

BY E-mail

25 January 2017

To the Senior Executive Officers of DFSA Regulated Entities

RE: Recent changes to DFSA Rulebook resulting from Consultation Paper CP 106, CP 107 and CP 108

Dear SEO

In December 2016, the DFSA issued a Notice of Amendments to Legislation to reflect changes resulting from the following Consultation Papers:

- Consultation Paper No. 106 titled *Regulation of Arranging, Representative Office Activities and Financial Promotions* (see [link](#)).
- Consultation Paper No. 107 titled *Proposed Changes to the Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module* (see [link](#)).
- Consultation Paper No. 108 titled *Proposed Miscellaneous Amendments* (see [link](#)).

The new Rules resulting from the above proposals have been made by the DFSA Board to come into force on 1st February 2017. The amended Rules can be viewed [here](#).

The purpose of this communication is to remind Firms about these changes and to set out the DFSA's approach.

1. Guidance relating to certain Financial Services

The key focus of the changes is to provide extensive Guidance and greater clarity relating to the Financial Services dealing with 'arranging', relating to financial products, credit, insurance and custody, and also to ensure that the remit of a Representative Office remains clear, and restricted to its intended scope.

An Authorised Firm should consider reviewing its current business activities in line with issued Guidance to ensure it continues to have the appropriate authorisations and approvals in relation to any Financial Services, Endorsements and financial products on its Licence.

2. Creation of the 'Arranging Credit and Advising on Credit' Financial Service

The new Rules reclassify the Financial Services relating to arranging and advising on credit by creating a Financial Service titled 'Arranging Credit and Advising on Credit', which should provide greater clarity to Firms conducting credit-related advising and arranging. As it is a reclassification only, those Firms with existing authorisations to advise on credit and/or arrange credit will have their Licences amended to reflect the new title of this Financial Service. Applicable DFSA Rules for advising and arranging activities relating to credit remain unchanged.

This change will appear on the DFSA Public Register on 1st February 2017. We have provided an illustration of the reclassification in Appendix 1. **Please note that the DFSA will not be issuing any new paper licences reflecting these changes.**

The DFSA expects all Firms to review the DFSA's Public Register at regular intervals to ensure that the Firm continues to have the appropriate authorisations on its Licence to match the Financial Services activities it conducts in or from the DIFC.

3. Requirements applicable to Authorised Firms that Arrange Custody

The new Rules remove the unnecessary regulatory burden on Authorised Firms 'Arranging Custody' by reducing the application of some of the safe custody requirements which currently apply to such Firms. As a result, such Authorised Firms will no longer be required to submit a safe custody auditor's report (under GEN Rule 8.6.1(e)) in respect of financial years ending in 2016 or 2017, or any part of those financial years.

4. New Rules in relation to contracts of Long-Term Insurance (LTI)

The DFSA has introduced new Rules for advising and arranging activities relating to a contract of LTI, which can be undertaken by Investment Firms or by Insurance Intermediaries. We have summarised the new Rules below:

- Investment Firms which give advice or arrange contracts of LTI for Retail Clients are required to provide detailed disclosure to Retail Clients (see COB Rule 6.15.1).
- An Insurance Intermediary which undertakes advising and arranging activities relating to contracts of LTI will be required to obtain an LTI endorsement on their licence to do so.

Investment Firms and Insurance Intermediaries will need to review their current systems and controls to ensure that they are in compliance with the new Rules. If an Authorised Firm wishes to seek an LTI endorsement, the relevant Form will be available on the DFSA's website from 1st February 2017.

5. Guidance in AML Module regarding Federal AML Legislation and other matters

As part of changes to the DFSA's AML Module, the DFSA has introduced Guidance to clarify its role as an administrator of the two AML regimes that apply in the DIFC, namely (i) the Federal regime and (ii) the DIFC Regime. To ensure compliance with both regimes, the DFSA introduced Guidance to signpost a number of requirements under the Federal AML legislation to remind Relevant Persons of these overarching obligations. This includes Guidance on identification and verification of beneficial owners, freezing assets, training and awareness and AML Reports.

As interpretation of Federal AML legislation is a matter for the relevant Federal authorities, rather than the DFSA, so any question about those requirements should be directed to the relevant Federal authorities. Where possible, the DFSA will publish and communicate any guidance that is provided to the DFSA by the Federal authorities.

In addition, the DFSA introduced additional Guidance to provide greater clarity in order to assist Relevant Persons in understanding the intention and expectations arising from certain provisions. This includes Guidance on low risk customers, Guidance on Tax Issues, and understanding and verification of Source of Wealth and Source of Funds.

6. Removal of the Prescribed Low Risk Customer (PLRC) Categorisation

The DFSA has removed the PLRC categorisation and its associated provisions to ensure alignment with the Federal AML legislation and Financial Action Task Force (FATF) Recommendations, which do not permit automatic assignment of customer risk ratings. Authorised Firms will note that the characteristics of the PLRC definition are now contained under new Guidance on low risk customers (see Guidance under AML Rule 6.1 – Assessing customer AML Risks).

The DFSA received several enquiries during the Consultation Period about the impact of this change and whether they would have to re-categorise existing PLRC customers when the new Rules are in force. A Relevant Person is **not** required to conduct a complete customer risk assessment of its PLRC customers as a result of these changes. Instead, assuming the relevant customer's circumstances remain unchanged, it is satisfactory for that customer to be reassigned a low risk rating. Notwithstanding this approach, a Relevant Person is required to ensure that PLRC customers meet the minimum CDD requirements prescribed by the AML Federal legislation and DFSA AML regime for low risk customers. In addition, and as is the case for all customers, the DFSA expects these

customers –to be subject to an appropriate level of on-going customer due diligence in accordance with AML Rule 7.6.

7. Annual AML Returns

The DFSA takes this opportunity to remind Authorised Firms of the changes that will come into effect in relation to Annual AML Returns. These changes will require Annual AML Returns to being completed and lodged by Relevant Persons online on or before the deadline of 30 September 2017. The new reporting period for Annual AML returns will be from 1 August 2016 to 31 July 2017. The transitional Rule (see AML Rule 14.5.2) in this regard is as follows:

FYE up to 31 December 2016	FYE on or after 1 January 2017
<p>A Relevant Person will report under the former rules, namely the AFN Form. It must be submitted within 4 months of the financial year end.</p> <p>Firms completing the Annual AML Return during the transition period should have regard to the DFSA's previously issued Dear SEO letter titled Guidance to complete DFSA's Annual AML Return.</p>	<p>A Relevant Person will report under the new Annual AML Return arrangements described above.</p>

8. Capital requirement for Fund Managers

Firms undertaking the Financial Service of Managing a Collective Investment Fund (CIF) are allocated to Prudential Category 3C, provided that they do not undertake any other Financial Service that would justify allocation to a higher prudential category. We have decided to adjust the Base Capital Requirement for all types of managers of CIFs whilst leaving the existing prudential categories undisturbed. The new Rules will make a distinction between Firms managing Public Funds, and those managing only Exempt Funds or QIFs. As a result, the Base Capital Requirement will now be as follows:

Prior to 1st Feb 2017		Post 1st Feb 2017	
Financial Service	Base Capital Requirement	Financial Service	Base Capital Requirement
Managing a Collective Investment Fund	USD 500,000	Managing a Collective Investment Fund (for Public Funds)	USD 140,000
		Managing a Collective Investment Fund (otherwise)	USD 70,000

All Firms will continue to face an on-going capital requirement of the higher of the BCR amount or an expenditure based capital minimum (EBCM), which continues to be calculated on the basis of 13/52s weeks of the Firm's annual expenditure provided that they do not undertake any other Financial Service or hold Client Assets that would necessitate the allocation of a higher EBCM fraction.

As a consequence of this Rule change, Firms will need to review and adjust their capital adequacy model and monitor the same. In addition, Firms will need to ensure correct reporting on applicable regulatory reports submitted to the DFSA which must be submitted on or before 30 April 2017.

9. General reminder regarding DFSA Authorisations

The DFSA reminds Authorised Firms of their responsibility to ensure at all times that they hold the required licences, authorisations and approvals necessary to conduct their business activities as they are being conducted in and from the DIFC, including in relation to any Financial Services,

Endorsements and financial products. This is a continuing responsibility that requires all Authorised Firms to prepare a Regulatory Business Plan each year that takes into account the Authorised Firm's current and any proposed business activities for the next 12 months. The DFSA expects all Authorised Firms to review their records at regular intervals and the DFSA's Public Register on its website to ensure that the Authorised Firm continues to have the appropriate authorisations on its Licence to carry on such Financial Services in or from the DIFC. Each Authorised Firm is required to ensure at all times that its business activities are properly authorised and carried on in accordance with the Rules and laws applicable to it. We encourage you to consider the new Rules and attend the outreach sessions that will be conducted by DFSA staff in the coming weeks to explain the above changes in more detail.

Should you have any questions regarding this letter, please contact your DFSA relationship manager if one has been assigned, or use the [Supervised Firm Contact Form](#) found on the DFSA Website.

Yours sincerely



Bryan Stirewalt
Managing Director, Supervision

Copied to: Compliance Officers & Money Laundering Reporting Officers

Appendix 1: Illustrative Scenarios

Scenario 1

	Current Licence	Post 1 February 2017
Financial Services	Firm A currently has a licence that includes: <ul style="list-style-type: none"> • Arranging Credit or Deals in Investments; and/or • Advising on Financial Products or Credit. 	Firm A licence will be changed to: <ul style="list-style-type: none"> • Arranging Deals in Investments; • Advising on Financial Products; and • Arranging Credit and Advising on Credit
Investments	Investments currently include <i>Credit Facilities</i> .	Firms with Arranging Deals in Investments and Advising on Financial Products will retain all other 'Investments' they currently have with the exception of <i>Credit Facilities</i> . The Financial Service of Arranging and Advising on Credit will not have any 'Investments'.

Below is an illustrative example of Scenario 1 and how it is currently displayed on the DFSA Public Register:

Financial Services:	ADVISING ON FINANCIAL PRODUCTS OR CREDIT
Investments:	CERTIFICATES, CREDIT FACILITIES, DEBENTURES, FUTURES, OPTIONS, SHARES, STRUCTURED PRODUCTS, UNITS, WARRANTS
Financial Services:	ARRANGING CREDIT OR DEALS IN INVESTMENTS
Investments:	CERTIFICATES, CREDIT FACILITIES, DEBENTURES, FUTURES, OPTIONS, SHARES, STRUCTURED PRODUCTS, UNITS, WARRANTS

Scenario 2

	Current Licence	Post 1 February 2017
Financial Services	Firm A currently has a licence that includes: <ul style="list-style-type: none"> • Arranging Credit or Deals in Investments; and/or • Advising on Financial Products or Credit. 	Firm A licence will be changed to: <ul style="list-style-type: none"> • Arranging Deals in Investments; and • Advising on Financial Products;
Investments	<i>Credit Facilities</i> is <u>not</u> included under Investments.	No change to current Investments.

Below is an illustrative example of Scenario 2 and how it is currently displayed on the DFSA Public Register:

Financial Services:	ADVISING ON FINANCIAL PRODUCTS OR CREDIT
Investments:	CERTIFICATES, DEBENTURES, FUTURES, OPTIONS, SHARES, STRUCTURED PRODUCTS, UNITS, WARRANTS
Financial Services:	ARRANGING CREDIT OR DEALS IN INVESTMENTS
Investments:	CERTIFICATES, DEBENTURES, FUTURES, OPTIONS, SHARES, STRUCTURED PRODUCTS, UNITS, WARRANTS

Scenario 3

	Current Licence	Post 1 February 2017
Financial Services	Firm A currently has a licence that includes: <ul style="list-style-type: none"> • Arranging Credit or Deals in Investments; and/or • Advising on Financial Products or Credit. 	Firm A licence will be changed to: <ul style="list-style-type: none"> • Arranging and Advising on Credit.
Investments	<i>Credit Facilities</i> is the <u>only</u> Investment on the licence.	The Financial Service of Arranging and Advising on Credit will not have any 'Investments'.

Below is an illustrative example of Scenario 3 and how it is currently displayed on the DFSA Public Register:

Financial Services:	ADVISING ON FINANCIAL PRODUCTS OR CREDIT
Investments:	CREDIT FACILITIES
Financial Services:	ARRANGING CREDIT OR DEALS IN INVESTMENTS
Investments:	CREDIT FACILITIES