

ANNEX D

This Annex sets out the proposed amendments to VER4/04-06 of the OSR module.

In this Annex, underlining indicates new text and striking through indicates deleted text.

The DFSA Rulebook

Offered Securities Rules

(OSR)

4 PROSPECTUS OFFERS OF SECURITIES

- 4.2.6 (1) A Person who makes or intends to make a Prospectus Offer must appoint a sponsor in sufficient time to enable the sponsor to comply with the requirements of chapter 10 of this module.
- (2) The appointment of a sponsor under Rule 4.2.6(1) remains in effect for the period the Prospectus Offer remains open.
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8 OBLIGATIONS OF REPORTING ENTITIES

8.1 Application

- 8.1.1 This chapter applies to a Reporting Entity.

Guidance

1. The term Reporting Entity is defined in the Schedule to the Markets Law 2004 as follows:
 - "(1) Subject to (2), a person is a Reporting Entity if:
 - (a) the person has or had Securities admitted to an Official List of Securities at any time;
 - (b) the person has filed a prospectus with the DFSA under Article 15;
 - (c) the person merges with or acquires a Reporting Entity; or
 - (d) the person is declared in writing to be a Reporting Entity by the DFSA.
 - (2) A person is not a Reporting Entity if:
 - (a) the person is a properly constituted government, a government agency, a central bank or other type of national monetary authority of a country or jurisdiction, a supra-national organisation whose members are either countries, central banks or national monetary authorities, a public authority or a state investment body; or
 - (b)
 - (i) the person previously had Securities admitted to an Official List of Securities;
 - (ii) the person currently has no Securities admitted to an Official List of Securities;

- (iii) the current holders of at least seventy five per cent of Securities in the Reporting Entity have agreed in writing that the person is no longer a Reporting Entity; and
 - (iv) the DFSA has confirmed in writing that the person is no longer a Reporting Entity; or
 - (c) the DFSA so determines."
2. For the purpose of the exclusion from Reporting Entity status set out in paragraph (2)(b) of the definition, a Person who ceases to be a Reporting Entity by virtue of an agreement of holders of the Securities should notify the DFSA of that fact in order no longer to be treated as a Reporting Entity.

8.1.2 In relation to a Fund, the Operator of the Fund is the Reporting Entity.

8.2 Continuous disclosure

- 8.2.1** (1) A Reporting Entity must make timely disclosure of Material Information, including the relevant matters set out in App2 in accordance with this chapter.
- (2) A Reporting Entity must ensure that its disclosure is complete, true, plain and not misleading, false or deceptive.
- (3) The Reporting Entity must, subject to section 8.3, disclose any matters as soon as reasonably practicable:
- (a) where App2 requires market disclosure, by way of an announcement made:
 - (i) on the website of the Reporting Entity;
 - (ii) to the DIFX or such other entity created by the DIFX for the purpose of public dissemination; and
 - (iii) to the DFSA; or
 - (b) otherwise, as required by App2. [Amended][VER2/08-05]

Guidance

The disclosure to the DIFX, regardless of whether the Securities are traded on that exchange, is of particular significance given the requirement by the DFSA that the DIFX make all announcements publicly available through on-line sources and by dissemination to the media.

8.2.2 If a Reporting Entity fails to comply with an obligation to disclose any information under this chapter, the DFSA may:

- (a) require the Reporting Entity to disclose the information; or
- (b) take such other steps as it considers appropriate;

if it considers that to do so would be in the interests of the DIFC.

Guidance

1. Under Article 22 of the Markets Law 2004, a Reporting Entity must make disclosures to the market in the circumstances prescribed by the Offered Securities Rules. This chapter, together with App2, sets out the obligations of Reporting Entities to make disclosures and provides guidance in relation to price sensitive information. [Amended][VER2/08-05]
2. Where a Reporting Entity realises that it has or may have breached its continuous disclosure obligations it should contact the DFSA to discuss the matter and seek guidance on taking steps to ensure that similar breaches are prevented from recurring.
3. The continuous disclosure obligations form an essential part of maintaining orderly markets and ensuring acceptable levels of investor protection. Where these obligations are not met and the DFSA considers it appropriate, one or more sanctions, which are set out in the Enforcement module may be imposed.
4. Article 32 of the Markets Law 2004 allows the DFSA to vary continuous disclosure requirements if:
 - a. at the time of the Offer of Securities in or from the DIFC, a Person has made an offer of Securities in a jurisdiction other than the DIFC; and
 - b. that jurisdiction has substantially the same disclosure requirements as provided in Part 6 of the Markets Law 2004 and the Offered Securities Rules.

- 8.2.3** (1) A Reporting Entity must not disclose any information it is required to disclose by Rule 8.2.1 to any other Person prior to the market disclosure in accordance with Rule 8.2.1(3) of such information except in strict confidence to:
- (a) its advisors, underwriters, ~~or~~ sponsors or compliance advisers;
 - (b) the custodian of the Listed Fund to which the information relates;
 - (c) agent employed to release the information;
 - (d) Persons with whom it is negotiating with a view to effecting a transaction or raising finance, including prospective underwriters or sponsors of an issue of Securities, providers of finance or loans or the placement of the balance of a rights issue not taken up by shareholders;

- (e) the DFSA or another Financial Services Regulator where such disclosure is necessary or desirable for the regulator to perform its functions;
- (f) a Person to whom the Reporting Entity discloses information in accordance with a lawful requirement; or
- (g) a Person to whom the information is disclosed in the necessary course of the business of the Reporting Entity.

[Amended][VER2/08-05]

- (2) A Reporting Entity must advise such recipients, except the DFSA, in writing, prior to them receiving the information, that the information is confidential and that they and any Person privy to the information should not deal in the relevant Securities, or any other related Investment, before the information has been made available to the market.

8.2.4 A Reporting Entity must nominate two Persons to be its main points of contact with the DFSA in relation to continuing disclosure and other continuous obligations under this chapter.

8.3 Disclosure exceptions

8.3.1 (1) A Reporting Entity who intends not to disclose information it would, but for Article 24(1) of the Markets Law 2004, be required to disclose under this chapter must notify the DFSA by written notice setting out:

- (a) a confidential report setting out the relevant information that it would, but for Article 24(1) of the Markets Law 2004, be required to be disclosed under the Rules; and
- (b) the reason why the Reporting Entity believes on reasonable grounds that the relevant information would fall within the grounds prescribed under Article 24(1) of the Markets Law 2004.

- (2) A notification under (1) must be in English, and all documents accompanying the notification must be either in the English language or accompanied by an English translation.

8.3.2 By making a notification under Rule 8.3.1 the Reporting Entity undertakes that the application is true, accurate and not misleading and does not omit anything of which the DFSA would reasonably be expected to be made aware of in the circumstances of the case.

8.3.3 A Reporting Entity which has made a notification under Rule 8.3.1 in respect of which the DFSA has taken no action must notify the DFSA promptly if:

- (a) there is a material change of circumstances such that the reason for the notification is no longer valid; or
- (b) it becomes aware, or there are reasonable grounds to suspect, that Persons with knowledge of the material change are purchasing or selling Securities or any other related investment.

8.4 Other continuing obligations

8.4.1 A Reporting Entity must comply with the relevant continuing obligations set out in section A2.2, App3 and App4.

Guidance

Where the Reporting Entity cannot comply with a requirement in section A2.2, App3 or App4 because it is not the Issuer it may apply to the DFSA for a waiver or modification of the relevant requirement.

- 8.4.2**
- (1) The DFSA may by written notice impose additional continuing obligations on a Reporting Entity with immediate effect or from such date and time as may be specified if it is satisfied that it is in the best interests of the DIFC.
 - (2) If the DFSA is minded to impose additional continuing obligations and provide an opportunity to make representations on a Reporting Entity, it will notify the Reporting Entity in writing prior to imposing such obligations, unless (3) applies.
 - (3) Where the DFSA concludes that any delay likely to arise as a result of allowing a Reporting Entity to make representations would be prejudicial to the interests of the DIFC, it will not provide the Reporting Entity with the prior opportunity to make representations.
 - (4) Where the DFSA has imposed additional continuing obligations without providing a prior opportunity to make representations, the DFSA will:
 - (a) provide the Reporting Entity with an opportunity to make representations in Person and in writing to the DFSA within the period of fourteen days or such further period as may be agreed from the date on which such additional continuing obligations were imposed; and
 - (b) provide a response to any such representations and make any consequential direction, variation or withdrawal of the additional continuing obligations without undue delay.

- (5) The Regulatory Appeals Committee has jurisdiction to hear and determine any appeal in relation a decision to impose additional continuing obligations on a Reporting Entity.

- 8.4.3** (1) The DFSA may by written notice require a Reporting Entity to appoint a compliance adviser for a specified period to assist the Reporting Entity in meeting its continuing obligations under the Markets Law 2004 and this module. Subject to 8.4.3(3) a Reporting Entity must appoint a sponsor to perform such role as set out in chapter 10.

[Amended][VER3/09-05]

- (2) A Reporting Entity that is required to appoint a compliance adviser in accordance with Rule 8.4.3(1) must ensure that a compliance adviser continues to fulfil the role of compliance adviser until such time as the DFSA advises the Reporting Entity in writing that a compliance adviser is no longer required. The Reporting Entity which appoints a sponsor in accordance with (1) must ensure that that sponsor continues to fulfil his role until such time as the DFSA consents in writing to his release.
- (3) ~~A Person who is a Reporting Entity solely by reason of the admittance of Designated Investments to an Official List of Securities does not need to appoint a sponsor.~~ [Added][VER3/09-05]

8.5 The database

- 8.5.1** Information which the DFSA believes, on reasonable grounds, may be prejudicial to the orderly operation of the market is prescribed as confidential for the purposes of Article 22(1) of the Markets Law 2004.
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10 SPONSORS

10.1 Application

- 10.1.1** This chapter applies to:

- (a) a sponsors; and
- (b) Persons required to appoint a sponsor under Rule 4.2.6. an Undertaking that is required to appoint a sponsor pursuant to Rule 4.2.6 or Rule 8.4.3.

Guidance

Rule 4.2.6 requires the appointment of a sponsor for a Prospectus Offer in the DIFC in sufficient time to enable the sponsor to comply with its obligations and for as long as the Offer is open. The requirement for the appointment of a sponsor is designed to ensure that a Person who makes or intends to make a Prospectus Offer is aware of, and complies with, the requirements under the Markets Law 2004 and this module.

In most cases the Person making a Prospectus Offer, will be the Issuer of the Securities in the Prospectus. However there may be situations where the Person making a Prospectus Offer, that is the Offeror, is not the Issuer.

In any event, the sponsor must make certain inquiries and assume certain obligations under the Rules. A sponsor must therefore be a Person familiar with the requirements of the Markets Law 2004 and this module and who has the necessary knowledge, experience, qualifications and resources to assist the Offeror to comply with the various requirements.

The DFSA's *Policy Statement on Sponsors* describes in greater detail the role and regulatory obligations of a sponsor and the kind of knowledge, experience, qualifications and resources the DFSA expects a sponsor to have. The Policy explains that although a sponsor has certain regulatory obligations of its own, as prescribed in this module, its principal role is to assist a Person making a Prospectus Offer to comply with its regulatory responsibilities relating to the Offer. In the Policy Statement, the DFSA confirms that a Person making a Prospectus Offer does not, and cannot, avoid or diminish its regulatory obligations related to Offering Securities simply because it is required to have a sponsor. The regulatory obligations of the Person making the Prospectus Offer are not transferred to the sponsor but remain the responsibility of the Person making the Offer.

~~Rules 4.2.6 and 8.4.3 require the appointment of a sponsor. The requirement for the appointment of a sponsor is designed to ensure that Reporting Entities are aware of, and comply with, their requirements under the Law and Rules. A sponsor must therefore be a Person familiar with the requirements of the Law and Rules and who has the necessary skill, experience and qualifications to ensure that the Reporting Entity complies with the various requirements. In exceptional circumstances, in light of the skills, qualifications and experience of staff within the Reporting Entity, the DFSA may grant a waiver or modification of the requirement of the appointment of a sponsor.~~

10.2 Appointment of sponsors

- 10.2.1** (1) ~~Prior to appointing a sponsor, a Person must: An Undertaking appointing a sponsor must, prior to making the appointment:~~
- (a) take reasonable steps to ensure that the proposed sponsor has the required knowledge, skills, resources and experience, qualifications and resources to carry out its obligations under the Rules; and
 - (b) notify the DFSA of the proposed sponsor's name, its business address and an address in the DIFC for the service of documents, and business address; and
 - (c) ~~obtain the DFSA's consent to the proposed appointment.~~

- (2) ~~If requested by the DFSA, a Person appointing a sponsor must provide the DFSA with information about the knowledge, experience, qualifications and resources of the appointed or proposed sponsor. An Undertaking must provide the DFSA with information on its appointed or proposed sponsor with regard to the sponsor's skills, resources and experience.~~

10.2.2 (1) ~~A Person must take reasonable steps to ensure that the relevant sponsor and Employees of the sponsor are independent and have appropriately managed any conflict of interest that may arise. An Undertaking must take reasonable steps to ensure that the relevant Employees of the sponsor are independent of the Undertaking and have appropriately managed any conflict of interest with respect to the Undertaking that may arise.~~

- (2) ~~A Person must notify the DFSA if it becomes aware, or has reason to believe, that the sponsor or relevant Employees of the sponsor are no longer independent or have a conflict of interest which has not been appropriately managed. An Undertaking must notify the DFSA if it becomes aware, or has reason to believe, that the relevant Employees of the sponsor are no longer independent of the Undertaking or have a conflict of interest which has not been appropriately managed.~~

10.2.3 ~~Where, in the opinion of the DFSA, a sponsor appointed by a Person an Undertaking is not suitable in the opinion of the DFSA, or where a sponsor has not been appointed or has resigned, the DFSA may direct the Person an Undertaking to replace or appoint a sponsor.~~

10.3 Obligations of a sponsor in relation to offers

10.3.1 ~~A sponsor appointed pursuant to Rule 4.2.6 must: When making an Offer, a sponsor must:~~

- (a) ~~satisfy itself to the best of its knowledge and belief, having made due and careful enquiry of the Person who makes or intends to make a Prospectus Offer Offer of the Securities and its advisers, that the Person Offeror has satisfied all applicable conditions for Offering Securities and other relevant requirements under the Markets Law 2004 and this module;~~
- (b) ~~provide to the DFSA any information or explanation known to it in such form and within such time limit as the DFSA may reasonably require for the purpose of verifying whether this module is being, and has been, complied with by the Offeror and Issuer in a Prospectus Offer; in relation to which it acts as sponsor; and~~
- (c) ~~take other steps required in writing by the DFSA.~~

10.3.2 (1) Where a sponsor becomes aware of a failure by a Reporting Entity to comply with its obligations under the Markets Law 2004 and this module, the sponsor must without undue delay:

(a) notify the Reporting Entity of the failure and take reasonable steps to ensure it rectifies the failure within a reasonable time; and

(b) if the Reporting Entity does not or is unable to rectify the failure as soon as practicable:

(i) notify the DFSA of that fact; and

(ii) if the continuing obligation is one of disclosure, make the disclosure to the DFSA.

10.4 Duty of care of sponsors ~~Obligations in relation to reporting entities~~

10.4.1 A sponsor has a duty of care to the Person to which it is appointed. ~~(1) A sponsor must ensure that a Reporting Entity complies with any applicable provisions in the Markets Law 2004 and this module.~~

~~(2) When a sponsor becomes aware of a failure of the Reporting Entity which he sponsors to comply with its obligations under the Markets Law 2004 and this module, he must without undue delay:~~

~~(a) notify the Reporting Entity of the failure and take reasonable steps to ensure it rectifies the failure within a reasonable time; and~~

~~(b) if the Reporting Entity does not or is unable to rectify the failure as soon as practicable:~~

~~(i) notify the DFSA of that fact; and~~

~~(ii) if the continuing obligation is one of disclosure, make the disclosure to the DFSA.~~

10.5 Co-operation with sponsors ~~Duty of care of sponsors~~

10.5.1 (1) Persons who make or intend to make a Prospectus Offer must take reasonable steps to ensure that they and their Employees: ~~A sponsor has a duty of care to the Undertaking to whom it is appointed.~~

- (a) provide such assistance as the sponsor reasonably requires to discharge its duties;
 - (b) give the sponsor right of access at all reasonable times to relevant records and information;
 - (c) do not interfere with the sponsor's ability to discharge its duties;
 - (d) do not provide misleading or deceptive information to the sponsor; and
 - (e) report to the sponsor any matter which may significantly affect the financial position of the Person issuing the Securities or the price or value of the Securities.
- (2) A sponsor must notify the DFSA of any non co-operation by the Offeror, Issuer, or their Employees.

10.6 Termination of sponsors Co-operation with sponsors

10.6.1 Where a Person who makes or intends to make a Prospectus Offer dismisses its sponsor, the Person must advise the DFSA in writing without delay of the dismissal, giving details of any relevant facts and circumstances. An Undertaking must take reasonable steps to ensure that it and its Employees:

- ~~(a) provide such assistance as the sponsor reasonably requires to discharge its duties;~~
- ~~(b) give the sponsor right of access at all reasonable times to relevant records and information;~~
- ~~(c) do not interfere with the sponsor's ability to discharge its duties;~~
- ~~(d) do not provide misleading or deceptive information to the sponsor; and~~
- ~~(e) report to the sponsor any matter which may significantly affect the financial position of the undertaking or the price or value of the Securities.~~

10.6.2 Where a sponsor resigns, it must advise the DFSA in writing without delay of the resignation, giving details of any relevant facts and circumstances. A sponsor must notify the DFSA of any non co-operation by the Undertaking or its Employees.

~~10.7 Termination of sponsors~~

~~10.7.1~~ Where an Undertaking dismisses its sponsor, the Undertaking must advise the DFSA in writing without delay of the dismissal, giving details of any relevant facts and circumstances.

~~10.7.2~~ Where a sponsor resigns as sponsor to an Undertaking, it must advise the DFSA in writing without delay of the resignation, giving details of any relevant facts and circumstances.

(As the whole of Chapter 11 is new, there is no text underlined in the usual manner)

11 COMPLIANCE ADVISERS

11.1 Application

11.1.1 This chapter applies to Reporting Entities that are required to appoint compliance advisers under Rule 8.4.3.

Guidance

The requirement for the appointment of a compliance adviser is designed to ensure that a Reporting Entity is aware of and complies with its continuing obligations under the Markets Law 2004 and this module. A compliance adviser should therefore be a person familiar with the requirements of the Markets Law 2004 and this module and should have the necessary knowledge, experience, qualifications and resources to assist a Reporting Entity to comply with its regulatory obligations.

The DFSA's *Policy Statement on Compliance Advisers* describes in greater detail the purpose of a compliance adviser and the circumstances in which the DFSA is likely to require a Reporting Entity to appoint a compliance adviser. The Policy also describes how a compliance adviser can assist a Reporting Entity to meet its obligations in the Markets Law 2004 and this module generally, and specifically the continuing obligations prescribed in Rule 8 and App2, App3 and App4 of this module. The Policy explains that the compliance adviser does not take on any regulatory obligations or potential regulatory liability of its own under the Markets Law 2004 or this module if it agrees to act as a compliance adviser to a Reporting Entity. The relationship between the Reporting Entity and compliance adviser is a contractual one similar to one with any other professional adviser. In the Policy Statement the DFSA confirms its view that the compliance adviser role is merely to advise and assist the Reporting Entity to comply with its continuing regulatory responsibilities, all of which remain the responsibility of the Reporting Entity.

11.2 Appointment of compliance advisers

11.2.1 The DFSA may, in its absolute discretion, require a Reporting Entity to:

- (1) appoint a compliance adviser; or
- (2) replace a compliance adviser already appointed.

11.2.2 (1) A Reporting Entity required to appoint a compliance adviser must, prior to making the appointment:

- (a) take reasonable steps to ensure that the proposed compliance adviser has the required knowledge, experience, qualifications and resources to carry out its obligations under this module;
- (b) notify the DFSA of the proposed compliance adviser's name and business address; and

- (c) take reasonable steps to ensure that the proposed compliance adviser and its relevant Employees are independent and that any conflicts of interest are appropriately managed;
- (2) If requested by the DFSA, a Reporting Entity appointing a compliance adviser must provide the DFSA with such information as it may require including information regarding knowledge, experience, qualifications and resources of the compliance adviser.
- (3) A Reporting Entity must notify the DFSA if it becomes aware, or has reason to believe, that the compliance adviser or its relevant Employees have a conflict of interest which has not been appropriately managed.

11.3 Obligations of a Reporting Entity relating to a compliance adviser

11.3.1 Where a Reporting Entity is advised by its compliance adviser that it is failing or has failed to comply with its obligations under the Markets Law 2004 and this module, the Reporting Entity must without undue delay:

- (a) take reasonable steps to rectify the failure as soon as practicable; and
- (b) if the Reporting Entity does not or is unable to rectify the failure as soon as practicable notify the DFSA of that fact.

11.3.2 A Reporting Entity must provide to the DFSA any information in such form and within such time as the DFSA may reasonably require regarding its compliance adviser or any advice the compliance adviser is providing, or has provided, to the Reporting Entity regarding its continuing obligations under the Markets Law 2004 and this module.

11.3.3 A Reporting Entity must take reasonable steps to ensure its compliance adviser cooperates in any investigation conducted by the DFSA including answering promptly and openly any questions addressed to the compliance adviser, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which the compliance adviser is requested to appear.

11.4 Co-operation with compliance advisers

11.4.1 A Reporting Entity must take reasonable steps to ensure that it and its Employees:

- (1) provide such assistance as the compliance adviser reasonably requires to discharge its duties;

- (2) give the compliance adviser right of access at all reasonable times to relevant records and information;
- (3) do not hinder or interfere with the compliance adviser's ability to discharge its duties;
- (4) do not withhold information that would assist the compliance adviser advising the Reporting Entity of its duties;
- (5) do not provide misleading or deceptive information to the compliance adviser; and
- (6) report to the compliance adviser any matter which may significantly affect the financial position of the Reporting Entity or the price or value of the Securities.

11.5 Termination of compliance adviser

11.5.1 Where a Reporting Entity dismisses its compliance adviser, the Reporting Entity must advise the DFSA in writing without delay of the dismissal, giving details of all relevant facts and circumstances.

11.5.2 Where a compliance adviser resigns, the Reporting Entity must without delay advise the DFSA in writing of the resignation, giving details of all relevant facts and circumstances.

11.6 Appeal to the Regulatory Appeals Committee

The Regulatory Appeals Committee has jurisdiction to hear and determine any appeal of a decision of the DFSA to require a Reporting Entity to appoint a compliance adviser under Rule 8.4.3.