



CONSULTATION PAPER NO 51

9 JULY 2007

PROPOSALS RELATING TO OFFERS OF SECURITIES FROM THE DIFC

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Why are we issuing this paper?

1. This Consultation Paper seeks public comments on the DFSA's proposals to amend OSR Rule 2.7, in respect to Offers from the DIFC. In summary the proposed amendments will:
 - a. require Offerors to advise the DFSA (within a prescribed time period) of details of Offers that are made, rather than those intended to be made; and
 - b. require Offerors to insert a disclaimer on the Offer document which states that the document has not been reviewed or approved by the DFSA.

Guidance has also been added to clarify the types of Offers the DFSA needs to be advised of and the nature of information such advice should include.

Who should read this paper?

2. The proposals in this paper would be of primary interest to Persons who make or intend to make an Offer of Securities from the DIFC, and their advisers.
3. The Offered Securities Rules do not apply to a Person in relation to an Offer of a Unit or any right of interest in a Unit. Such offers are not covered by this paper and are dealt with under the Collective Investment Law and Collective Investment Rules.

How is this paper structured?

4. In this paper, we set out:
 - (a) defined terms in paragraph 7;
 - (b) the purpose of OSR Rule 2.7 in paragraphs 8 to 10;
 - (c) current limitations of OSR Rule 2.7 in paragraphs 11 to 13; and
 - (d) proposed amendments to OSR Rule 2.7 in paragraphs 14 to 19 and Annex A.

How to provide comments?

5. All comments should be forwarded 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?

6. **The deadline for providing comments on these proposals is 8th August 2007.** Once we receive your comments, we will consider if any further refinements are required to these proposals. We will then proceed to make the necessary changes to the OSR Module of the DFSA Rulebook. However, because the changes recommended in this paper 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:

Roberta Julfar

Legal Counsel

DFSA

PO Box 75850

Dubai, UAE

or e-mailed to: rjulfar@dfsa.ae

Definitions

7. The terms used in this paper have the same meaning as in the Rulebook Glossary, unless otherwise stated. For convenience of reference, in this paper:
- (a) “Exempt Offer” means an Offer prescribed under Article 14 (2) of the Markets Law 2004 and further prescribed under OSR Rule 2.4;
 - (b) “Offer” means an offer of Securities falling within Article 13 of the Markets Law 2004;
 - (c) “Offeror” means a Person who makes an Offer of Securities;
 - (d) “OSR” means the Offered Securities Rules Module of the DFSA Rulebook;
 - (e) “Person” means any natural person, Body Corporate or body unincorporated, including a legal person, company, Partnership, unincorporated association, government or state;
 - (f) “Personal Exempt Offer” means an Exempt Offer of a kind specified in OSR Rule 2.4.1 (2);
 - (g) “Prospectus Offer” means an Offer of Securities made in circumstances where a Prospectus has been filed with the DFSA and published; and
 - (h) “Security” means:
 - i. Shares, Debentures, Warrants, Certificates, Units or any right to or interest in any such Investment but not a right to or interest in a Derivative; and
 - ii. Designated Investments.

Purpose of OSR Rule 2.7

8. The main objective of OSR Rule 2.7 is to ensure the continuance of the high integrity and reputation of the DIFC. The Rule does this by providing the DFSA with regulatory recourse against Persons who make Offers of Securities from the DIFC, in circumstances where the Person making the Offer does not comply with the legislation in the jurisdiction where the Offer is received.
9. Currently OSR Rule 2.7 reads as follows:

2.7 Offers from the DIFC

2.7.1 A Person intending to make an Offer of Securities from the DIFC must:

- (a) *advise the DFSA in writing of the nature of the Offer and the jurisdiction in which the Offer is to be made; and*
- (b) *comply with any initial and ongoing obligations that are applicable in that jurisdiction in relation to the Offer of Securities.*

10. In the absence of OSR Rule 2.7, the DFSA would be unaware of Persons making Offers of Securities from the DIFC. Such a constraint may inhibit the ability of the DFSA to effectively carry out its regulatory responsibilities and subsequently impact upon the integrity and reputation of the DIFC.

Current limitations of OSR Rule 2.7

11. Existing OSR Rule 2.7.1 (a) facilitates the collection of information relating to intended Offers of Securities from the DIFC. There is no requirement for the DFSA to be notified of Offers of Securities from the DIFC that are in fact made.
12. The requirement under existing OSR Rule 2.7.1 (b) for an Offeror to comply with the regulatory obligations in the jurisdiction in which the Offer is made, can only be satisfied when there is an Offer rather than merely an intention to make an Offer. In the absence of confirmation by the Offeror to the DFSA that the Offer has taken place, the DFSA is unable to determine whether the obligation under existing OSR Rule 2.7.1 (b) has arisen.
13. In practice, it is only once an Offer is made that the obligation under existing OSR Rule 2.7.1 (b) becomes relevant.

Proposed amendments to OSR Rule 2.7

14. The proposed amendments to OSR Rule 2.7 are set out in Annex A. In summary the proposed amendments:
 - (a) require Offerors to advise the DFSA (within a prescribed time period) of details of Offers that are made (rather than those intended to be made); and
 - (b) require Offerors to insert a disclaimer on the Offer document which states that the document has not been reviewed or approved by the DFSA.Guidance has also been added to clarify the types of Offers the DFSA needs to be advised of and the nature of information such advice should include.
 15. The proposed amendment to OSR Rule 2.7.1 ensures that actual Offers, rather than intended Offers, made from the DIFC are notified to the DFSA. This will assist in reducing the regulatory requirements on Offerors.
 16. In addition, a time limit of 5 business days following the making of an Offer for an Offeror to notify the DFSA has been inserted. The aim of the inclusion of such a period is to make the time period definitive.
 17. The proposed new OSR Rule 2.7.1 (1) (c) requires Offerors to provide in or by attachment to the Offer document a prominent disclaimer, stating that the Offer document has not been reviewed or approved by the DFSA. This is consistent with the approach taken by the DFSA for marketing and selling Units of a Foreign Fund (another activity not regulated by the DFSA) under COB Rule 6.9.
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18. The proposed new Rule 2.7.1 (2) will clarify that any Offers from the DIFC, that fall within the definition of Personal Exempt Offers will not be subject to the notification requirement in OSR Rule 2.7.1 (1) (a). Personal Exempt Offers are a special and very limited category of Exempt Offer. Such Offers are made to no more than 50 Offerees in the DIFC in any 12 month period, and the total consideration payable for the Offer of Securities offered does not exceed US\$1 million (refer to OSR Rule 2.4.1 (2)).
19. The proposed Guidance clarifies:
 - (a) that the application of OSR Rule 2.7.1 (1) (a) includes Exempt and Prospectus Offers of Securities from the DIFC;
 - (b) that a Person located in the DIFC (such as an Issuer incorporated in the DIFC) will be subject to the notification obligation under OSR Rule 2.7.1 (1) (a) even if the Offer of Securities is to be made through its agent located outside the DIFC; and
 - (c) the type of information that should be included in the notification to the DFSA under OSR Rule 2.7.1 (1) (a).