

Appendix 2

The text in this appendix is new and is not underlined and struck through in the usual manner.



The DFSA Rulebook

General Module

(GEN)

11 FINANCIAL PROMOTIONS

11.1 Application

11.1.1 This chapter applies to any Person who approves, makes or intends to make a Financial Promotion in or from the DIFC.

11.1.2 Rules 11.4.1 to 11.6.3 do not apply to a Person who makes an Offer which is in accordance with the requirements relating to:

- (a) an Offer of Securities under the Markets Law 2004 and the OSR Rules; or
- (b) an Offer of Units under the Collective Investment Law 2010 and CIR Rules.

11.2 Overview

11.1.3 The Rules in this chapter are made for the purposes of the Financial Promotions Prohibition in Article 41A of the Regulatory Law 2004.

Guidance

1. The Guidance in this chapter is designed to help explain the scope of the Financial Promotions Prohibition.
2. The definition of a Financial Promotion is very broad and encompasses the definitions of a “financial promotion” in Article 19(3) of the Collective Investment Law 2010 and OSR Rule 2.2.1(3). A Financial Promotion also includes “marketing material” as defined elsewhere in the Rulebook.
3. The DFSA considers that a Financial Promotion may be made in any manner and by any form including, but not limited to, an oral, electronic or written communication and includes an advertisement, or any form of promotion or marketing.
4. A Person who is permitted to make a Financial Promotion in the DIFC pursuant to these Rules should ensure that in making such a Financial Promotion he does not breach the Financial Services Prohibition in Article 41 of the Regulatory Law 2004.

11.3 Definition of a Financial Product

11.3.1 Pursuant to Article 41A(4) of the Regulatory Law 2004, “financial product” in Article 41A(3)(b) of the Regulatory Law 2004 is hereby prescribed to mean an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account, or a Contract of Insurance.

11.4 Scope of the Financial Promotions Prohibition

- 11.4.1** (1) A Person shall not, subject to (2), make a Financial Promotion in or from the DIFC unless that Person is an Authorised Person.
- (2) A Person other than an Authorised Person may make a Financial Promotion in or from the DIFC if, and only to the extent that, the Person:
- (a) is licensed and supervised by a Financial Services Regulator in the UAE;
 - (b) is a Recognised Person or External Fund Manager;
 - (c) is a Reporting Entity and makes a Financial Promotion in or from the DIFC exclusively for the purpose of discharging its mandatory disclosure requirements; or
 - (d) makes an exempt Financial Promotion as specified in (3).
- (3) For the purposes of (2)(d), a communication is an “exempt Financial Promotion” if it is:
- (a) approved by an Authorised Firm;
 - (b) directed at and capable of acceptance exclusively by a Person who appears on reasonable grounds to be a Professional Client of the type specified in COB Rule 2.3.2(2);
 - (c) made to a Person in the DIFC (the “recipient”) as a result of an unsolicited request by the recipient to receive the Financial Promotion; or
 - (d) made or issued by or on behalf of a government or non-commercial government entity.

11.4.2 A Person does not breach the Financial Promotions Prohibition if:

- (a) the Person causes a Financial Promotion to be made in the course of providing a facility which is a mere conduit for the making of the Financial Promotion;
- (b) the Financial Promotion appears, on reasonable grounds, to be a communication which is not intended to be acted upon by, or targeted at, a Person in the DIFC; or
- (c) the Financial Promotion is not made for a commercial or business purpose.

Guidance

1. Examples of a mere conduit would include a newspaper or magazine, a website carrying third-party banner ads, a postman or courier, a person paid to hand out

promotional material to the public and an event venue - unless in each case they were the originator i.e the Person who makes the Financial Promotion.

2. In Rule 11.4.2(b) the DFSA considers that the following non-exhaustive list of factors may each be indicative of whether a Financial Promotion is “intended to be acted upon by, or targeted at, Persons in the DIFC”:
 - (i) it is expressed to be for a Person or type of Person in the DIFC;
 - (ii) it is sent to an address (including a P.O. Box) in the DIFC;
 - (iii) it is physically distributed to Persons in the DIFC;
 - (iv) it takes place in the DIFC;
 - (v) it makes reference to the DIFC;
 - (vi) it appears in a DIFC publication;
 - (vii) it appears on a DIFC-based or related website or other media; or
 - (viii) it is sent to the email of a Person in the DIFC.
3. The DFSA in applying Rule 11.4.2(c) will generally consider that for a communication to be made “for a commercial or business purpose” there must be a commercial element to the Financial Promotion, whether or not the Financial Promotion actually leads to the provision of any financial service. However, the DFSA considers that “for a commercial or business purpose” requires a commercial or business interest on the part of the communicator and the nature of the communicator’s business need not be related to any specific financial service.

11.5 Additional Rules for Financial Promotions

- 11.5.1** (1) A Person in Rule 11.4.1(2) must, subject to (2), take reasonable care to ensure that any Financial Promotion it makes in the DIFC:
- (a) is clear, fair and not misleading;
 - (b) includes the Person’s name, address and regulatory status;
 - (c) if it is intended only for Professional Clients, is not sent or directed to any Person who appears on reasonable grounds not to be a Professional Client, and contains a clear statement that only a Person meeting the criteria for a Professional Client should act upon it; and
 - (d) if it contains any information or representation relating to past performance, or any future forecast based on past performance or any other assumptions, which is provided to or targeted at Retail Clients it:
 - (i) presents a balanced view of the financial products or financial services to which the Financial Promotion relates;

- (ii) identifies, in an easy to understand manner, the source of information from which the past performance is derived and how any key facts and assumptions used in that context are drawn; and
 - (iii) contains a prominent warning that past performance is not necessarily a reliable indicator of future performance.
- (2) A Person described in Rule 11.4.1(2)(a) who makes a Financial Promotion to an existing client in the DIFC is not required to comply with (1) provided that in making the Financial Promotion that Person complies with the requirements of the relevant Financial Services Regulator in the UAE which relate to Financial Promotions.

Guidance

1. In presenting information relating to past performance of a financial product or financial service, a Person should use a reputable independent actuarial, financial or statistical reporting service provider.
2. The effect of Rule 11.5.1(2) is that a Person who is licensed and regulated by a Financial Services Regulator in the UAE is not required to comply with Rule 11.5.1(1) when communicating with an existing client. However, when making a Financial Promotion to a prospective client in the DIFC, Rule 11.5.1(1) does apply to such Persons, as do the prohibitions on the making of offers contained in the Offered Securities Rules and Collective Investment Law 2010 respectively.

11.5.2 A Person must not, in any Financial Promotion, attempt to limit or avoid any duty or liability it may have under any DFSA-administered laws or the Rules.

11.6 Approval of Financial Promotions by an Authorised Firm

11.6.1 For the purposes of GEN Rule 11.4.1(3)(a), an Authorised Firm must not approve a Financial Promotion unless:

- (a) the Financial Promotion includes a clear and prominent statement that it has been “approved by” the relevant Authorised Firm; and
- (b) the Financial Promotion is made in accordance with the requirements in Section 11.5.

11.6.2 An Authorised Firm must not approve a Financial Promotion which is directed at a Person who appears on reasonable grounds to be a Retail Client unless:

- (a) it has an endorsement on its License which permits it to carry on a Financial Service with or for a Retail Client; and
- (b) the scope of its License includes the Financial Service and, if applicable, the particular financial product, to which the Financial Promotion relates.

11.6.3 An Authorised Firm must ensure that a Financial Promotion it has approved complies with the requirements in this chapter on an on-going basis.

Guidance

An Authorised Person which proposes to approve a Financial Promotion where all or part of that promotion will be real time, such as a live event, will need to consider whether it is able to effectively comply with any relevant Rules in relation to the Financial Promotion or its approval.