

**Appendix 6**

In this appendix underlining indicates new text and striking through indicates deleted text.



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# **The DFSA Rulebook**

## **Offered Securities Rules**

### **(OSR)**

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## **2 OFFERS OF SECURITIES**

### **2.1 Application**

**2.1.1** This chapter applies to a Person in relation to an Offer of Securities in accordance with Rule 1.1.2.

### **2.2 Offers**

#### **Guidance**

Article 13(1) of the Markets Law 2004 reads as follows:

- “(1) A person is to be regarded as making an offer of Securities if he:
- (a) makes an offer which, if accepted, would give rise to a contract for the issue of Securities by him or by another person with whom he has made arrangements for the issue of Securities; or
  - (b) makes an offer or invitation in relation to an issue or sale of Securities in circumstances prescribed by the Offered Securities Rules.’”

**2.2.1** (1) The DFSA, for the purposes of Article 13(1)(b) of the Markets Law 2004, prescribes the following activities, in relation to a sale of Securities, as constituting an Offer:

- (a) (i) where a Person makes an offer to another Person which, if accepted, would give rise to a contract for the sale of Securities by him or by another Person with whom he has made arrangements for the sale of Securities; or
  - (ii) where a Person (the ‘first Person’) invites another Person to make an offer which, if accepted by the first Person, would give rise to a contract for the sale of Securities by him or by another Person with whom he has made arrangements for the sale of Securities; and
  - (b) the offer or invitation is a financial promotion of the Securities.
- (2) Admitting a Security or having a Security admitted to an Official List of Securities does not amount to an invitation or an offer for the purposes of (1)(a)(i) and (ii).
- (3) In (1) a financial promotion is an advertisement or any other form of promotion or marketing inviting a Person to:
- (a) enter into an agreement;
  - (b) offer to enter into an agreement; or
  - (c) exercise any rights conferred by a Security;
- to acquire, dispose of, underwrite or convert a Security.

- (4) In (3) the financial promotion may be communicated in any manner including, but not limited to, the following:
- (a) orally;
  - (b) electronically; or
  - (c) in writing.
- (5) For the purposes of (1) and (3) where a Reporting Entity discloses information in accordance with the requirements of OSR, disclosure of such information is not a financial promotion provided the disclosure of the information does not:
- (a) include an express invitation or offer; or
  - (b) expressly encourage a Person;
- to engage in any of the activities specified in (3)(a), (b) or (c).
- (6) For the purposes of (1) and (3) where a Representative Office merely distributes information in relation to a Security or refers the potential investor to its place of business in a jurisdiction other than the DIFC or to a member of its Group in such a jurisdiction, disclosure of such information is not a financial promotion provided the information does not:
- (a) include an express invitation or offer; or
  - (b) expressly encourage a Person;
- to engage in any of the activities specified in (3)(a), (b) or (c).

### **Guidance**

#### **Offers in or from the DIFC**

1. By virtue of Article 13(3) of the Markets Law 2004, an Offer of Securities is regarded as being made in the DIFC if the Offer is directed at or received a Person in the DIFC at the time of the making of the Offer and it is capable of acceptance by such an Offeree.
2. By virtue of Article 13(5) of the Markets Law 2004, an Offer of Securities is regarded as being made from the DIFC if the Person making the Offer is located in the DIFC, the Person to whom the Offer is made is located outside the DIFC and the Offer is capable of being accepted by that Person.

#### **When is an Offer made in the DIFC?**

3. It will be a question of fact in each case whether a Person has in fact made an Offer in the DIFC. The DFSA considers that the following will be indications that an Offer (including via a website) has not in fact been made in the DIFC, however, these examples of indicators are not exhaustive, and satisfaction of them is not conclusive as to an Offer not being made in the DIFC: systems and controls on the part of the Person making the Offer to ensure that it, any member of its Group, any entity controlled, sponsored or managed by it, or any entity with whom it has arrangements in relation to the Offer does not sell or issue Securities to a Person in the DIFC.