CONSULTATION PAPER NO.116

MISCELLANEOUS CHANGES

11 SEPTEMBER 2017

PREFACE

Why are we issuing this Consultation Paper (CP)?

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 collected 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 CP?

The proposals in this Paper should generally be of interest to Authorised Firms, to applicants and to their advisers. Item 4 will be of particular interest to Trust Service Providers.

Terminology

In this CP, defined terms are identified by the capitalisation of the initial letter of a word, or of each word in a phrase, and are defined in the Glossary Module (GLO). Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

What are the next steps?

All comments should be emailed to **consultation@dfsa.ae** using the table provided in Appendix 9. Please refer to the CP number in the subject line. You may 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.

The deadline for providing comments is **11 October 2017**.

Once we receive comments, we shall consider whether any changes to these proposals are required and then seek approval from the DFSA Board for the finalised proposals. Once the proposals are approved, we shall issue a notice on our website to this effect.

Structure of this CP

The remainder of this Consultation Paper contains:

(a) Item 1: Exclusion from Dealing in Investments as Principal;

(b) Item 2: Financial statements for debt issuers;

(c) Item 3: Price stabilisation for shares in listed funds;

(d) Item 4: Fees for Provision of Trust Services;

(e) Item 5: Fees for changes of scope;

(f) Other matters;

(g) Appendix 1: draft amendments to the [GEN] Module;

(h) Appendix 2: draft amendments to the [MKT] Module;

(i) Appendix 3: draft amendments to the [PRS] Module;

(j) Appendix 4: draft amendments to the [FER] Module;

(k) Appendix 5: draft amendments to the [PIB] Module;

(l) Appendix 6: draft amendments to the [REP] Module;

(m) Appendix 7: draft amendments to the Markets Law 2012;

(n) Appendix 8: draft amendments to the [GLO] Module; and

(o) Appendix 9: template for providing comments on this Consultation Paper.

Specific issues

1. Exclusion from Dealing in Investments as Principal

Please see proposed changes to GEN 2.7.4 in Appendix 1.

1. We are aware that a number of Persons wish to place reliance on GEN 2.7.4, or perhaps are placing reliance on this Rule, as a rationale to avoid being authorised for the Financial Service of Dealing in Investments as Principal.

2. However, the exclusion in GEN 2.7.4 is not intended to be available for Persons who hold themselves out to other potential counterparties as engaging in such a business or as being willing to enter into transactions.

3. We propose to amend GEN 2.7.4, and to add Guidance, to make clear the limitation in the scope of this exclusion.

2. Financial statements for debt issuers

Please see proposed change to MKT, table to A1.1, item 7.1(c)(i) in Appendix 2.

4. Our current Rules allow financial statements for those planning to issue debt to be of a certain age if unaudited (no older than 15 months), and slightly older (18 months) if audited.

5. The EU legislation, on which we have largely based our regime, has recently been updated. The EU rules now allow financial statements to be up to 18 months old without condition (i.e., they can be audited or unaudited), if the debt in question is issued only to professional investors.

6. We think that it is sensible to align our regime with the EU regime again. As these are issues of debt to professional investors only, we see no significant risk arising from this proposed change.

3. Price stabilisation for shares in listed funds

Please see proposed changes to PRS 2.2.1(2) in Appendix 3 and to GLO at Appendix 8.

7. The Price Stabilisation Rules (in the PRS Module) allow certain parties to take steps to stabilise the price of newly issued securities, from the date of their issue, and provide a defence to those parties from the market abuse provisions.

8. Price Stabilisation activities can only take place for Eligible Securities. Our definition of Eligible Securities does not include Shares that represent Unitholder interests in a Listed Fund. This has

caused some practical difficulties, where issuers of such Shares have not felt able to take price stabilisation measures.

9. To address this, we propose to add Shares that represent Unitholder interests in a Listed Fund to the category of securities for which Price Stabilisation measures can be taken.

4. Fees for Provision of Trust Services

Please see proposed changes to FER 2.1.1 and 3.2.1 in Appendix 4.

10. Our current fee regime lists one application fee of USD 25,000 (FER 2.1.1) and one annual fee of USD 25,000 (FER 3.2.1) for those Firms who are Providing Trust Services.

11. However, in our prudential regime in the PIB Module, which largely drives our fee regime, we recognise two separate sub-categories of Providing Trust Services.

12. A distinction is drawn between those who are Providing Trust Services, including acting as trustee in respect of at least one express trust (GEN 2.23.1(c)) – such Firms are in prudential category 3C - and those who are Providing Trust Services, but not acting as trustee in respect of any express trust – these Firms are in prudential category 4.

13. We believe that the fee treatment of Providing Trust Services should reflect the distinction drawn for prudential purposes.

14. We propose to amend the FER Module so that Firms who are Providing Trust Services, but who are not acting as trustee in respect of at least one express trust, should face application and annual fees of USD 15,000. This would make their fees comparable to those of other Firms whose activities are in prudential category 4 in the PIB Module.

5. Fees for changes of scope

Please see proposed changes to FER 2.2.7 in Appendix 4.

15. In the interests of clarity, we intend to amend FER 2.2.7 to make it clear that this Rule applies to any change of scope of a Firm's activities including, for example, the addition of a new product to a Firm's Licence.

Other matters

Please refer to:

16. We have also identified a number of other matters that involve minor additions, clarifications or where cross-references need correcting. The proposed changes we are consulting on are:

Appendix 1	(a)	GEN 2.3.2(1)(c) – clarify scope by adding "… or a customer of a member of the same Group…";
Appendix 2	(b)	MKT 2.4.1(i)(iii)(A) – add text making it clear that the DFSA may require further information;
Appendix 7	(c)	Markets Law – remove a duplicative paragraph relating to Rule-making about 'connected persons';
Appendix 2	(d)	MKT9.7.4 Guidance – add text that DFSA may require (i) disclosure of the mechanics that will be used to effect the share buybacks, and (ii) that buyback transactions are made at an arm's length basis when the buyback will be through open market purchases;
Appendix 2	(e)	Table to MKT APP1.1, Item 2.4(c) – delete "past 12 months" and replace with "current financial year";
Appendix 5	(f)	PIB 4.12.9 – we propose to add the European Stability Mechanism to the list of supranational institutions recognised under the Rule;
Appendix 5	(g)	PIB A2.4.1 – the title of the B270 form in Table 1 will be changed from "Insurance Brokerage" to "Insurance Intermediation and Underwriting", to reflect what should be reported on this form. The relevant guidance notes in the PRU Sourcebook will also be updated; and
Appendix 6	(h)	REP 2.1.2(1)(b) – add Guidance illustrating the meaning of 'regulated' by a Financial Services Regulator.

Q1: Do you have any comments on, or concerns related to, the proposed rule changes? If so, what are they and how should they be addressed?