



CONSULTATION PAPER NO. 54

FEBRUARY 2008

IMPLEMENTATION OF DFSA'S KEY POLICY REVIEW

CONSULTATION PAPER NO. 54

IMPLEMENTATION OF DFSA'S KEY POLICY REVIEW

Why are we issuing this paper?

1. This Consultation Paper provides a further update on certain aspects of the DFSA's Key Policy Review proposals (Consultation Paper No. 52). These aspects relate to:
 - (a) a proposed Rule which would require an Authorised Firm to apply to the DFSA for an endorsement to its Licence to enable it to conduct Financial Services with Retail Clients;
 - (b) the dispute resolution and Complaints handling processes which an Authorised Firm is required to implement if it conducts Financial Services with Retail Clients; and
 - (c) the transitional arrangements which the DFSA would provide to facilitate the implementation of the Rule changes proposed in Consultation Paper No. 52.
2. The current proposals involve changes to the following modules of the DFSA Rulebook:

GEN	General – Chapter 3	(Appendix 1)
AUT	Authorisation – Part 5	(Appendix 2)
COB	Conduct of Business	(Appendix 3)
GEN	General – Chapter 9	(Appendix 4)

Who should read this paper?

3. The proposals in this paper would be of interest to Persons carrying on, or considering carrying on, Financial Services in or from the DIFC, to their professional advisers, and to those who deal with such Persons.

How to provide comments?

4. 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?

5. The deadline for providing comments on the proposals is **15 March 2008**. Once we receive your comments, we will consider if any further refinements are required to these proposals. We will then proceed to enact the changes to the

DFSA's Rulebook. You should not act on these proposals 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, Policy & Legal Services

DFSA

PO Box 75850

Dubai, UAE

or e-mailed to: lparamasivam@dfsa.ae

Background

6. Consultation Paper No. 52, issued on 4 December 2007, contained a proposal by the DFSA to develop its regulatory regime in three key areas: client classification and access; the regime for collective investment funds; and convergence with international regulatory developments. Consultation Paper No. 52 also indicated that the DFSA would consult on other issues relating to this proposal.
7. This Consultation Paper contains an update in relation to:
 - (a) a proposed Rule requiring an Authorised Firm before it carries on Financial Services with Retail Clients to apply to the DFSA for an endorsement on its Licence (*see paragraphs 8 to 10*);
 - (b) the dispute resolution and Complaints handling processes of an Authorised Firm that carries on Financial Services with Retail Clients (*see paragraphs 11 to 16*); and
 - (c) the transitional arrangements which should be in place for all Authorised Firms upon the implementation of the changes proposed in Consultation Paper No. 52. (*see paragraphs 17 to 18*).

Licence Endorsement for an Authorised Firm

8. As outlined in paragraphs 27 to 33 of Consultation Paper No. 52, we propose to make changes to our regime which will permit an Authorised Firm to carry on Financial Services with Retail Clients. To facilitate this proposal, the DFSA proposes to insert Rules within our GEN and AUT Modules requiring an Authorised Firm to apply to the DFSA for an endorsement on its Licence before it carries on Financial Services with Retail Clients. Authorised Firms including those entities that have received an in principle letter from the DFSA to carry on Financial Services, will be able to apply for an endorsement on their Licence. The DFSA will also update its application forms to enable applicants for a Licence to apply for such an endorsement.
9. To assist Authorised Firms and applicants, the DFSA proposes to provide further guidance outlining the requirements that a person must meet before the DFSA grants such an endorsement. Amongst other things, the DFSA would need to consider the following before granting an endorsement:
 - (a) the adequacy of the internal dispute resolution and Complaints handling procedures;
 - (b) the enhanced market material disclosures for Retail Clients including any information relating to past performances under proposed COB Rules 3.2.4 to 3.2.6; and
 - (c) the systems, controls and procedures for carrying on Financial Services with Retail Clients.

The issue raised in paragraph (a) is likely to be the most significant one for the DFSA to consider.

10. It is also intended that the Public Register for Authorised Firms on the DFSA's website will be updated to reflect such endorsements.

Dispute resolution and complaints handling processes

11. An Authorised Firm that carries on Financial Services with Retail Clients will be required to have an internal dispute resolution and complaints handling process (see paragraphs 85 to 87 of Consultation Paper No. 52). The proposed Chapter 9 of the GEN Module sets out the requirements for an Authorised Firm to have written policies and procedures for the investigation and resolution of Complaints made against it by Retail Clients and the manner of redress.
12. The DFSA has explored the possibility of creating an external dispute resolution scheme (“EDR scheme”) for Retail Clients. An EDR scheme provides Retail Clients with an additional mechanism to resolve a Complaint. However, a Retail Client must first lodge a Complaint with an Authorised Firm’s internal dispute resolution process, and receive an unsatisfactory outcome. An example of an EDR scheme is the Financial Ombudsman Service within the United Kingdom.
13. The DFSA has commenced work to develop a suitable model for an EDR scheme. However, it is not envisaged that the DFSA will require Authorised Firms to provide to their Retail Clients access to a suitable EDR scheme at the time of implementation of the policy proposals in Consultation Paper No.52. The DFSA considers that from a cost benefit perspective, the immediate establishment of an EDR scheme is not warranted given the likely initial low volume of Complaints that may be received by an EDR scheme within its first few years of operation. However, the DFSA will monitor the effectiveness of an Authorised Firm’s internal dispute resolution and Complaints handling procedures and may, in the light of experience, decide to establish an EDR scheme for Authorised Firms and their Retail Clients. This is unlikely to happen within the next twelve months.
14. As there will not be an EDR scheme available when the proposed changes come into operation, the DFSA intends to place a higher emphasis on ensuring that an Authorised Firm has adequate policies and procedures governing the investigation and resolution of Complaints made against it by Retail Clients.
15. Given this emphasis, the DFSA considers that an Authorised Firm should ensure that a Retail Client is aware of its Complaints handling procedures. In Consultation Paper No.52, we proposed under COB Rule A2.1.2(1)(h) to require an Authorised Firm to provide details of its internal Complaints handling procedures within the Client Agreement entered into with a Retail Client. The DFSA would consider that such details include a summary of the minimum requirements on internal Complaints handling procedures proposed in section 9.2 of the GEN Module.
16. We propose to include within COB Rule A2.1.2(1)(h) a requirement that a Client Agreement for a Retail Client include a statement that the Complaints handling procedures are available to a Retail Client upon request in accordance with proposed GEN Rule 9.2.11.

Transitional arrangements for all Authorised Firms

17. We have previously indicated that where an Authorised Firm does not intend to deal with Retail Clients, they should be able to continue to deal with their existing Clients with little change. Accordingly, there are a number of areas in which the DFSA intends to provide Authorised Firms with transitional relief, if the changes proposed in Consultation Paper No. 52 are implemented. The DFSA

will provide transitional relief through either Rule amendments and/or by waiver and modification of DFSA Rules. These areas of transitional relief include the following:

- (a) Persons that are classified by an Authorised Firm as either a:
 - i. Client within the current COB Rule 3.2.2; or
 - ii. Commercial Customer within the current Part 4 of the COB Module relating to Insurance Business,

will be classified as a Professional Client under the new regime in relation to the same Financial Services provided to that Person. Therefore, an Authorised Firm will not be required to undertake a new assessment of such Persons as required under proposed COB Rule 2.3.1;

- (b) Persons that are classified as a Qualified Investor within the current OSR Rule 3.3.2 will be classified as a Professional Client under the new regime;
 - (c) Existing Market Counterparties will be treated the same without an Authorised Firm having to obtain their express consent as required under proposed COB Rule 2.3.4;
 - (d) Client Agreements which are currently in place for Clients will remain valid, in that an Authorised Firm would not need to sign a new Client Agreement with a Professional Client as required under proposed COB Rule 3.3.2. However, if an Authorised Firm has obtained an endorsement on its Licence to conduct Financial Services with Retail Clients and it then receives a request from a Professional Client to be treated as a Retail Client under the proposed COB Rule 2.3.3(4), the DFSA would expect that an Authorised Firm would enter into a new Client Agreement with the Person as a Retail Client; and
 - (e) Existing marketing material and disclosure documents for Clients will continue to be valid under the new regime for a specified period of time before having to comply with the requirements in the proposed regime.
18. The DFSA would also like to receive comments as to whether any other transitional relief should be given to Authorised Firms from any of the intended changes in Consultation Paper No.52.