



CONSULTATION PAPER NO. 104

15 DECEMBER 2015

PROPOSED MISCELLANEOUS AMENDMENTS

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Why are we issuing this paper?

1. This Consultation Paper seeks public comment on the DFSA's proposals to make a variety of amendments to the DFSA's policy framework, as expressed through its Rules. The DFSA has gathered together a number of miscellaneous amendments to the modules of the DFSA Rulebook; each item in this paper is a discrete amendment.

Who should read this paper?

2. The proposals in this Paper would generally be of particular interest to Authorised Persons and, in a number of cases, to Issuers and potential Issuers.
3. Item 1 will be of particular interest to any Authorised Firm that holds, or has plans to hold, Client Assets or Insurance Monies.

How to provide comments?

4. 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. You may, if relevant, identify the organisation you represent in providing your comments. The DFSA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments.

What happens next?

5. The deadline for providing comments on the proposals is **14 January 2016**. Once we receive your comments, we shall consider if any further refinements are required to these proposals. We shall then proceed to enact the relevant changes to the DFSA's Rulebook. You should not act on these proposals until the relevant changes to the DFSA Rulebook are made. We shall issue a notice on our website telling you when this happens.

Comments to be addressed or emailed to:

Consultation Paper No. 104
Policy and Legal Services
DFSA
PO Box 75850
Dubai, UAE

Email: consultation@dfsa.ae

Tel: +971(0)4 3621500

Terminology in this paper

6. In this paper, defined terms are identified throughout by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the [GLO](#) Module or in the proposed amendments. Unless the context otherwise requires,

where capitalisation of the initial letter is not used, the expression has its natural meaning.

Structure of this paper

7. The remainder of this Consultation Paper is structured as follows:
- (a) Item 1: Transparency for Firms holding Client Assets or Insurance Monies;
 - (b) Item 2: Financial services definitions;
 - (c) Item 3: Reporting fund information to the DFSA;
 - (d) Item 4: AMI and MKT Module updates;
 - (e) Item 5: Use of Special Purpose Vehicles by Exempt Offerors of Securities;
 - (f) Item 6: Payment and Calculation of fees;
 - (g) Item 7: Representative Offices;
 - (h) Item 8: Updating other references;
 - (i) Appendix 1: draft amendments to the GEN Module;
 - (j) Appendix 2: draft amendments to the FER Module;
 - (k) Appendix 3: draft amendments to the CIR Module;
 - (l) Appendix 4: draft amendments to the IFR Module;
 - (m) Appendix 5: draft amendments to the AMI Module;
 - (n) Appendix 6: draft amendments to the MKT Module;
 - (o) Appendix 7: draft amendments to the PRS Module;
 - (p) Appendix 8: draft amendments to the GLO Module;
 - (q) Appendix 9: draft amendments to the REP Module; and
 - (r) Appendix 10: draft amendments to the COB Module.

ITEM 1 TRANSPARENCY FOR FIRMS HOLDING CLIENT ASSETS OR INSURANCE MONIES

8. Under our current regime, there is no indication on the Licence of an Authorised Firm, or on the Public Register, that a Firm is allowed to hold or control Client Assets or to hold Insurance Monies. We believe that this information should be publicly available and, therefore, we propose that a Licence of an Authorised Firm and the Public Register should include this information.
9. We propose to do this through an endorsement on the relevant Firm's Licence. To be able to obtain such an endorsement, a firm would need to demonstrate to the DFSA that it is able to meet, on an ongoing basis, the requirements relating to holding of:
 - (a) Client Assets in COB section 6.11 to 6.14 ; and/or
 - (b) Insurance Monies in COB section 7.12,as relevant. The application for such an endorsement would attract a fee of USD 5,000 (see draft GEN Rules 2.2.10A and 2.2.10B and 7.3.3 and 4 in Appendix 1 and draft FER Rule 2.2.6(3) and (4) in Appendix 2).
10. For Authorised Firms that already hold Client Assets, or Insurance Monies, or both, we propose that these Firms would not need to go through the formal application process, for two reasons. Firstly, the Firms in question already hold Client Assets or Insurance Monies, as relevant, and it seems inappropriate, and unnecessarily burdensome, that they should need to formally apply to be able to continue to do so. Secondly, requiring formal applications from a significant number of Firms would impose a substantial administrative burden on Firms and the DFSA.
11. Instead, these Firms would be able to self-certify within a period of time (we propose six months) after the new Rules come into effect. A Firm would need to certify that it:
 - (a) was already entitled to hold Client Assets or Insurance Monies, or both, as evidenced by the most recent auditor's report, together with the date of submission of that report; and
 - (b) has in place systems and controls that meet the requirements for holding such Client Assets or Insurance Monies.
12. Upon self-certification, the Firm would receive the relevant endorsement to its Licence, which it would retain without payment of any further fee. Any Firm not self-certifying within the relevant time period would need to apply for an endorsement and pay a fee in the usual way (see draft GEN section 10.1).
13. Lastly, in addition to proposing these transitional Rules in GEN 10.1, we also propose to delete a number of long-standing transitional provisions, which we believe are obsolete and no longer relied on by Firms.

Q1: Do you have any concerns about these proposals? If so, what are they and how should they be addressed?
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ITEM 2 FINANCIAL SERVICE DEFINITIONS

14. We are proposing two changes to the definitions of Financial Services. In substance the changes should not affect those already carrying out, or providing, these Services, but they will introduce greater precision and clarity.
15. Firstly, we propose amending the definition of Providing Custody in GEN 2.13. This is necessary to correct an unintended anomaly, where the current text suggests that a Firm needs to carry out either of safeguarding or administering to be Providing Custody, while the policy intention is that they Provide Custody only if they carry out both of these activities.
16. Secondly, we propose amending the definition of Operating an Exchange. The intention here is to provide greater clarity and legal certainty overall on what activities are inherently a part of operating an exchange by introducing more specific provisions. We propose to do this by deleting GEN 2.17.1(3) and introducing a number of more specific Rules elsewhere, for example, the proposed GEN 2.9.8.
17. The draft Rules and Guidance relating to these proposals can be found in Appendix 1.

Q2: Do you have any concerns about these proposals? If so, what are they and how should they be addressed?
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ITEM 3 REPORTING FUND INFORMATION TO THE DFSA

18. CIR 15.1.10 requires certain information on Funds to be reported to the DFSA by Authorised Firms, with a reporting deadline of four months after the Firm's financial year end.
19. The information required to be reported to the DFSA would be more useful to us if it covered a common period and was provided to us by Firms at the same time.
20. We propose to change this reporting requirement to cover the same period for all firms – the calendar year – and to require the submission of the report by the end of January each year. The first report under the proposed changes would be due by the end of January 2017 for the 2016 calendar year.
21. Reports that a Firm would be due to submit in 2016, after the end of their financial year, would still be submitted.
22. The draft Rules relating to these proposals can be found in Appendix 3.

Q3: Do you have any concerns about this proposal? If so, what are they and how should they be addressed?
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ITEM 4 AMI AND MKT MODULE UPDATES

23. We updated the Markets (MKT) module in 2012 and the Authorised Market Institutions (AMI) module in 2013. Since the implementation of those revised Rules, we have received feedback from market participants, and identified through our own work, a number of changes that need to be made.

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24. The proposed changes are as follows:
- (a) IFR Rule 7.4.1 to be deleted, as we feel it is superfluous. The information and documents required to be submitted under this Rule are now required to be provided at the (earlier) Prospectus review stage;
 - (b) AMI Rule 5.8.1 is to be amended so that it provides greater clarity about which Investments may be admitted to trading or traded on an Exchange or Multilateral Trading Facility of an Authorised Market Institution;
 - (c) MKT 4.3.3 to be amended to address two issues:
 - i. to recognise that there are two different sorts of persons who fall within Connected Persons, and to clarify that they face differing reporting obligations. A person who is connected by virtue of control faces no change in their reporting obligations – they should report a 5% stake and every subsequent 1% change. A person who is connected by virtue of their position at the Reporting Entity (e.g., a director, a senior manager) should be required to report all transactions, of whatever scale, given the interest that market participants have in understanding when such persons are buying or selling interests in the Reporting Entity; and
 - ii. to clarify the disclosure obligations of Connected Persons where they acquire options or other rights to securities, or otherwise build a 'silent' stake in a Reporting Entity;
 - (d) MKT 5.1.8(3)(b) to be amended to clarify that a Reporting Entity in respect of debt does not need to issue an additional interim report if its accounting reference date changes;
 - (e) MKT A1.1.1 Rule 6.1(a), A2.1.1 Rule 2.3 and A3.1.1 Rule 2.2 to be amended to clarify that disclosure of the professional qualification of certain individuals is no longer required. This change would bring our rules in line with the European Union's Prospectus Directive in this area;
 - (f) MKT A1.1.1 to be amended to apply additional information requirements for offers of debentures denominated in sizes that may attract retail investors;
 - (g) MKT A1.1.1 Rule 7.1(i) to be amended so that our Rules on when additional interim financial information needs to be provided to professional investors are in line with the European Union's Prospectus Directive;
 - (h) MKT A3 Rule 6.1 to be amended to correct a mistaken reference; and
 - (i) PRS Rule 4.2.1(1) to be amended to remove the requirement to disclose the likely cost of Price Stabilisation activities, as this has proven extremely difficult to identify in advance. In addition, we propose to add Guidance setting out possible wording of the statement required by this Rule.
25. The draft Rules relating to these proposals can be found in Appendices 4 (IFR), 5 (AMI), 6 (MKT) and 7 (PRS).
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Q4: Do you have any concerns about these proposals? If so, what are they and how should they be addressed?

ITEM 5 USE OF SPECIAL PURPOSE VEHICLES BY EXEMPT OFFERORS OF SECURITIES

- 26. A specific issue that has arisen is that our Rules do not address adequately the situation where an Exempt Offeror of securities wishes to issue those securities using a Special Purpose Vehicle.
- 27. We propose to amend MKT A5.1.1 so that the regime addresses this situation more effectively and to introduce a definition of Special Purpose Vehicle into the Glossary (GLO).
- 28. We also propose to update the list of supranational organisations in MKT A5.1.1 to include the International Finance Corporation and the Islamic Development Bank.
- 29. The draft Rules relating to these proposals can be found in Appendix 6 (MKT) and Appendix 8 (GLO).

Q5: Do you have any concerns about these proposals? If so, what are they and how should they be addressed?

ITEM 6 PAYMENT AND CALCULATION OF FEES

- 30. Over the last 18 months or so, a number of instances have arisen where applicants, firms or issuers have had difficulties in making payments to the DFSA in precisely the manner required by our current Rules.
- 31. Given this, and as we see no risk to the DFSA's objectives in putting a different approach in place, we propose to:
 - (a) add a new exemption to FER Rule 1.2.7 to address situations that have arisen in the issuing of securities. For example, we propose to allow DIFC lawyers to be able to pay listing fees on behalf of their clients; and
 - (b) to amend FER Rule 1.2.7(2) to allow certain members of a firm's group to make payments of fees on the firm's behalf.
- 32. Additionally, earlier this year we amended a number of reporting forms contained in the Prudential Returns Module (PRU) of our Rulebook. We now propose a consequential amendment to FER Rule 3.2.2(1)(a), to reflect the changes already made to the underlying forms in PRU. These changes should not result in firms paying different fees than they otherwise would have.
- 33. The draft Rules relating to these proposals can be found in Appendix 2.

Q6: Do you have any concerns about these proposals? If so, what are they and how should they be addressed?

ITEM 7 REPRESENTATIVE OFFICES

- 34. We have received, and approved, a number of requests to modify REP Rule

4.1.2, to allow a Representative Office to share premises with another Authorised Firm within the same Group.

35. As with a number of cases involving other modules of the Rulebook, we consider that this modification has become commonplace and so it is appropriate to modify the underlying rule.
36. We propose, therefore, to amend REP Rule 4.1.2 to allow for the sharing of premises as discussed above. The draft Rules relating to these proposals can be found in Appendix 9.

Q7: Do you have any concerns about this proposal? If so, what are they and how should they be addressed?
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ITEM 8 UPDATING OTHER REFERENCES

37. We have also identified a number of other matters that require clarification or where references need to be corrected in other Rules.
38. The proposed changes we are consulting on are:
- (a) to remove references to the Regulatory Appeals Committee in COB Rule 9.2.3(6) and the related guidance in paragraph 3, and in COB Rule 9.6.8(6), and instead allow a reference to the Financial Markets Tribunal (see Appendix 10); and
 - (b) we propose to delete the definitions in the Glossary (GLO) of Providing Accountancy Services and Providing Legal Services as these were primarily used in the ASP Module, which has now been replaced. The terms are also used in the GEN Module, but we propose that they should be replaced there with undefined terms, as the natural meaning of the phrases should be clear enough (see Appendix 1 (GEN) and Appendix 8 (GLO)).