

ANNEX A

In this Annex, underlining indicates new text and striking through indicates deleted text.



The DFSA Rulebook

Offered Securities Rules

(OSR)

VER5/06-06

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1.2 Overview of module

Guidance

Sponsors and compliance advisers

8. Chapter 10 contains Rules in respect of the appointment, termination and obligations of sponsors. Chapter 11 contains Rules in respect of the appointment and termination of compliance advisers and the obligations of Reporting Entities to compliance advisers. [Amended][VER5/06-06]

General provisions

9. Chapters ~~11, 12 and~~ 12, 13 and 14 complete the regulatory scheme by setting out Rules relating to contraventions, fees and applications for waivers and modifications. [Amended][VER5/06-06]

Units and Listed Units

14. However, the other provisions of OSR do apply to a Fund in relation to the listing of Units, Listed Funds and to Operators which are Reporting Entities. Consequently, chapters 7 to ~~13~~ 14 of this module apply as appropriate in relation to Funds and Operators. [Amended][VER5/06-06]

[Amended][VER4/04-06]

4 PROSPECTUS OFFERS OF SECURITIES

4.2 General requirements

- 4.2.6 (1) A Person who makes or intends to make a Prospectus Offer must appoint a sponsor in sufficient time to enable that sponsor to comply with the requirements of chapter ~~10~~ 10 of this module. [Amended][VER5/06-06]

(2) The appointment of a sponsor under Rule 4.2.6(1) remains in effect for the period the Prospectus Offer remains open. [Added][VER5/06-06]

5 PROSPECTUS REQUIREMENTS

5.2 Contents requirements

5.2.2

Guidance

2. An Offeror applying for a waiver or modification in respect of Prospectus requirements is required, in accordance with chapter ~~13~~ 14, to complete and submit the appropriate form in PFN and:
- a. identify the contents requirement which it seeks to waive or modify; and

- b. provide a statement of the reasons why it believes the information should not or cannot be disclosed in the Prospectus, or should be disclosed in a modified manner.

7 LISTED SECURITIES

7.1 Application

7.1.1

Guidance

2. Once a Person has Securities admitted to an Official List of Securities by an Authorised Market Institution, in most instances, it will become a Reporting Entity. A Reporting Entity, and some other associated Persons, become subject to the provisions of chapters 8, 99, 10 and 10, 11 of this module and have obligations to the DFSA. A Reporting Entity may also be subject to ongoing obligations to an Authorised Market Institution under the listing rules. [Amended][VER5/06-06]

8 OBLIGATIONS OF REPORTING ENTITIES

8.2 Continuous disclosure

- 8.2.3 (1) A Reporting Entity must not disclose any information it is required to disclose by Rule 8.2.1 to any other Person prior to the market disclosure in accordance with Rule 8.2.1(3) of such information except in strict confidence to:
- (a) its advisors, underwriters or sponsors or compliance advisers;
[Amended][VER5/06-06]
 - (b) the custodian of the Listed Fund to which the information relates;
 - (c) agent employed to release the information;
 - (d) Persons with whom it is negotiating with a view to effecting a transaction or raising finance, including prospective underwriters or sponsors of an issue of Securities, providers of finance or loans or the placement of the balance of a rights issue not taken up by shareholders;
 - (e) the DFSA or another Financial Services Regulator where such disclosure is necessary or desirable for the regulator to perform its functions;
 - (f) a Person to whom the Reporting Entity discloses information in accordance with a lawful requirement; or
 - (g) a Person to whom the information is disclosed in the necessary course of the business of the Reporting Entity.

[Amended][VER2/08-05]

8.4 Other continuing obligations

~~8.4.3 (1) Subject to 8.4.3(3) a Reporting Entity must appoint a sponsor to perform such role as set out in chapter 10. [Amended][VER3/09-05]~~

8.4.3 (1) The DFSA may by written notice require a Reporting Entity to appoint a compliance adviser for a specified period to assist the Reporting Entity in meeting its continuing obligations under the Markets Law 2004 and this module.

(2) The A Reporting Entity which appoints a sponsor that is required to appoint a compliance adviser in accordance with Rule 8.4.3(1) must ensure that that sponsor a compliance adviser continues to fulfil his the role of compliance adviser until such time as the DFSA consents in writing to his release advises the Reporting Entity in writing that a compliance adviser is no longer required.

~~(3) A Person who is a Reporting Entity solely by reason of the admittance of Designated Investments to an Official List of Securities does not need to appoint a sponsor. [Added][VER3/09-05]~~

[Amended][VER5/06-06]

10 SPONSORS

10.1 Application

10.1.1 This chapter applies to:

- (a) ~~a sponsor~~ sponsors; and
- (b) ~~an Undertaking that is~~ Persons required to appoint a sponsor pursuant to Rule 4.2.6 or Rule 8.4.3.4.2.6.

[Amended][VER5/06-06]

Guidance

Rules Rule 4.2.6 and 8.4.3 require requires the appointment of a sponsor for a Prospectus Offer in the DIFC in sufficient time to enable the sponsor to comply with its obligations and for as long as the Offer is open. The requirement for the appointment of a sponsor is designed to ensure that ~~Reporting Entities~~ are a Person who makes or intends to make a Prospectus Offer is aware of, and comply complies with, their the requirements under the Markets Law 2004 and this module.

In most cases the Person making a Prospectus Offer, will be the Issuer of the Securities in the Prospectus. However there may be situations where the Person making a Prospectus Offer, that is the Offeror, is not the Issuer.

In any event, the sponsor must make certain inquiries and assume certain obligations under the Rules. A sponsor must therefore be a Person familiar with the requirements of the Markets Law 2004 and Rule this module and who has the necessary skill knowledge, experience and, qualifications to ensure that the Reporting Entity complies and resources to assist the Offeror to comply with the various requirements. ~~In exceptional circumstances, in light of the skills, qualifications and experience of staff within the Reporting Entity, the DFSA may grant a waiver or modification of the requirement of the appointment of a sponsor.~~

The DFSA's *Policy Statement 1/2006 Sponsors* describes in greater detail the role and regulatory obligations of a sponsor and the kind of knowledge, experience, qualifications and resources the DFSA expects a sponsor to have. The Policy explains that although a sponsor has certain regulatory obligations of its own, as prescribed in this module, its principal role is to assist a Person making a Prospectus Offer to comply with its regulatory responsibilities relating to the Offer. In the Policy Statement, the DFSA confirms that a Person making a Prospectus Offer does not, and cannot, avoid or diminish its regulatory obligations related to Offering Securities simply because it is required to have a sponsor. The regulatory obligations of the Person making the Prospectus Offer are not transferred to the sponsor but remain the responsibility of the Person making the Offer.

[Amended][VER5/06-06]

10.2 Appointment of sponsors

[Amended][VER5/06-06]

10.2.1 (1) ~~An Undertaking~~Prior to appointing a sponsor, a Person must, ~~prior to making the appointment:~~

- (a) take reasonable steps to ensure that the proposed sponsor has the required ~~skills, resources and~~knowledge, experience, qualifications and resources to carry out its obligations under the Rules; and
- (b) notify the DFSA of the proposed sponsor's name ~~and, its~~ business address; and ~~(c) obtain the DFSA's consent to the proposed appointment.~~ an address in the DIFC for the service of documents.

(2) If requested by the DFSA, ~~an Undertaking~~a Person appointing a sponsor must provide the DFSA with information ~~on its~~about the knowledge, experience, qualifications and resources of the appointed or proposed sponsor ~~with regard to the sponsor's skills, resources and experience.~~

10.2.2 (1) ~~An Undertaking~~A Person must take reasonable steps to ensure that the relevant sponsor and Employees of the sponsor are independent ~~of the Undertaking~~ and have appropriately managed any conflict of interest ~~with respect to the Undertaking~~ that may arise.

(2) ~~An Undertaking~~A Person must notify the DFSA if it becomes aware, or has reason to believe, that the sponsor or relevant Employees of the sponsor are no longer independent ~~of the Undertaking~~ or have a conflict of interest which has not been appropriately managed.

10.2.3 Where, ~~in the opinion of the DFSA,~~ a sponsor appointed by ~~an Undertaking~~a Person is not suitable ~~in the opinion of the DFSA,~~ or where a sponsor has not been appointed or has resigned, the DFSA may direct ~~an Undertaking~~the Person to replace or appoint a sponsor.

10.3 Obligations in relation to offers of a sponsor

[Amended][VER5/06-06]

10.3.1 When making an Offer, ~~a~~a sponsor appointed pursuant to Rule 4.2.6 must:

- (a) satisfy itself to the best of its knowledge and belief, having made due and careful enquiry ~~of the Offeror of the Securities and its advisors, that the Offeror~~that the Person who makes or intends to make a Prospectus Offer has satisfied all applicable conditions for Offering Securities and other relevant requirements under the Markets Law 2004 and this module;
- (b) provide to the DFSA any information or explanation known to it in such form and within such time limit as the DFSA may reasonably require for the purpose of verifying whether this module is being, and has been, complied with by the Offeror and Issuer in relation to which it acts as sponsor~~a Prospectus Offer~~; and
- (c) take other steps required in writing by the DFSA.

10.4 Obligations in relation to reporting entities

~~10.4.1 (1) A sponsor must ensure that a Reporting Entity complies with any applicable provisions in the Markets Law 2004 and this module.~~

10.3.2 (21) ~~When~~Where a sponsor becomes aware of a failure ~~of the~~by a Reporting Entity ~~which he sponsors~~ to comply with its obligations under the Markets Law 2004 and this module, ~~he~~the sponsor must without undue delay:

- (a) notify the Reporting Entity of the failure and take reasonable steps to ensure it rectifies the failure within a reasonable time; and
- (b) if the Reporting Entity does not or is unable to rectify the failure as soon as practicable:
 - (i) notify the DFSA of that fact; and
 - (ii) if the continuing obligation is one of disclosure, make the disclosure to the DFSA.

10.4 Obligations in relation to reporting entities

~~DELETED. [Amended][VER5/06-06]~~

10.5 Duty of care of sponsors

10.5.1 A sponsor has a duty of care to the Undertaking Person to ~~whom~~which it is appointed. ~~[Amended][VER5/06-06]~~

10.6 Co-operation with sponsors

10.6.1 ~~An Undertaking~~Persons who make or intend to make a Prospectus Offer must take reasonable steps to ensure that ~~it~~they and ~~its~~their Employees: ~~[Amended][VER5/06-06]~~

- (a) provide such assistance as the sponsor reasonably requires to discharge its duties;

- (b) give the sponsor right of access at all reasonable times to relevant records and information;
- (c) do not interfere with the sponsor's ability to discharge its duties;
- (d) do not provide misleading or deceptive information to the sponsor; and
- (e) report to the sponsor any matter which may significantly affect the financial position of the ~~undertaking~~Person issuing the Securities or the price or value of the Securities. [Amended][VER5/06-06]

10.6.2 A sponsor must notify the DFSA of any non co-operation by the ~~Undertaking~~Offeror, Issuer, or ~~its~~their Employees.

10.7 Termination of ~~sponsors~~sponsorship

[Amended][VER5/06-06]

10.7.1 Where an ~~Undertaking~~a Person who makes or intends to make a Prospectus Offer dismisses its sponsor, the ~~Undertaking~~Person must advise the DFSA in writing without delay of the dismissal, giving details of any relevant facts and circumstances.

10.7.2 Where a sponsor resigns ~~as sponsor to an Undertaking~~, it must advise the DFSA in writing without delay of the resignation, giving details of any relevant facts and circumstances.

11 COMPLIANCE ADVISERS

[Added][VER5/06-06]

11.1 Application

11.1.1 This chapter applies to Reporting Entities that are required to appoint compliance advisers under Rule 8.4.3.

Guidance

The requirement for the appointment of a compliance adviser is designed to ensure that a Reporting Entity is aware of and complies with its continuing obligations under the Markets Law 2004 and this module. A compliance adviser should therefore be a person familiar with the requirements of the Markets Law 2004 and this module and should have the necessary knowledge, experience, qualifications and resources to assist a Reporting Entity to comply with its regulatory obligations.

The DFSA's *Policy Statement 2/2006 Compliance Advisers* describes in greater detail the purpose of a compliance adviser and the circumstances in which the DFSA is likely to require a Reporting Entity to appoint a compliance adviser. The Policy also describes how a compliance adviser can assist a Reporting Entity to meet its obligations in the Markets Law 2004 and this module generally, and specifically the continuing obligations prescribed in Rule 8 and App2, App3 and App4 of this module. The Policy explains that the compliance adviser does not take on any regulatory obligations or potential regulatory liability of its own under the Markets Law 2004 or this module if it agrees to act as a compliance adviser to a Reporting Entity. The relationship between the Reporting Entity and

compliance adviser is a contractual one similar to one with any other professional adviser. In the Policy Statement the DFSA confirms its view that the compliance adviser role is merely to advise and assist the Reporting Entity to comply with its continuing regulatory responsibilities, all of which remain the responsibility of the Reporting Entity.

11.2 Appointment of compliance advisers

11.2.1 The DFSA may, in its absolute discretion, require a Reporting Entity to:

- (1) appoint a compliance adviser; or
- (2) replace a compliance adviser already appointed.

11.2.2 (1) A Reporting Entity required to appoint a compliance adviser must, prior to making the appointment:

- (a) take reasonable steps to ensure that the proposed compliance adviser has the required knowledge, experience, qualifications and resources to carry out its obligations under this module;
 - (b) notify the DFSA of the proposed compliance adviser's name and business address; and
 - (c) take reasonable steps to ensure that the proposed compliance adviser and its relevant Employees are independent and that any conflicts of interest are appropriately managed.
- (2) If requested by the DFSA, a Reporting Entity appointing a compliance adviser must provide the DFSA with such information as it may require including information regarding knowledge, experience, qualifications and resources of the compliance adviser.
- (3) A Reporting Entity must notify the DFSA if it becomes aware, or has reason to believe, that the compliance adviser or its relevant Employees have a conflict of interest which has not been appropriately managed.

11.3 Obligations of a Reporting Entity relating to a compliance adviser

11.3.1 Where a Reporting Entity is advised by its compliance adviser that it is failing or has failed to comply with its obligations under the Markets Law 2004 and this module, the Reporting Entity must without undue delay:

- (a) take reasonable steps to rectify the failure as soon as practicable; and
- (b) if the Reporting Entity does not or is unable to rectify the failure as soon as practicable notify the DFSA of that fact.

11.3.2 A Reporting Entity must provide to the DFSA any information in such form and within such time as the DFSA may reasonably require regarding its compliance adviser or any advice the compliance adviser is providing, or has provided, to the Reporting Entity regarding its continuing obligations under the Markets Law 2004 and this module.

11.3.3 A Reporting Entity must take reasonable steps to ensure its compliance adviser cooperates in any investigation conducted by the DFSA including answering promptly and openly any questions addressed to the compliance adviser, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which the compliance adviser is requested to appear.

11.4 Co-operation with compliance advisers

11.4.1 A Reporting Entity must take reasonable steps to ensure that it and its Employees:

- (1) provide such assistance as the compliance adviser reasonably requires to discharge its duties;
- (2) give the compliance adviser right of access at all reasonable times to relevant records and information;
- (3) do not hinder or interfere with the compliance adviser's ability to discharge its duties;
- (4) do not withhold information that would assist the compliance adviser advising the Reporting Entity of its duties;
- (5) do not provide misleading or deceptive information to the compliance adviser; and
- (6) report to the compliance adviser any matter which may significantly affect the financial position of the Reporting Entity or the price or value of the Securities.

11.5 Termination of compliance adviser

11.5.1 Where a Reporting Entity dismisses its compliance adviser, the Reporting Entity must advise the DFSA in writing without delay of the dismissal, giving details of all relevant facts and circumstances.

11.5.2 Where a compliance adviser resigns, the Reporting Entity must without delay advise the DFSA in writing of the resignation, giving details of all relevant facts and circumstances.

11.6 Appeal to the Regulatory Appeals Committee

The Regulatory Appeals Committee has jurisdiction to hear and determine any appeal of a decision of the DFSA to require a Reporting Entity to appoint a compliance adviser under Rules 8.4.3 and 11.2.

12 CONTRAVENTIONS, ENFORCEMENT AND STOP ORDERS

[Renumbered][VER5/06-06]

11.1 Application

12.1 Application

~~11.1.1~~12.1.1 This chapter applies to every Person to whom the Markets Law 2004 applies and to the same extent in relation to every such Person as that Law.

~~11.2~~12.2 **Stop orders**

12

13 FEES

[Renumbered][VER5/06-06]

~~12.1~~13.1 **Fees**

~~12.1.1~~13.1.1 This section applies to any Person to whom any provision in this module applies.

~~12.1.2~~13.1.2 Where a fee is payable for any application to the DFSA pursuant to a Rule in this module, the application will not be regarded as submitted until the fee has been paid in full.

~~12.1.3~~13.1.3 The DFSA may reduce, waive or refund all or part of any fee if it considers that, in the exceptional circumstances of a particular case, it would be equitable to do so.

~~12.2~~13.2 **Application fees**

~~12.2.1~~13.2.1 An Offeror who files a Prospectus must pay the applicable fee specified in App6.

1314 WAIVERS OR MODIFICATIONS

[Renumbered][VER5/06-06]

~~13.1~~14.1 **Applications to waive or modify the Markets Law 2004 and rules**

~~13.1.1~~14.1.1 A Person wishing to seek a waiver or modification of a provision of the Law or Rules as it applies to him, must:

~~13.1.2~~14.1.2 In considering the application, the DFSA may: