

ANNEX A

Sections 6.8 and 6.9 are replaced with the following :

6.8 Marketing and selling Units of a Domestic Fund**General Requirements and application**

6.8.1 (1) An Authorised Firm must comply with the requirements in the Rules in this section when undertaking Transactions in or from the DIFC in relation to a Unit of a Domestic Fund, except where the Transaction:
[Amended][VER7/08-06]

(a) is an execution only Transaction as defined in (2)(b); or

(b) is carried out in connection with or for the purposes of a discretionary portfolio management agreement which it has entered into with a Client.

[Added][VER7/08-06]

(2) For the purposes of this section, section 6.9 and section 6.10:

(a) a “ Transaction” is a transaction undertaken by an Authorised Firm in the course of carrying on a Financial Service in or from the DIFC and includes any Offer of the Units of a Fund in or from the DIFC; and

(b) a Transaction is an “execution only Transaction” where the Authorised Firm merely executes an unsolicited Client order. An order is an unsolicited Client order only if the Authorised Firm has not provided Advice to the Client as defined in GEN 2.11 in relation to any Units of the Fund to which the Transaction relates.

[Added][VER7/08-06]

6.8.2 An Authorised Firm must not enter into Transactions in relation to Units in a Domestic Fund with any Person other than a Qualified Investor.
[Amended][VER7/08-06]

Prospectus requirements

Guidance

There are other Prospectus requirements that apply to the Offer, issue and sale of Units of Domestic Funds (both Public and Private Funds), which are set out in the Collective Investment Law 2006 and the CIR Module. An Authorised Firm must, where applicable, ensure compliance with those requirements in addition to the requirements in these Rules. [Added][VER7/08-06]

- 6.8.3** (1) An Authorised Firm which undertakes a Transaction in respect of any Units of a Domestic Fund must have at its place of business in the DIFC copies of the relevant Prospectus for inspection by potential participants and the DFSA. Such copies may be stored electronically so long as potential participants and the DFSA can easily and immediately access the relevant Prospectus for inspection and print out a hard copy.
- (2) An Authorised Firm must not undertake any Transactions in relation to the Units mentioned in (1) unless it has offered the Person with whom it is transacting a copy of the Prospectus.

[Amended][VER7/08-06]

Private Funds

- 6.8.4** An Operator of a Domestic Fund which is a Private Fund must ensure when entering into a Transaction for the issue or sale of the Units in its Fund, that it does so:
- (a) by means only of private placement with Qualified Investors; and
- (b) to no more than 100 such investors.

[Amended][VER7/08-06]

- 6.8.5** If an Operator of a Domestic Fund which is a Private Fund makes arrangements with other Authorised Firms or Persons in other jurisdictions, to Offer or sell the Units, then it must take reasonable steps to ensure that those Authorised Firms or other Persons do not Offer or sell the Units in a manner that would result in a breach of the limitations applicable to the Operator under Rule 6.8.4. [Amended][VER7/08-06]

- 6.8.6** An Authorised Firm must not enter into a Transaction in relation to the Units of a Domestic Fund, which is a Private Fund, where such a Transaction would result in a breach of the limitations applicable to the Operator of a Domestic Fund under Rule 6.8.4. [Added][VER7/08-06]

Periodic Information to DFSA

- 6.8.7** (1) An Authorised Firm must submit to the DFSA, at the same time as its quarterly regulatory returns in accordance with PIB, a report regarding any Transaction in respect of Units of a Domestic Fund which it has entered into during the preceding quarter. [Amended][VER7/08-06]
- (2) The report required under (1) must include;
- (i) the name of the Fund; and
 - (ii) the name of the Operator of the Fund.

6.9 Marketing and selling Units of a Foreign Fund**General Requirements and application**

- 6.9.1** (1) An Authorised Firm must comply with the requirements in the Rules in this section when it undertakes a Transaction in the Units of a Foreign Fund except where the Transaction: [Amended][VER7/08-06]
- (a) is an execution only Transaction as defined in Rule 6.8.1(2)(b);
 - (b) is carried out in connection with or for the purposes of a discretionary portfolio management agreement which it has entered into with a Client and the Authorised Firm provides to the Client information required under Rule 6.9.2;
 - (c) is carried out with the Operator of a Foreign Fund for the purpose of redeeming a Unit of that Fund for or on behalf of a Client; or
 - (d) falls within (3).

[Added][VER7/08-06]

- (2) An Authorised Firm must not enter into Transactions in relation to the Units of a Foreign Fund with any Persons other than a Client. [Added][VER7/08-06]
- (3) The requirements in this section do not apply to a Transaction in relation to the Units of a Foreign Fund where an Authorised Firm:

- (a) enters into the Transaction on an Authorised Market Institution in the DIFC or on an exchange regulated by a Financial Services Regulator in a Recognised Jurisdiction; and
- (b) the Authorised Firm has provided to the Client the information of the kind referred to in Rule 6.9.2(4) prior to the execution of the Transaction for or on behalf of that Client.

[Added][VER7/08-06]

Prospectus requirements

- 6.9.2** (1) Where an Authorised Firm enters into any Transaction relating to the Units of a Foreign Fund, it must ensure that: [Amended][VER7/08-06]
- (a) a Prospectus, in the English language, relating to the Units of the Foreign Fund is offered to the Client before entering into that Transaction; and
 - (b) the information requirements in (2) are met.

[Added][VER7/08-06]

- (2) The Authorised Firm may comply with the information requirements for the purposes of (1)(b) by meeting the requirements in (3) or (4).
[Added][VER7/08-06]
- (3) The Authorised Firm ensures that the Prospectus contains in a prominent position or has attached to it, a statement that describes clearly:
 - (a) the regulatory status accorded to the Fund by the foreign Regulator;
 - (b) the foreign jurisdiction and the legislation in that jurisdiction that applies to the Fund;
 - (c) the name of the Regulator; and
 - (d) the following warning:

[Amended][VER7/08-06]

“This Prospectus relates to a Fund which is not subject to any form of regulation or approval by the Dubai Financial Services Authority (“DFSA”).

This Prospectus is intended for distribution only to Persons of a type specified in the DFSA’s Rules (i.e. “Qualified Investors”) and must not, therefore, be delivered to, or relied on by, any other type of Person.

The DFSA has no responsibility for reviewing or verifying any Prospectus or other documents in connection with this Fund. Accordingly, the DFSA has not approved this Prospectus or any other associated documents nor taken any steps to verify the information set out in this Prospectus, and has no responsibility for it.

The Units to which this Prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the Units offered should conduct their own due diligence on the Units.

If you do not understand the contents of this document you should consult an authorised financial adviser.”

- (4) The Authorised Firm may satisfy the information requirement for the purposes of (1)(b) by entering into a prior agreement with the Client where:
 - (a) that agreement sets out in substance the information to the effect set out in (3) in respect of the Transactions which the Authorised Firm may enter into for or on behalf of the Client in relation to Units of Foreign Funds; and
 - (b) the Authorised Firm provides confirmation of that information on an annual basis in respect of each Foreign Fund the Units of which have been the subject of any Transactions the Authorised Firm had entered into for or on behalf of that Client during the preceding year.

[Added][VER7/08-06]

- 6.9.3** An Authorised Firm must, when undertaking Transactions in respect of any Units of a Foreign Fund, have at its place of business in the DIFC copies in English of the relevant Prospectus for inspection by potential participants and the DFSA. Such copies may be stored electronically so long as potential participants and the DFSA can easily and immediately access the relevant Prospectus for inspection and print out a hard copy. [Amended][VER7/08-06]

Designated Foreign Fund located in a recognised jurisdiction

6.9.4 Subject to Rule 6.9.5, an Authorised Firm may only undertake a Transaction in respect of the Units of a Foreign Fund:

- (a) where the Fund:
 - (i) is a Designated Fund in a Recognised Jurisdiction;
 - (ii) is approved or authorised by the Recognised Jurisdiction's Financial Services Regulator; and
 - (iii) satisfies the requirements that govern the ability of Persons in that jurisdiction, to Offer the Units to Retail Customers by means of public offering; and

[Amended][VER7/08-06]

- (b) if the Fund is a Property Fund, the requirements in Rule 6.9.6 are met.

[Added][VER7/08-06]

Guidance

In relation to the requirements of Rules 6.9.4 and 6.9.5, in respect of Recognised Jurisdictions and Designated Funds, the DFSA has issued and published a Recognised Jurisdictions Notice on its website which sets out the list of Recognised Jurisdictions and which also specifies the Designated Funds.

Non-Designated Funds

6.9.5 (1) An Authorised Firm may only undertake a Transaction in respect of the Units of a Foreign Fund not falling within Rule 6.9.4 where:

[Amended][VER7/08-06]

- (a) both the custodian and the investment manager of the Fund meet one of the requirements set out under (4) or (5), as applicable; or
- (b) both the custody and investment management activities of the Fund are performed by a Person who meets the requirements in (6); or
- (c) the Fund has been rated in accordance with the requirement in (7);

and, in any event

- (d) if the Fund is a Property Fund, the requirements in Rule 6.9.6 are met.

[Amended][VER7/08-06]

- (2) For the purposes of (1)(a), the “custodian” is a Person who is retained by the Fund, the Operator of the Fund or the Fund’s Directors or Partners under a commercial arrangement which is not an “employee contract of service” to safeguard the Fund’s assets. [Amended][VER7/08-06]
- (3) For the purposes of (1)(a), the “investment manager” is a Person who is retained by the Fund, the Operator of the Fund or the Fund’s Directors or Partners under a commercial arrangement which is not an “employee contract of service” to manage the Fund’s assets. [Amended][VER7/08-06]
- (4) For the purposes of (1)(a), the custodian must be:
 - (a) an Eligible Custodian;
 - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and the activities of the custodian are included within the scope of that regulation;
 - (c) appointed under an agreement by a Person who is subject to regulation and supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of that regulator; or
 - (d) a Person whom the Authorised Firm has satisfied itself as having adequate custody and asset safety arrangements in respect of the Foreign Fund after performing due diligence taking into consideration each of the following factors:
 - (i) whether the Person providing custody is licensed and subjected to regulation by a Financial Services Regulator for the purposes of providing custody;
 - (ii) the extent of segregation of assets;
 - (iii) independence and management of conflicts of interests;
 - (iv) the terms of the safe custody agreement; and
 - (v) periodic reporting requirements;

[Amended][VER7/08-06]

- (5) For the purposes of (1)(a), the investment manager must be a Person who is:
- (a) authorised or licensed and supervised by the DFSA or a Financial Services Regulator located in a Recognised Jurisdiction;
 - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and the activities of the investment manager are included within the scope of the regulation; or
 - (c) appointed under an agreement by another Person who is subject to regulation and supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of the regulator.

[Amended][VER7/08-06]

- (6) For the purposes of (1)(b), the Person carrying out both the custody and investment management activities of the Fund must be a Person who is:
- (a) authorised or licensed and supervised by the DFSA or a Financial Services Regulator located in a Recognised Jurisdiction in respect of both of its custody and investment management activities;
 - (b) a member of a Group that is subject to consolidated supervision by a Financial Services Regulator in a Recognised Jurisdiction and its custody and investment management activities are included within the scope of that regulation; or
 - (c) appointed under an agreement by another Person who is subject to regulation and supervision by a Financial Services Regulator in a Recognised Jurisdiction and the agreement is in accordance with the requirements of that regulator.

[Added][VER7/08-06]

- (7) The requirement in (1)(c) in respect of the Foreign Fund is that the Fund has been rated or graded as at least “investment grade” by Moodys, Fitch or Standard & Poor’s or such other international rating agency as may be recognised by the DFSA. [Added][VER7/08-06]

Property Funds

- 6.9.6** (1) An Authorised Firm must ensure that it does not undertake a Transaction in respect of the Units of a Foreign Fund which is a Property Fund in respect of which 60% or more of the Fund's assets comprise Real Property unless the requirements in (2) and (3) are met.
- (2) The Fund in (1) is a closed-ended structure.
- (3) The Fund in (1) is listed and traded on an Authorised Market Institution or on an exchange regulated in a Recognised Jurisdiction unless the Units are to be Offered, issued or sold by means only of private placement.

[Amended][VER7/08-06]

Guidance

A closed ended legal structure is an investment vehicle used by a Fund that does not continuously issue or redeem Units based on the net asset value of the Fund. [Added][VER7/08-06]

Periodic Information to DFSA

- 6.9.7** (1) An Authorised Firm must submit to the DFSA, at the same time as its quarterly regulatory returns in accordance with PIB, a report regarding any Transactions in respect of the Units of a Foreign Fund which have been made during the preceding quarter. [Amended][VER7/08-06]
- (2) The report required under (1) must include details of:
- (a) the name of the Fund and its Operator;
 - (b) whether it is a Designated Fund and, if so, in which Recognised Jurisdiction it is authorised or approved; and
 - (c) if the Fund is not a Designated Fund, the criteria met under Rule 6.9.5 to enable a Transaction to be undertaken in respect of the Fund's Units. [Amended][VER7/08-06]