

Appendix 5

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



The DFSA Rulebook

Offered Securities Rules

(OSR)

3 EXEMPT OFFERS OF SECURITIES

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3.2 Exempt offer statement

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3.2.3 A Person who makes an Exempt Offer which requires an exempt offer statement must create and update the following records through the period of the Offer:

- (a) a copy of the exempt offer statement relating to the Offer;
- (b) a list containing:
 - (i) the name and address of each Offeree relating to the Offer;
 - (ii) the date on which the Offer was made to each Offeree;
 - (iii) the date on which an exempt offer statement was supplied to each Offeree who purchases Securities, including the acknowledgement of receipt by the Offeree who purchased the Securities;
 - (iv) a description of the Securities (if any) issued to, or purchased by or sold to, the Offeree including the number of Securities and consideration for them;
 - (v) the grounds for belief that the Offeree was a Person to whom an Exempt Offer could be made in accordance with the Rules; and
 - (vi) the condition under section 2.4 by reference to which the Offer to the Offeree is an Exempt Offer.

Guidance

~~Where an Offeree is not an individual, records made under Rule 3.2.3 should include the name of at least one representative of the Offeree.~~

3.3 Professional Client ~~Qualified investor~~ restriction

3.3.1 A Person (first Person) making an Exempt Offer must not enter into a binding contract arising out of an the Exempt Offer with another any Person (second Person) unless the first Person has taken reasonable steps to ensure that the second Person meets the other than a Qualified Investor Professional Client criteria in COB Rule 2.3.2.

Guidance

A Professional Client includes a Market Counterparty.

3.3.2 ~~A Qualified Investor is a Person who meets the following criteria:~~

- ~~(a) an individual who:

 - ~~(i) has at least one million dollars in liquid assets and who has provided the Offeror or another Person on behalf of the Offeror with written confirmation of this fact;~~
 - ~~(ii) after analysis has sufficient financial experience and understanding to participate in financial markets in a wholesale jurisdiction; and~~
 - ~~(iii) has consented in writing to being treated as a Qualified Investor in a wholesale jurisdiction;~~~~
- ~~(b) an Undertaking which has had, or any of whose Holding Companies or Subsidiaries has had, in the last two years, paid up share capital or net assets of at least five million dollars, in the case of a limited liability partnership calculated without deducting loans owing to any of the partners;~~
- ~~(c) a trustee of a trust or pension scheme which has had in the last two years assets of at least five million dollars calculated by aggregating the value of the cash and investments forming part of the trust's or scheme's assets, but before deducting its liabilities;~~
- ~~(d) a properly constituted government, government agency, central bank or other national monetary authority of any country or jurisdiction;~~
- ~~(e) a public authority or state investment body;~~
- ~~(f) a supranational organisation whose members are either countries, central banks or national monetary authorities;~~
- ~~(g) an Authorised Firm or Regulated Financial Institution;~~
- ~~(h) an Authorised Market Institution, Recognised Body, regulated exchange, regulated clearing house or regulated settlement operator;~~
- ~~(i) an Undertaking which is a Holding Company or Subsidiary of an Undertaking in (g) or (h) with that latter Undertaking's consent;~~
- ~~(j) a Body Corporate whose shares are listed or admitted to trading on any regulated exchange of an IOSCO member country; or~~
- ~~(k) a Collective Investment Fund or Special Purpose Vehicle.~~

~~3.3.3~~ For the purpose of Rule 3.3.2(a)(i), liquid assets are cash or assets which can be readily converted into cash, including but not limited to marketable securities, government bonds, treasury bills and notes that mature within 90 days.

~~3.3.4~~ For the purpose of Rule 3.3.2(a)(ii), an Offeror must ensure that the analysis includes consideration of each of the following matters:

- ~~(a)~~ the individual's knowledge and understanding of the relevant financial markets, types of investment and of the risks involved either generally or in relation to the proposed transaction;
- ~~(b)~~ the length of time the individual has been active in relevant financial markets, the frequency of dealings and the extent to which the individual has relied on financial advice from financial institutions;
- ~~(c)~~ the size and nature of transactions that have been undertaken for the individual in relevant financial markets;
- ~~(d)~~ the individual's relevant qualifications relating to financial markets;
- ~~(e)~~ the composition and size of the individual's existing financial investment portfolio; and
- ~~(f)~~ any other matters which the Offeror considers relevant.

3.4 Record keeping

~~3.4.1~~ Records made under this chapter must be A Person must:

- ~~(a)~~ maintain sufficient records to demonstrate compliance with Rule 3.3.1 maintained for a period of six years from the end of the period of the Exempt Offer; and
- ~~(b)~~ be capable of promptly providing prompt reproduction to the DFSA access to such records in English upon request, during business hours.

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4 PROSPECTUS OFFERS OF SECURITIES

4.1 Application

- 4.1.1** This chapter applies to a Person who makes or intends to make a Prospectus Offer and to members of its Governing Body.

Guidance

A Prospectus Offer, unlike an Exempt Offer may be made to Retail Clients and Professional Clients. Note Exempt Offers can only be made to Professional Clients in accordance with Rule 3.3.1.