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**CONSULTATION PAPER NO. 48**

**3 JULY 2007**

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**PROPOSALS TO FACILITATE CERTAIN TYPES OF ADVISING AND  
ARRANGING**

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## CONSULTATION PAPER NO 48

### PROPOSALS TO FACILITATE CERTAIN TYPES OF ADVISING AND ARRANGING

#### Why are we issuing this paper?

1. This Consultation Paper seeks public comment on the DFSA's proposal to provide a greater degree of flexibility for Authorised Firms providing generic advice or making mere referrals as part of conducting Investment Business by removing:
  - (a) the detailed analysis and verification requirements for establishing whether a Person meets the Client test in COB Rule 3.2.2;
  - (b) the suitability requirements under COB Rule 6.2.1; and
  - (c) the client agreement requirements under COB Rule 8.1.1.
2. These proposals reflect the DFSA's risk based approach to regulation.

#### Who should read this paper?

3. The proposals in this Paper would be of primary interest to Authorised Firms conducting the Financial Services of Advising on Financial Products or Credit or Arranging Credit or Deals in Investments. It will also assist those Persons proposing to conduct such Financial Services.

#### How to provide comments

4. All comments should be provided to the person specified below. 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 this proposal is **5 August 2007**. Once we receive your comments, we will consider if any further refinements are required to this proposal. We will then proceed to enact the changes to the DFSA's Rulebook. Because these are still proposals, you should not act on them until the relevant changes to the DFSA Rulebook are made. We will issue a notice on our website telling you when this happens.

#### Comments to be addressed to:

Lawrence Paramasivam  
Legal Counsel  
DFSA  
PO Box 75850  
Dubai, UAE

or e-mailed to: [lparamasivam@dfsa.ae](mailto:lparamasivam@dfsa.ae)

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## Defined Terms

6. Where we have used capitalised terms, they are generally defined terms in the Glossary Module of the DFSA Rulebook. For convenience of reference, in this Paper:
  - (a) “ASP” means the Ancillary Service Providers Module of the DFSA Rulebook;
  - (b) “COB” means the Conduct of Business Module of the DFSA Rulebook;
  - (c) “Financial Services Regulator” means a regulator of financial services activities established in a jurisdiction other than the DIFC.
  - (d) “Firm” means an Authorised Firm;
  - (e) “GEN” means the General Module of the DFSA Rulebook; and
  - (f) “Person” includes an natural person, body corporate or body unincorporated, including a legal person, company, partnership, unincorporated association, government or state.

## Background

7. The activity of generic advice falls within the definition of the Financial Service of Advising on Financial Products or Credit in GEN Rule 2.11.1. It is defined to mean any communication that contains information about a Financial Product or Credit Facility which can reasonably be regarded as intended to influence a Person to make a decision relating to that product or facility, but without containing any advice on the merits of the particular Person entering into a contract relating to that product or facility. A similar concept applies in relation to Insurance Intermediation (GEN Rule 2.19.1), but does not raise the issues dealt with in this paper.
8. The activity of a mere referral falls within the scope of the Financial Service of Arranging Credit or Deals in Investments in GEN 2.9.1.
9. The Financial Services of Advising on Financial Products or Credit and Arranging Credit or Deals in Investments in turn fall within the definition of Investment Business. A Firm conducting Investment Business can only do so with a Person who is a Client as defined in COB Rule 3.2.2.
10. To establish whether a Person meets the Client test, a Firm is required to undertake an analysis and verification process, which is designed to ensure that Firms do not provide Financial Services to Retail Customers, in keeping with the wholesale nature of the DIFC. (See COB Rules 3.2.4 and 3.2.5.)
11. With limited exceptions, under COB Rule 6.2.1, a Firm may only advise a Client on Financial Products or Credit where that advice is suitable for that Client having regard to that Client’s investment objectives and risk tolerance and any other requirements or relevant facts about the Client of which the Firm ought reasonably to be aware.

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12. A Firm must also provide a client agreement before conducting Investment Business with a Client (or if impracticable, within a reasonable time after), subject to some limited exceptions. (See COB Rule 8.1.1.)

### **Scope of, and the rationale for, the proposals**

13. Firms are encountering difficulty in complying with the Rules mentioned above when giving generic advice. This is because generic advice is often given at a preliminary stage of a professional relationship with a potential customer, for example in a seminar or by giving out a brochure. As a result, an analysis of a Person's assets, financial experience and understanding to participate in financial markets is neither practicable nor cost efficient. Similarly, Firms may give out information brochures on products that contain contact details of product providers to potential customers in seminar and similar contexts. Given that those potential customers are then able to contact the relevant product providers, such activities would constitute arranging as defined in GEN Rule 2.9.1.
  14. The DFSA considers that the requirements for a Firm before giving generic advice to a Person to conduct a detailed analysis and have a verification process, meet suitability requirements and issue a client agreement, are not justified from a cost benefit or risk perspective, because generic advice by its very nature:
    - (a) does not contain any advice on the merits of the Person entering into a transaction relating to a particular Financial Product or Credit Facility to warrant a detailed analysis; and
    - (b) may often be given at an early stage of the establishment of a formal professional relationship with a potential customer.
  15. Similarly, the DFSA considers that certain types of referral activities do not warrant a detailed analysis and verification process and the issue of a client agreement. The circumstances are that no advice of the kind referred to in GEN Rule 2.11.1(1)(a) or (b) is given to the Person and the referral is to an entity which is subject to adequate regulation (i.e. another Authorised Firm or an entity regulated by another Financial Services Regulator). In these circumstances, there are no suitability based recommendations about Financial Products or Credit to warrant the more detailed analysis otherwise required and also, the Client has the benefit of regulation provided by the DFSA or another Financial Services Regulator when obtaining the products or services from the entity to whom the referral is made.
  16. Therefore, the DFSA proposes that a Firm giving generic advice or providing a mere referral to a Person only need satisfy itself, on reasonable grounds, that the Person appears to be a high net worth individual (i.e. a person who appears to have \$1 million or more in liquid assets) or an Undertaking (i.e. a Body Corporate, a Partnership, or an association carrying on a trade or business). However, a Firm providing advice as to the merits of a Person entering into a transaction to buy or sell a particular Financial Product or Credit Facility will be subject to the full analysis, verification, suitability and client agreement requirements under the COB Rules. Similarly, a Firm that proceeds to provide any other Financial Service, such as dealing, will also be
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subject to the same COB requirements.

17. The DFSA proposes to make changes to its COB and GLO Rulebooks (set out in Annex A) that will allow Firms giving generic advice, the benefit of not having to:
  - (a) undertake a detailed analysis and verification process required under COB Rules 3.2.2 to 3.2.6;
  - (b) the suitability requirements under COB Rule 6.2.1; and
  - (c) provide a client agreement as required under COB Rule 8.1.1.
18. Furthermore, the DFSA proposes to allow a Firm providing a mere referral from the benefit of not having to comply with COB Rules 3.2.2 to 3.2.6 and 8.1.1.