



# Markets Brief

## Financial Promotions and Offers

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### Introduction

Welcome to the seventh edition of Markets Brief. The aim of this edition is to provide clarity on the applicability of the exclusion from the Financial Promotions Rules in the General Module (“GEN”) to Financial Promotions made in connection with Exempt Offers and admissions to trading of Exempt Securities as well as to communications prior to a Prospectus Offer. In this edition, we also respond to a number of queries we have received from market participants on these matters.

### Guidance

Please note that the contents of this communication are not intended to be Guidance as contemplated by the Regulatory Law 2004 and the contents should neither be interpreted, nor relied upon, as Guidance. You should refer to the DFSA Rules for Guidance or contact the DFSA if you require individual guidance.

Technical explanations given in this brief are for illustrative purposes and should not be considered or relied upon as a legal advice. We recommend that independent legal

advice is obtained if you are unsure about any aspect of the DFSA markets regime which may apply to you.

Defined terms are identified in this brief by the capitalisation of the initial letter of a word or each word in a phrase and are defined in the Glossary Module of the DFSA Rulebook.

### The Financial Promotions Prohibition

Under Article 41A of the Regulatory Law 2004 (the “Financial Promotions Prohibition”) and the Rules made for the purposes of that Article, a person must not make a Financial Promotion in or from the DIFC unless that Person is an Authorised Person, is permitted to do so under GEN Rule 3.4.1(2), or makes an exempt Financial Promotion under GEN Rule 3.4.1(3).

A Financial Promotion is defined in Article 41A(3) of the Regulatory Law 2004 as:

*“Any communication, however made, which invites or induces a Person to:*

- (a) *enter into, or offer to enter into, an agreement in relation to the provision of a financial service; or*
- (b) *exercise any rights conferred by a financial product or acquire, dispose of, underwrite or convert a financial product.”*

In relation to Offers of Securities, Financial Promotions would include a Prospectus, any advertisement made in relation to the offer (including the “roadshow” marketing activities), pre-marketing, Investment Research in relation to the Securities or sales and marketing calls.

## **The exclusion from the Financial Promotions Prohibition**

GEN Rule 3.1.2 states that:

*“Rules 3.4.1 to 3.6.3 [of GEN] 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 2012 and the Markets Module of the DFSA Rulebook; or*
- (b) *an Offer of Units under the Collective Investment Law 2010 and Collective Investment Rule Module of the DFSA Rulebook.”*

The effect of GEN Rule 3.1.2 is that where a Person is making an Offer in accordance with the requirements relating to an Offer of Securities under the Markets Law 2012 and the MKT Rules (or the equivalent requirements for Funds), the Person does not need to also comply with GEN Chapter 3 requirements on Financial Promotions. The principle behind this exclusion is that where an Offer of Securities is made in accordance with Markets Law 2012 and the MKT Rules

adequate investor protection is provided under those requirements.

## **Market queries regarding the applicability of the exclusion**

Two questions which we have been asked in relation to the exclusion are:

1. Does the exclusion apply to Financial Promotions made in connection with an Exempt Offer or an admission to trading on an Authorised Market Institution (AMI) of an Exempt Security under Article 14(3) of the Markets Law 2012? and
2. Does the exclusion apply to Financial Promotions made prior to a Prospectus Offer being made e.g. during the roadshow or book-build?

## **Exempt Offers and Exempt Securities**

To answer the first question, the DFSA considers that the exclusion in GEN Rule 3.1.2 does not apply to Financial Promotions made in connection with Exempt Offers or admissions to trading on an AMI of Exempt Securities. These offers and admissions to trading are exempt from the Prospectus requirements in the MKT Rules and so are not made “[...] in accordance with the requirements relating to: (a) an Offer of Securities under the Markets Law 2012 and the MKT Rules [...]” (GEN Rule 3.1.2 (a)). This means that for Financial Promotions made in connection with an Exempt Offer or an admission to trading on an AMI of Exempt Securities, GEN Chapter 3 applies.

## Communications prior to a Prospectus Offer

The answer to the second question is that communications made *prior to* a Prospectus Offer being made will not benefit from the exclusion in GEN Rule 3.1.2. The exclusion only becomes available if and when an Offer is actually made, with a DFSA approved Prospectus, and in compliance with the Markets Law 2012 and the MKT Rules (GEN Rule 3.1.2). During the Offer Period, the MKT Rules on Financial Promotions apply, rather than the Rules in GEN Chapter 3. Prior to the making the Offer, the Financial Promotions Prohibition set forth in Article 41A of the Regulatory Law 2004 and referred to in GEN Chapter 3 applies.

However, the DFSA is mindful of the market practice whereby, prior to an Offer being commenced the Issuer, or person acting on its behalf, conducts meetings with potential investors in relation to the contemplated offering as part of a “roadshow” and “book-building” process. During such roadshow meetings, important information concerning the Offer and the Securities involved is disclosed to what is oftentimes a small group of potential investors using a “pathfinder” prospectus (essentially a prospectus which is still subject to regulatory approval).

In order for the use of such a pathfinder prospectus not to constitute a breach of the Financial Promotions Prohibition, an Issuer could have the pathfinder prospectus approved by an Authorised Firm under GEN 3.6 or, alternatively, the Issuer (and its advisors) could consider whether one of the other exclusions in GEN Rule 3.4.1(2) applies to the Financial Promotions made during the roadshow.

## Other exclusions

Where a Financial Promotion does not benefit from the exclusion in GEN Rule 3.1.2, a number of exclusions exist in GEN Chapter 3 which a Person may seek to rely on when making a Financial Promotion in connection with an Offer. These exclusions would be available to an offer prior to the Prospectus being approved by the DFSA, and also to a Person making a Financial Promotion in connection with an Exempt Offer or an admission to trading on an AML of an Exempt Security under Article 14(3) of the Markets Law 2012. These exclusions include, for example, that a Person would not breach the Financial Promotions Prohibition if: the relevant communication was approved by an Authorised Firm, made by a Person who is licensed and supervised by a Financial Services Regulator in the UAE, or directed at Professional Clients (other than natural persons).

## Arabic edition

Every Markets Brief is produced in both English and Arabic and is available on the DFSA website.

## Contact us

Visit the DFSA website [www.dfsa.ae](http://www.dfsa.ae) for:

- previous editions of the Markets Brief;
- access to DFSA-administered legislation and the DFSA Rulebook; and
- the full text of the Markets Law 2012 and Markets Rules.

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## Feedback

- We appreciate your feedback and welcome any suggestions that you may have. Please email us at [markets@dfsa.ae](mailto:markets@dfsa.ae)