

**Appendix 4**

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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## **3. FINANCIAL PROMOTIONS**

### **3.1 Application**

**3.1.1** This chapter applies to any Person who approves, makes or intends to make a Financial Promotion in or from the DIFC.

**3.1.2** Rules 3.4.1 to 3.6.3 do not apply to a Person who makes an Offer which is in accordance with the requirements relating to:

- (a) an Offer of Securities under the Markets Law and the MKT Rules; or
- (b) an Offer of Units under the Collective Investment Law 2010 and CIR Rules.

#### **Guidance**

The purpose of the exclusion in Rule 3.1.2 is to ensure that a Person who makes an Offer referred to in that Rule is not subject to duplicative requirements under this chapter. The exclusion applies only to a communication by a Person making an Offer and if that communication is subject to requirements specified in the relevant laws or Rules.

### **3.2 Overview**

**3.2.1** The Rules in this chapter are made for the purposes of the Financial Promotions Prohibition in Article 41A of the Regulatory Law.

#### **Guidance**

1. Article 41A(3) of the Regulatory Law defines a Financial Promotion as:

*“Any communication, however made, which invites or induces a Person to:*

- (a) enter into, or offer to enter into, an agreement in relation to the provision of a financial service; or*
- (b) exercise any rights conferred by a financial product or acquire, dispose of, underwrite or convert a financial product.”*

2. The Guidance in this chapter is designed to help explain the scope of the Financial Promotions Prohibition.

3. The definition of a Financial Promotion is very broad and encompasses the definitions of a “financial promotion” in Article 19(3) of the Collective Investment Law 2010. A Financial Promotion also includes “marketing material” as defined elsewhere in the Rulebook.

4. The DFSA considers that a Financial Promotion may be made in any manner and by any form including, but not limited to, an oral, electronic or written communication and includes an advertisement, or any form of promotion or marketing. A disclaimer stating that a communication is not a Financial Promotion would not, on its own, prevent a communication from being a Financial Promotion.

5. A Person who is permitted to make a Financial Promotion in the DIFC pursuant to these Rules should ensure that in making such a Financial Promotion he does not breach the Financial Services Prohibition in Article 41 of the Regulatory Law.
6. Depending on the nature and scale of the activities, if a Person makes Financial Promotions on a regular basis or for a prolonged period while physically located in the DIFC, for example by way of a booth, meetings or conferences, the DFSA may consider such activities as constituting the carrying on of a Financial Service, such as Operating a Representative Office. The DFSA considers that in the context of Financial Promotions, "a regular basis" would be anything more than occasional and "a prolonged period" would usually be anything more than 3 consecutive days.

### **3.3 Definition of a Financial Product**

- 3.3.1** Pursuant to Article 41A(4) of the Regulatory Law, "financial product" in Article 41A(3)(b) of the Regulatory Law is hereby prescribed to mean an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account, or a Contract of Insurance or a Crowdfunding Loan Agreement.

### **3.4 Scope of the Financial Promotions Prohibition**

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- 3.4.2** A Person does not breach the Financial Promotions Prohibition if:

- (a) the Person causes a Financial Promotion to be made in the course of providing a facility which is a mere conduit for the making of the Financial Promotion;
- (b) the Person is located outside the DIFC and makes a Financial Promotion which appears, on reasonable grounds, to be a communication which is not directed at or intended to be acted upon by a Person in the DIFC; or
- (c) the Person makes a Financial Promotion for the purposes of an employee share scheme, that is, a scheme for the offer or allotment of Securities to existing or former directors or Employees, or Close Relatives of such directors or Employees, of the Issuer or of a member of the same Group as the Issuer; or
- (ed) the Financial Promotion is not made for a commercial or business purpose.

#### **Guidance**

1. Examples of a mere conduit would include a newspaper or magazine, a website carrying third-party banner ads, a postman or courier, a person paid to hand out promotional material to the public and an event venue - unless in each case they were the originator i.e the Person who makes the Financial Promotion.
2. In Rule 3.4.2(b) the DFSA considers that the following non-exhaustive list of factors may each be indicative of whether or not a Financial Promotion is "intended to be acted upon by, or targeted at, Persons in the DIFC":
  - i. whether it is expressed to be for a Person or type of Person in the DIFC;

- ii. whether it is sent to an address (including a P.O. Box) in the DIFC;
  - iii. whether it is physically distributed to Persons in the DIFC;
  - iv. whether it takes place in the DIFC;
  - v. whether it makes reference to the DIFC;
  - vi. whether it appears in a DIFC publication;
  - vii. whether it appears on a DIFC-based or related website or other media
  - viii. whether it is sent to the email of a Person in the DIFC; or
  - ix. whether it contains a prominent and clear disclaimer on its face that it is not intended to be acted upon by Persons in the DIFC.
3. The DFSA in applying Rule 3.4.2(ed) will generally consider that for a communication to be made “for a commercial or business purpose” there must be a commercial element to the Financial Promotion, whether or not the Financial Promotion actually leads to the provision of any financial service. However, the DFSA considers that “for a commercial or business purpose” requires a commercial or business interest on the part of the communicator and the nature of the communicator’s business need not be related to any specific financial service.
4. The DFSA considers that a Person located outside the DIFC who makes a Financial Promotion into the DIFC, makes that communication in the DIFC. The DFSA considers that the prohibition in Article 41A(1) applies irrespective of where the communicator of the Financial Promotion is located.

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## **6 GENERAL PROVISIONS**

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### **6.5 Location of offices**

- 6.5.1** (1) Where an Authorised Person is a Body Corporate incorporated in the DIFC, its head office and registered office must be in the DIFC.
- (2) Where an Authorised Person is a partnership established under the Limited Partnership Law 2004 or the General Partnership Law 2006, its head office and registered office must be in the DIFC.
- (3) Where an Authorised Person operates in the DIFC through a Branch:
- (a) it must have a place of business in the DIFC that is the principal place where it carries on the activities for which it is authorised by the DFSA; and
  - (b) that place of business must be its address in the DIFC to which communications and notices may be addressed.
- (4) An applicant for authorisation to carry on one or more Financial Services must satisfy the DFSA that it will meet the requirements in this Rule when the authorisation is granted.
- (5) In this Rule:
- (a) “head office” means the principal place where an Authorised Person carries on:
    - (i) the day-to-day management and control of its business, wherever that business may be conducted; and
    - (ii) the activities for which it is authorised by the DFSA; and
  - (b) “registered office” has the meaning given in the Companies Law 2009, Limited Partnership Law 2004 or General Partnership Law 2006, as applicable.

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