

About the Dubai Financial Services Authority

The DFSA is the independent regulator of financial and ancillary services conducted through the DIFC, a purpose-built financial free-zone in Dubai. The DFSA's regulatory mandate covers asset management, banking and credit services, securities, collective investment funds, custody and trust services, commodities futures trading, Islamic Finance, insurance, an international equities exchange and an international commodities derivatives exchange.

The New Financial Promotions Prohibition

In March 2011, His Highness Sheikh Mohammed Bin Rashid Al Maktoum, in his capacity as Ruler of Dubai, enacted amendments to the Regulatory Law 2004 which enhance the requirements and prohibitions relating to the marketing of financial services and financial products ("Financial Promotions") in or from the DIFC.

The legislation provides the DFSA with a greater degree of regulatory oversight and control over who may make Financial Promotions in or from the DIFC and, in particular, oversight of the standards which such promotions must meet with respect to retail investors. The DFSA will also have greater scope to bring enforcement action in respect of unlawful Financial Promotions when it deems it necessary to do so in light of its statutory objectives. This new legislation provides greater protection for investors and potential investors against misleading promotions, especially those coming into the DIFC from unregulated persons based outside the DIFC.

Getting Help

DFSA Laws and Rules: These are available on the DFSA website.

Visit the DFSA website at www.dfsa.ae for:

- More information on the Financial Promotions Prohibition
- Copies of DFSA publications
- Full text of Laws, Regulations and Rules
- More news about the DFSA.

A Guide to the DIFC Financial Promotions Prohibition

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The DFSA has produced this document to provide an overview of the DIFC Financial Promotions Prohibition. It should be read in conjunction with the DFSA Rulebook and any other relevant legislation. The information does not constitute legal advice nor does the DFSA give any express or implied warranty or assume any legal liability for the accuracy or completeness of the information herein.

About the Financial Promotions Prohibition

This leaflet aims to highlight key features of the Financial Promotions Prohibition, and the rules made under the law, and to provide you with greater clarity as to who can make a Financial Promotion in the Dubai International Financial Centre (DIFC) and under what circumstances. This leaflet is a guide to the Financial Promotions Prohibition but should not be relied on as legal advice. Readers should consult DFSA-administered legislation for the definitive version of the law and the rules.

Where can I find the relevant law and rule?

The Financial Promotions Prohibition is set out in Article 41A of the Regulatory Law 2004. Chapter 3 of the DFSA Rulebook, General Module contains rules and guidance concerning the application and scope of the Financial Promotions Prohibition. The Financial Promotions Prohibition came into effect on 28 April 2011.

What is a Financial Promotion?

A Financial Promotion is defined 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.

Therefore, a Financial Promotion would include oral, written and electronic communications such as advertisements, letters, mailshots, emails, faxes, telephone calls, webcasts, face-to-face meetings, roadshows or conferences.

Who can (and can't) make a Financial Promotion?

The Financial Promotions Prohibition affects anyone who makes a Financial Promotion for a commercial or business purpose. It is unlawful for a person to make a Financial Promotion in or from the DIFC unless such person:

- a. is a DFSA-Authorised Firm;
- b. is a firm licensed and supervised by a Financial Services Regulator in the UAE, being the Central Bank of the UAE, the Emirates Securities and Commodities Authority and the UAE Insurance Authority;
- c. is a Reporting Entity making a mandatory disclosure; or
- d. makes an exempt Financial Promotion.

A communication is an exempt Financial Promotion if it is:

- approved by an Authorised Firm;
- made to professional clients who are not individuals;
- made to persons who expressly solicit the promotion;
- made or issued by government or non-commercial government entities; or
- made by a person in the course of providing legal or accountancy services and which may reasonably be regarded as incidental to such services.

Financial Promotions must be clear, fair and not misleading

A Financial Promotion made in or from the DIFC must meet the following criteria:

- a. It must be clear, fair and not misleading;
- b. It must include the person's name, address and regulatory status;

- c. If it is intended only for Professional Clients, it must not be sent or directed to any Person who appears on reasonable grounds not to be a Professional Client. It must also contain a clear statement that only a Person meeting the criteria for a Professional Client should act upon it; and
- d. If it is provided to a Retail Client, and contains any information or representation relating to past performance, or any forecast based on past performance or on any other assumptions, then it must:
 - i. present a balanced view of the financial products or financial services to which the Financial Promotion relates;
 - ii. identify, in an easy to understand manner, the information from which the past performance or forecast is derived and how any key facts and assumptions used in that context are drawn; and
 - iii. contain a prominent warning that past performance is not necessarily a reliable indicator of future performance.

Why has the Financial Promotions Prohibition been introduced

The Financial Promotions Prohibition has been introduced by the DFSA because the DFSA has concerns about unregulated Financial Promotions including:

- Unauthorised persons setting-up a marketing presence in the DIFC;
- Unregulated conferences promoting financial products and services;
- Pressure sales in the DIFC by unregulated persons; and
- Financial scams.