons of which the Applicant or any of its Affiliates or its clients on whose behalf it intends to invest in listed shares is a client;
- (ix) Details of all of the following legal or regulatory sanctions imposed on the Applicant or its Affiliates during the five (5) years prior to the submission of the application:
  - (A) The suspension or revocation by a regulatory authority of any license or permission in any jurisdiction or the imposition by a regulatory authority of any material restriction or condition upon any such license or permission; and
  - (B) Any criminal, civil or regulatory sanction or penalty imposed as a result of insider trading, market manipulation or other market abuse or misconduct.

together with a declaration from the Applicant that no other such sanctions have been imposed on the Applicant or its Affiliates during this period. If no legal or regulatory sanctions falling within the categories specified in this paragraph have been imposed on the Applicant or its Affiliates during the past five (5) years, a declaration by the Applicant to this effect is required;
- (x) Details of any pending or ongoing criminal or regulatory investigations or civil proceedings;
- (xi) Details of any settlement regarding criminal or regulatory investigations or civil proceedings during the five (5) years prior to the submission of the application;

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<sup>20</sup> The Glossary defines **Control** as the ability to influence the actions or decisions of another person through, whether directly or indirectly, alone or with a relative or Affiliate, (a) holding 30% or more of the voting rights in a company, or (b) having the right to appoint 30% or more of the members of the governing body; **Controller** shall be construed accordingly.

<sup>21</sup> The Glossary defines an **Affiliate** as a person who controls another person or is controlled by that other person, or who is under common control with that person by a third person. In any of the preceding, control could be direct or indirect.

- (xii) Financial statements prepared and accredited by the Applicant's auditors in accordance with accounting standards prescribed by the relevant authorities in the Applicant's jurisdiction of establishment, and showing the Applicant's current financial position, including its capital, financial resources, revenues and expenses at the date of the financial statements;
- (xiii) Confirmation of its consent that the assessing Authorized Person may disclose to the CMA or the Tadawul information which the assessing Authorized Person receives under the Rules or the Capital Market Law and its Implementing Regulations, and that such information may also be disclosed to other government agencies of the Kingdom in accordance with the relevant laws;
- (xiv) Confirmation by the Applicant of its consent to disclose any information or documents required by the CMA or other government agencies of the Kingdom in accordance with the relevant laws; and
- (xv) Such other documents or other evidence as may be sufficient to satisfy each of the registration conditions under the Rules.

### 1.3 Assessment by the AAP of the Application to be Registered as a QFI

The AAP to which the Applicant's application for registration as a QFI is submitted must take the necessary steps to ensure that all information and documents required by the Rules are complete and accurate and ensure that the Applicant's application complies with the requirements specified by the Rules.<sup>22</sup> The AAP must provide a determination of the Applicant's application for registration as a QFI within five (5) days<sup>23</sup> of receiving all information and documents required by the Rules.<sup>24</sup>

### 1.4 Notice from the AAP to the CMA

Within one (1) day of its determination of an Applicant's application to be registered as a QFI, the AAP must give notice to the CMA (in the approved form<sup>25</sup>) of such determination,<sup>26</sup> complete with reasons. Such notice must be supported by:

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<sup>22</sup> See Article 11(b) of the Rules.

<sup>23</sup> Please note that the Glossary defines a **day** as a business day in the Kingdom in accordance with the official working days of the CMA.

<sup>24</sup> See Article 11(a) of the Rules.

<sup>25</sup> Where the AAP approves the Applicant's application to be registered as a QFI, the AAP must give notice to the CMA in the form of the CMA document entitled "The Assessing Authorized Person's Acceptance Determination Template (to Register a QFI or to Approve a QFI Client)" available at [http://www.cma.org.sa/En/Documents/The%20Assessing%20Authorised%20Person%20Acceptance%20Determination%20Template%20\(to%20Register%20a%20QFI%20or%20to%20Approve%20a%20QFI%20Client\)](http://www.cma.org.sa/En/Documents/The%20Assessing%20Authorised%20Person%20Acceptance%20Determination%20Template%20(to%20Register%20a%20QFI%20or%20to%20Approve%20a%20QFI%20Client))

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- (a) Certain of the documents and information submitted by the Applicant in support of the completed QFI Registration Form. The particular documents and information vary with the nature of the Applicant;<sup>27</sup>
- (b) The draft QFI Assessment Agreement agreed with the Applicant;<sup>28</sup> and
- (c) The necessary written declarations of the AAP as specified in the approved form of the notice to the CMA.<sup>29</sup>

1.5 Review by the CMA

- (a) AAP Rejects the Applicant

Where an AAP has rejected an Applicant’s application to be registered as a QFI, the AAP’s decision becomes final upon the AAP’s receipt of notice in writing from the CMA confirming the CMA’s receipt of the AAP’s notice to the CMA (the **CMA Receipt Notice**).<sup>30 31</sup>

- (b) AAP Approves the Applicant

Where an AAP has approved an Applicant’s application to be registered as a QFI, the AAP’s approval of the application becomes final after the lapse of five (5) days from the date of the AAP’s receipt<sup>32</sup> of the CMA Receipt Notice unless within such five (5) days the CMA gives notice in writing to the AAP that:

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[nt\).docx](http://www.cma.org.sa/En/Documents/The%20Assessing%20Authorised%20Person%20Rejection%20Det%20mination%20Template%20(to%20Register%20QFI%20or%20to%20Approve%20QFI%20Client).docx). Where the AAP rejects the Applicant’s application to be registered as a QFI, the AAP must give notice to the CMA in the form of the CMA document entitled “ available at [http://www.cma.org.sa/En/Documents/The%20Assessing%20Authorised%20Person%20Rejection%20Det%20mination%20Template%20\(to%20Register%20QFI%20or%20to%20Approve%20QFI%20Client\).docx](http://www.cma.org.sa/En/Documents/The%20Assessing%20Authorised%20Person%20Rejection%20Det%20mination%20Template%20(to%20Register%20QFI%20or%20to%20Approve%20QFI%20Client).docx).

<sup>26</sup> See Article 13(a) of the Rules.

<sup>27</sup> See Article 13(b)(1) of the Rules.

<sup>28</sup> See Article 13(b)(2) of the Rules.

<sup>29</sup> See Article 13(b)(3) of the Rules.

<sup>30</sup> See Articles 14(a) and 14(b) of the Rules.

<sup>31</sup> Article 14(a) of the Rules specifies that upon receiving notice from an AAP of the AAP’s determination of an Applicant’s application to be registered as a QFI, the CMA must issue the CMA Receipt Notice to the AAP “without delay”.

<sup>32</sup> See the CMA’s reply to question 29 of the FAQ.

- (i) The CMA has rejected the Applicant’s application to be registered as a QFI;<sup>33</sup> or
- (ii) The CMA will require additional time in order to review the Applicant’s application to be registered as a QFI.<sup>34</sup>

## 1.6 Registration

Where the AAP approves an Applicant’s application to be registered as a QFI and such approval becomes final, whether by the passage of time or notice from the CMA, the CMA will, without delay:

- (a) Register the Applicant as a QFI; and
- (b) Give notice in writing to the AAP of the Applicant’s registration as a QFI (**CMA Registration Notice**).<sup>35</sup>

## 1.7 Notice to the Applicant

- (a) Applicant Approved

Within one (1) day of the AAP’s receipt of the CMA Registration Notice, the AAP must notify the Applicant in writing that the applicant has been registered as a QFI.<sup>36</sup> Thereafter, the AAP must:

- (a) Accept the Applicant / QFI as a client in accordance with the Authorized Persons Regulations; and
- (b) Execute the Draft QFI Assessment Agreement as agreed with the Applicant / QFI; and
- (c) Submit to the CMA a copy of the QFI Assessment Agreement as executed by the AAP and the Applicant / QFI.<sup>37</sup>

- (b) Applicant Rejected

Where the Applicant’s application to be registered as a QFI has been rejected by the AAP or by the CMA,<sup>38</sup> the AAP must give written notice to the Applicant of such rejection.<sup>39</sup>

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<sup>33</sup> See Article 14(c) of the Rules.

<sup>34</sup> See Article 14(d) of the Rules.

<sup>35</sup> See Article 15 of the Rules.

<sup>36</sup> See Article 16(a) of the Rules.

<sup>37</sup> See Article 16(b) of the Rules.

## 2. APPROVAL OF A QFI CLIENT

### 2.1 Approval of Clients

A QFI cannot invest in listed shares on behalf of any of its clients unless the client has been approved in accordance with the Rules (an **Approved QFI Client**).

### 2.2 Who Can Be an Approved QFI Client?

A client of a QFI cannot be approved unless:

- (a) The QFI or the Applicant is responsible for the management of the client funds when invested in listed shares;<sup>40</sup>
- (b) The client is not a QFI nor an Approved QFI Client of another QFI;<sup>41</sup> and
- (c) The client is either:<sup>42</sup>
  - (i) An Investment Fund incorporated in a jurisdiction that applies regulatory and monitoring standards equivalent to those of the CMA or acceptable to the CMA. For the purposes of this paragraph, the CMA may, at its absolute discretion, determine whether the regulatory and monitoring standards are equivalent to those of the CMA or acceptable to the CMA, and the CMA shall provide Authorized Persons duly authorized to conduct dealing activities with a list of jurisdictions that applies regulatory and monitoring standards equivalent to those of the CMA or acceptable to it, and any updates to that list; or
  - (ii) A financial institution that could qualify to apply to be registered as a QFI.<sup>43</sup>

### 2.3 How to Apply to Have a Client Approved?

Where an Applicant or a QFI intends to invest in listed shares on behalf of a client, the Applicant or QFI must submit to an AAP a completed standard form Qualified Foreign Investor Client Application for Approval Form (the **Client Approval Form**) supported by the information and documents specified in Part

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<sup>38</sup> When (i) an Applicant's application to be registered as a QFI and/or (b) the application by an Applicant or a QFI to have a client approved is rejected, the Applicant or the QFI can re-apply and there is no specific timing for the re-application. See the CMA's reply to question 30 in the FAQ.

<sup>39</sup> See Article 16(c) of the Rules.

<sup>40</sup> See Article 7(a) of the Rules.

<sup>41</sup> See Article 7(b) of the Rules.

<sup>42</sup> See Article 7(c) of the Rules.

<sup>43</sup> See section 1.1 above.

2 of Annex 2.1 of the Rules.<sup>44</sup> Part 2 of Annex 2.1 of the Rules requires an Applicant to submit in support of the Client Approval Form:

- (a) In respect of the client, all the information and documents specified in Part 1 of Annex 2.1;
- (b) Where the client is an Investment Fund, only the following information need to be provided to satisfy Part 1 of Annex 2.1:
  - (i) Details of the Investment Fund's jurisdiction of establishment;
  - (ii) The Investment Fund's investment policy;
  - (iii) A list of all of the Investment Fund's Controllers, details of the identity and ownership of each Controller (if applicable);
  - (iv) The identity of any Affiliate;
  - (v) Details of other account names or affiliations under which the fund or its Affiliates invest in the Kingdom, if any;
  - (vi) Confirmation of the Investment Fund's consent that the AAP may disclose to the CMA or the Tadawul information which the AAP receives under these Rules or the Capital Market Law and its Implementing Regulations, and that such information may also be disclosed to other government agencies of the Kingdom in accordance with the relevant laws; and
  - (vii) Confirmation by the Investment Fund of its consent to disclose any information or documents required by the CMA or other government agencies of the Kingdom in accordance with the relevant laws; and
- (c) A signed written confirmation from persons duly authorized to sign on behalf of the Applicant or QFI, confirming that:
  - (i) The client for which approval is sought meets the applicable registration conditions under the Rules;
  - (ii) The Applicant or QFI has the authority to manage the client's funds, and the authority to take investment decisions based on its absolute discretion when investing in listed shares; and
  - (iii) The applicant or QFI will notify the AAP immediately of any changes to the terms of its investment management that would alter or impede the extent of this discretion.

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<sup>44</sup> See Article 9(a) of the Rules.

## 2.4 Post Submission Process

The procedure outlined in sections 1.3 – 1.7 above applies *mutatis mutandis* to the processing of an application by an Applicant or a QFI for approval of a client.<sup>45</sup>

## 3. TRADING

### 3.1 Conditions Precedent to the Commencement of Trading

A QFI may not invest in any listed shares on its own behalf unless the QFI,<sup>46</sup> or on behalf of an Approved QFI Client unless the Approved QFI Client:<sup>47</sup>

- (a) Holds a Client Account;<sup>48</sup>
- (b) Holds an account with the Depository Center;<sup>49</sup> and
- (c) Has satisfied any other conditions imposed by the CMA.

### 3.2 Investment Limits

Investments of QFI's and Approved QFI Clients are subject to the following limitations:<sup>50</sup>

- (a) Each QFI, together with its Affiliates, or each Approved QFI Client, together with its Affiliates, may own a maximum of five percent (5%) of the shares of any issuer whose shares are listed.
- (b) Where a QFI invests on behalf of an Approved QFI Client, the QFI must not execute a transaction which would result in the relevant Approved QFI Client, together with its Affiliates, owning more than five percent (5%) of the shares of any issuer whose shares are listed;

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<sup>45</sup> See Articles 9(c) and 19 of the Rules.

<sup>46</sup> See Article 18(a) of the Rules.

<sup>47</sup> See Article 18(b) of the Rules.

<sup>48</sup> The Glossary defines a **Client Account** as an account at a local bank which is in the name of an Authorized Person and fulfils the conditions required by the Client Money Rules. The Glossary defines the **Client Money Rules** as the rules relating to client money contained in Part 7 of the Authorized Persons Regulations.

<sup>49</sup> The Glossary defines the **Depository Center** as the Securities Depository Center to be established in accordance with Article 26 of the Capital Market Law. Pending the establishment of the Depository Center, any reference to the Depository Center shall be construed as a reference to the Tadawul Depository System at the Tadawul.

<sup>50</sup> See Article 21(a) of the Rules.

- (c) The maximum proportion of the shares of any issuer whose shares are listed that may be owned by all foreign investors (in all categories, whether residents or non-residents) in aggregate is forty-nine percent (49%), including interests under swaps;<sup>51</sup>
- (d) The maximum proportion of the shares of any issuer whose shares are listed that may be owned by QFI's and Approved QFI Clients is twenty percent (20%).
- (e) The maximum proportion of the shares of all issuers whose shares are listed that may be owned by QFI's and Approved QFI Clients in aggregate is ten percent (10%) by market value, including any interests under swaps;
- (f) Other legislative limitations on foreign ownership in joint stock companies;<sup>52</sup>
- (g) The limitations set forth in the Articles of Association or By-laws of the listed companies or any instructions issued by the supervisory or regulatory authorities to which these companies are subject.

The Tadawul will publish on its website<sup>53</sup> the ownership percentages referred to in section 3.2(c) – (e) above and the limits referred to in section 3.2 (f) and (g) above.<sup>54</sup>

#### 4. ONGOING REQUIREMENTS

##### 4.1 AAP

A QFI must have, for as long as it remains registered as a QFI, an AAP engaged by it and must not engage with more than one AAP simultaneously.<sup>55</sup>

##### 4.2 Disclosure Requirements

A QFI must disclose (as specified by Annex 3.1 of the Rules) to its AAP (or to the CMA, where disclosure to the AAP would materially prejudice the operations and business of the QFI or a third party<sup>56</sup>) the information and documents set out in Annex 3.1 of the Rules,<sup>57</sup> as follows:

<sup>51</sup> Persons that are not resident in Saudi Arabia or that are not nationals of a GCC member state can trade indirectly in shares listed on the Tadawul via swaps. See CMA Circular No. 2132/5 dated 30/3/1431 H / 16 March 2010.

<sup>52</sup> Saudi legislation imposes limits on foreign ownership of a variety of listed companies, including (for example) banks, insurance companies, and telecommunications companies.

<sup>53</sup> [http://www.tadawul.com.sa/wps/portal!/ut/p/c1/04\\_SB8K8xLLM9MSSzPy8xBz9CP0os3g\\_A-ewIE8TlwP3gDBTA08Tn2Cj4AAvY\\_dQA\\_3gxCI9P4\\_83FT9gmxHRQAK2gLn/dI2/d1/LOIHSkovd0RNQUprQUVnQSEhL1ICWncvZW4!/](http://www.tadawul.com.sa/wps/portal!/ut/p/c1/04_SB8K8xLLM9MSSzPy8xBz9CP0os3g_A-ewIE8TlwP3gDBTA08Tn2Cj4AAvY_dQA_3gxCI9P4_83FT9gmxHRQAK2gLn/dI2/d1/LOIHSkovd0RNQUprQUVnQSEhL1ICWncvZW4!/).

<sup>54</sup> See Article 21(b) of the Rules.

<sup>55</sup> See Article 22(a) of the Rules.

- (a) The QFI must disclose annually to the AAP:
  - (i) A copy of the QFI's (and, where applicable, its Approved QFI Clients) annual report and consolidated accounts; and
  - (ii) Any material changes to the information provided by the QFI under Annex 2.1 of the Rules or furnished subsequently in connection with:
    - (A) The granting or maintenance of the QFI's registration; and\or
    - (B) The approval of its Approved QFI Clients; and
- (b) The QFI must disclose immediately to the AAP:
  - (i) The commencement of insolvency proceedings against the QFI or any of its Approved QFI Clients in any jurisdiction;
  - (ii) The commencement of criminal or legal or regulatory proceedings against the QFI or any of its Approved QFI Clients in any jurisdiction;
  - (iii) Any breach or anticipated breach by the QFI or any of its Approved QFI Clients of the investment limits and restrictions set out in sub-paragraphs a (1); a (2); a (6) and a (7) of Article 21(a)(1), (2), (6) or (7) of the Rules;
  - (iv) Any breach or anticipated breach by the QFI or any of its Approved QFI Clients of any obligations under these Rules;
  - (v) The QFI or any of its Approved QFI Clients becomes a client of another Authorized Person for the purpose of investing in listed shares;
  - (vi) Any material change that affects its status or activities to:
    - (A) The business of the QFI or any of its Approved QFI Clients;
    - (B) The regulatory status or permissions of the QFI or any of its Approved QFI Clients in its home jurisdiction; and
    - (C) The identity of any Controller(s) of the QFI or any of its Approved QFI Clients;

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<sup>56</sup> See Article 23(c) of the Rules.

<sup>57</sup> See Article 23(a) of the Rules.

- (vii) The QFI becoming aware that it or any of its Approved QFI Clients no longer meets or will no longer meet the registration conditions stated in the Rules; and
- (viii) Any restructuring of the QFI or any of its Approved QFI Clients.

## 5. SANCTIONS

### 5.1 Sanctions

If the CMA considers that:

- (a) A QFI or any of its approved QFI clients no longer meets the conditions, obligations or requirements stated in the Rules;
- (b) A QFI or an approved QFI Client has not fulfilled the requirements of Article 18(a) of the Rules<sup>58</sup> within sixty (60) days of its registration;
- (c) An insolvency event has occurred in relation to a QFI or any of its Approved QFI Clients;
- (e) A QFI or any of its Approved QFI Clients has breached any of its obligations under the Capital Market Law and its Implementing Regulations and/or any other laws of the Kingdom;
- (f) A QFI has obtained its registration or the approval of any of its Approved QFI Clients on the basis of incomplete, false, outdated or misleading information;
- (g) A QFI or any of its Approved QFI Clients has been the subject of any material legal or regulatory sanction in any jurisdiction;
- (h) Any restructuring of the QFI or any of its Approved QFI Clients has occurred, is occurring, or will occur; or
- (i) There has occurred, is occurring, or will occur any other event that the CMA believes necessitates its intervention in order to protect investors or safeguard the functioning of the capital market within the Kingdom,<sup>59</sup>

then the CMA may:

- (j) Require the QFI to provide such information, documents and/or written explanation as the CMA requires in respect of the matters giving rise to its consideration;
- (k) Require the QFI or its representative to attend before the CMA to answer questions and explain any matter the CMA considers relevant;

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<sup>58</sup> See section 3.1 above.

<sup>59</sup> See Article 28(d) of the Rules.

- (l) Carry out any enquiries that it considers appropriate;
- (m) Take any steps to verify any information furnished by the QFI, including by communicating with overseas regulatory authorities;
- (n) Suspend the QFI's registration or prohibit the QFI from dealing on behalf of one or more of its Approved QFI Clients for such period as the CMA requires;
- (o) Cancel the QFI's registration or withdraw the approval of any of its Approved QFI Clients;
- (p) Prohibit the QFI from dealing on behalf of one or more of its Approved QFI Clients in listed shares; and/or
- (q) Exercise any of its other powers under the Capital Market Law<sup>60, 61</sup>

## 5.2 Consequences of Sanctions

It is worth noting that:

- (a) Following the suspension or revocation of its registration, a QFI may not:
  - (i) Sell any listed shares (for its own behalf or on behalf of any of its Approved QFI Clients) without the prior approval of the CMA;<sup>62</sup> or
  - (ii) Purchase (for its own behalf or on behalf of any of its Approved QFI Clients) any listed shares; and
- (b) Similarly, following the withdrawal of the approval of an Approved QFI Client, a QFI may not:
  - (i) Sell any listed shares on behalf of any of such Approved QFI Client without the prior approval of the CMA;<sup>63</sup> or
  - (ii) Purchase any listed shares on behalf of such Approved QFI Client.<sup>64</sup>

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<sup>60</sup> The Saudi Arabian Capital Market Law, as enacted by Royal Decree No. M/ 30 dated 2/6/1424 H / 1 August 2003.

<sup>61</sup> See Article 28(a) of the Rules.

<sup>62</sup> See Article 28(f) of the Rules.

<sup>63</sup> See Article 28(h) of the Rules.

<sup>64</sup> See Article 28(g) of the Rules.

## 6. COMING INTO FORCE

The Rules shall come into force on 14/8/1436 H / 1 June 2015.<sup>65</sup> QFI's will be able to trade in shares listed on the Tadawul as from 28/8/1436 H / 15 June 2015.<sup>66</sup>

## 7. CONCLUSION

The CMA has confirmed that the opening of the Tadawul to foreign investors is intended to support the increased participation of institutional investors and reduce the role of retail investors, who currently account for a higher proportion of traded volumes, at ninety percent (90%), when compared to other large market indices, such as the US, where they account for less than two percent (2 %). The Rules have obviously been drafted carefully to reflect this goal but issues still remain. For example:

- (a) The Rules include Banks and Brokerage and Securities Firms amongst the financial institutions that that can be registered as a QFI.<sup>67</sup> However, at the same time, the Rules require a potential QFI to have assets under management of at least SAR 18,750,000,000 (approximately US\$ 5,000,000,000).<sup>68</sup> Since many Banks and Brokerage and Securities Firms do not participate in asset management, determining the eligibility to register in part by reference to the value of assets under management will exclude many otherwise qualified Banks and Brokerage and Securities Firms;<sup>69</sup> and
- (b) Under what circumstances will the CMA consider reducing the threshold value of assets under management to SAR 11,250,000,000 (approximately US\$ 3,000,000,000)?<sup>70</sup>

These and other issues will hopefully be resolved once the Rules come into force and are implemented.

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<sup>65</sup> See Article 29 of the Rules.

<sup>66</sup> See "CMA Announcement in Regard to the Rules for Qualified Foreign Financial Institutions' Investment in Listed Shares." *CMA.org.sa*. Saudi Arabian Capital Market Authority. 16 April 2015. 13 May 2015.

<sup>67</sup> See Article 6(a)(1) of the Rules. See also section 1.1 above.

<sup>68</sup> See Article 6(b) of the Rules. See also section 1.1 above.

<sup>69</sup> See "Update: Opening the Tadawul up to Foreign Investors". *Jadwa.com*. Jadwa Investment. April 2015. 13 May 2015.

<sup>70</sup> See Article 6(b)(i) of the Rules.