

## Appendix 2

In this Appendix underlining indicates new text and striking through indicates deleted text.



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# The DFSA Rulebook

General Module

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## 2 FINANCIAL SERVICES

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### 2.3 By way of business

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**2.3.6** (1) This Rule applies if the DIFC is the Host Jurisdiction of a Passported Fund.

(2) A Fund Manager of the Passported Fund does not carry on an activity specified under paragraphs (d), (e), (f), (h) or (i) of Rule 2.2.2 by way of business to the extent that it Promotes the Passported Fund in the DIFC.

(3) An Agent of the Fund Manager or another Licensed Person does not carry on an activity specified under paragraphs (d), (e), (f) or (h) of Rule 2.2.2 by way of business to the extent that it Promotes the Passported Fund in the DIFC.

(4) The exclusions in (2) and (3) do not apply if the relevant Fund Manager, Agent or Licensed Person is an Authorised Person.

#### Guidance

The terms “Host Jurisdiction”, “Passported Fund”, “Fund Manager”, “Promote”, “Agent” and “Licensed Person” are defined in the Fund Protocol Rules (and in GLO). The exclusion in Rule 2.3.6 does not apply if the Person is already an Authorised Person in the DIFC. It applies to the Fund Manager, its Agent or a Licensed Person from the Home Jurisdiction of the Passported Fund.

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## 3. FINANCIAL PROMOTIONS

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### 3.4 Scope of the Financial Promotions Prohibition

**3.4.1** (1) A Person shall not, subject to (2) and (3), make a Financial Promotion in or from the DIFC unless that Person is an Authorised Person.

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- (3) A Person other than an Authorised Person may make a Financial Promotion in or from the DIFC if, and only to the extent that, the Person:
  - (a) is licensed and supervised by a Financial Services Regulator in the UAE;

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*[Note that Rule 3.4.1 is not being amended, but is included for information only.]*

### **3.5 Additional Rules for Financial Promotions**

- 3.5.1** (1) A Person in Rule 3.4.1(3) (a) to (d) must, subject to (2), take reasonable care to ensure that any Financial Promotion it makes in or from the DIFC:
- (a) is clear, fair and not misleading;
  - (b) includes the Person's name, address and regulatory status;
  - (c) if it is intended only for Professional Clients, is not sent or directed to any Person who appears on reasonable grounds not to be a Professional Client, and contains a clear statement that only a Person meeting the criteria for a Professional Client should act upon it; and
  - (d) which is provided to or directed at a Retail Client and contains any information or representation relating to past performance, or any forecast based on past performance or on any other assumptions:
    - (i) presents a balanced view of the financial products or financial services to which the Financial Promotion relates;
    - (ii) identifies, in an easy to understand manner, the information from which the past performance or forecast is derived and how any key facts and assumptions used in that context are drawn; and
    - (iii) contains a prominent warning that past performance is not necessarily a reliable indicator of future performance.
- (2) A Person described in Rule 3.4.1(3)(a) who makes a Financial Promotion:
- (a) to an existing client in the DIFC; or

(b) to a prospective client in the DIFC relating to the Passported Fund for which the DIFC is the Host Jurisdiction,

is not required to comply with (1) provided that in making the Financial Promotion that Person complies with the requirements of the relevant Financial Services Regulator in the UAE which relate to Financial Promotions.

#### **Guidance**

1. In presenting information relating to past performance of a financial product or financial service, a Person should use a reputable independent actuarial, financial or statistical reporting service provider.
2. The effect of Rule 3.5.1(2) is that a Person who is licensed and regulated by a Financial Services Regulator in the UAE is not required to comply with Rule 3.5.1(1) when communicating with an existing client, or with a prospective client in relation to a Passported Fund where the DIFC is a Host Jurisdiction. However, when making any other Financial Promotion to a prospective client in the DIFC, Rule 3.5.1(1) does apply to such Persons, as do the prohibitions on the making of offers contained in the Markets Law 2012 and Collective Investment Law 2010 respectively. The exclusion in Rule 3.5.1(2) applies only if the Person is complying with the financial promotion requirements of its Financial Services Regulator in the UAE.

**3.5.2** A Person must not, in any Financial Promotion, attempt to limit or avoid any duty or liability it may have under any DFSA-administered laws or the Rules.

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## **6 GENERAL PROVISIONS**

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### **6.2 Interpreting the rulebook**

#### **Guidance**

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#### **Defined Terms**

9. Defined terms are identified throughout the Rulebook by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the Glossary (GLO), however, where a word or phrase is used only, for example, in a prudential context in PIB then for convenience purposes it is only defined under Rule 1.2.1 of PIB rather than in GLO. Similarly, in AML Rule 3.2.1 and in FPR section 1.3 there are a number of specific definitions. Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.