



Dubai Financial
Services Authority

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20 December 2009

To the Senior Executive Officers
of DFSA Authorised Firms

Dear SEO,

Outcome of DFSA's Controls Questionnaire 2009

We refer to our 17 June 2009 letter, copy attached, sent to all Prudential Category 4 firms (Firms). This letter transmitted a Controls Questionnaire to be completed and returned to the DFSA.

Overall, we provide the following comments relating to the Control Questionnaires:

1. We received a diverse range in quality of written responses compared to the specific ratings given to statements in the Control Questionnaire;
2. The responses from Firms will be incorporated by Relationship Managers into the risk profile and ongoing risk assessment of such Firms; and
3. All Prudential Category 4 Firms will now be subject to an on-site risk assessment.

Background

The Controls Questionnaire contained 27 statements divided into five sections:

1. Corporate Governance and Strategy;
2. High Level Systems and Controls;
3. Money Laundering and Financial Crime;
4. Financial Resources; and
5. Compliance Arrangements.

Firms were asked to rate each statement and provide a concise explanation. A rating of 5 indicated that the Firm strongly agreed with the statement. A rating of 1 indicated a Firm strongly disagreed with the statement.



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In assessing the Control Questionnaires, we have noted the following circumstances:

1. This was the first response by Firms to a Controls Questionnaire issued by the DFSA;
2. Some Firms may have had little or no previous experience in responding to this type of request;
3. Some Firms have only been recently authorised and/or are conducting minimal or no business, and may have not had the opportunity to test their systems and controls; and
4. A few statements in the questionnaire were closed-ended which may have dictated a "Yes" or "Not Applicable" response by the Firm.

Overall Comments

Based on our review and the above comments, we noted that some Firms did not:

1. give a rating to all applicable questions; and/or
2. provide adequate supporting explanations to one or more questions. For example, some responses to statements were generic in that the Firm indicated that it had complied with the statement, without explaining how it complied.

Some Firms gave a rating of 5 to several statements despite:

1. recently being authorised and not having the opportunity to test their systems and controls. In particular, this was the case where a Firm had conducted minimal or no business; and
2. providing insufficient supporting explanations as to how the Firm considers it strongly agrees with the statement.

General Comments to Specific Statements

1. Section 1 – Corporate Governance and Business Strategy
 - a. Statement 4 - a significant number of Firms did not confirm whether the Compliance Officer and audit function (internal and external) has direct and effective access to the Governing Body, and not just the Senior Executive Officer. For small Firms, this may mean at least direct access to the other Licensed Director(s) other than the Senior Executive Officer.

We consider that good corporate governance standards to be an important aspect of the way firms behave. It is through such standards that a high level of integrity, transparency and accountability can be brought to the way in which firms are managed and controlled in the interests of their stakeholders.

- b. Statement 5 - a number of Firms did not appear to understand the risks between performance based incentives and the possibility of individuals taking unnecessary risks. In particular, what steps is a Firm taking to prevent any excessive risk taking or other non-compliance behaviour.

We consider the risks associated with remuneration structures and the payment of bonuses is important to the DFSA given its renewed focus in the current financial climate.

2. Section 2 - High Level Systems and Controls

- a. Statements 8 to 13 - some Firms relied primarily on the group's systems and controls without explaining how this had been tailored and applied specifically to the Firm's business and activities.
- b. Statement 10 - a few Firms did not identify that they outsource their Compliance/AML functions.

As outlined in our theme review conducted earlier this year relating to the Outsourcing of functions, Supervision will be closely monitoring what due diligence is undertaken by a firm in relation to choosing a service provider and how effectively a firm supervises such person.

3. Section 3 – Money Laundering and Financial Crime

- a. Statements 14 to 18 - generally, all Firms confirmed that they comply with relevant AML requirements. However, most Firms did not provide supporting information as to how they monitored the Firms potential exposure to money laundering and financial crime. For example, no explanation was given as to the use of a specific electronic database to screen for compliance against United Nations Security Council sanctions and resolutions and to identify Politically Exposed Persons.

Anti Money Laundering (AML) and Combating the Financing of Terrorism (CFT) continues to be of high importance within the Dubai International Financial Centre and the wider UAE. Our commitment to managing these risks is evidenced by the two thematic reviews conducted this year by the Supervision department relating to AML and CFT.

4. Section 4 - Financial Resources

- a. Statements 19 to 22 - this section was answered reasonably well with the majority of Firms providing explanatory information in relation to the monitoring of capital adequacy.
- b. Some Firms indicated that their parent company would provide additional capital if required. However, there was no explanation provided as to the extent and type of support contemplated as well as the timeframe for its provision.

5. Section 5 - Compliance Arrangements

- a. Statements 23 to 27 - this section was answered generally well. The wording of some of these statements may have lead to quite generic answers from some Firms.

Conclusion

The DFSA is grateful for the assistance provided by all Firms in undertaking this exercise. We hope the foregoing feedback is useful in enhancing the quality of responses in the future.

The Controls Questionnaire will become an annual requirement. It will form part of DFSA's supervisory tools to be used in assessing the risk profile of a Firm along with other intelligence obtained from enquiries such as theme reviews, complaints and market trends. How a Firm responds to the Controls Questionnaire will inform our view as to Firm management's credibility and assist us in prioritising our on-site risk assessments.

We would expect future responses to be based on actual operating practices and where appropriate, self-critical. As Firms are aware, we expect high standards of transparency and integrity from our regulated entities and would consider that this forms a critical element in our evaluation of risks associated with a Firm. Our aim is to encourage a Firm to identify and deal with regulatory issues in a proactive manner rather than having to rely on regulatory intervention to resolve such issues.

We note that the DFSA has amended its supervisory approach with respect to Prudential Category 4 Firms, which previously had not been subject to a fixed on-site risk assessment frequency. Given the recent changes in economic conditions around the globe and in the region, we have decided to amend the frequency of risk assessments. As such, all Prudential Category 4 Firms will be subject to a periodic on-site risk assessment. The frequency of these visits will continue to be subject to a firm's overall risk profile and its potential impact to the DIFC.

We also propose to make some refinements to next year's Controls Questionnaire. These refinements are likely to include some guidance as to what we expect to obtain as part of the supporting explanations to particular statements. We also intend to expand submission requirements to Prudential Category 3 firms. If you have any feedback in relation to the Controls Questionnaire, this can be provided by email to the Special Surveillance unit through either Matthew Gamble MGamble@dfsa.ae or Lawrence Paramasivam LParamasivam@dfsa.ae

Yours faithfully,



Michael J. Zamorski
Managing Director - Supervision

cc: Compliance Officer of Authorised Firms

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To the Senior Executive Officers
of DFSA Category 4 Firms

17th June 2009

Dear SEO

Re: Controls Questionnaire

Please find attached a Controls Questionnaire we would like you to complete and submit to the DFSA.

The DFSA has recently published an SEO letter regarding enhancements to our supervisory approach for Authorised Firms. The enhancements represent a structured and proportionate response to current regulatory developments within the DIFC and internationally. The aim is to enhance regulation and organisational standards within Authorised Firms to address the risks posed by a more complex and interconnected global financial market.

The Questionnaire represents one element of our enhanced supervisory approach. The Questionnaire asks you for a self-evaluation of your Firm's critical management and systems and controls.

The Questionnaire contains a series of statements that have been divided into 5 sections (Corporate Governance and Business Strategy, High Level Systems and Controls, Money Laundering and Financial Crime, Financial Resources and Compliance Arrangements). You must evaluate your Firm against each of the relevant statements and assign it a rating between 1 and 5. A rating of 5 would indicate you strongly agree with the statement, whilst a rating of 1 would indicate you strongly disagree with the statement. For each statement you are required to provide a concise supporting explanation for your rating.

The Governing Body of the Authorised Firm must approve the responses provided to the Questionnaire.

The Questionnaire must be returned to us by 31 July 2009, to the contact details set out on the last page of the Questionnaire. If you have any questions, please contact your Relationship Manager.

Yours sincerely,



Michael Zamorski
Managing Director, Supervision



For DFSA use only

Controls Questionnaire

Notes for completion

The Questionnaire contains a series of statements that have been divided into 5 sections. The section header will indicate if there are any statements within that section that may not apply to you, otherwise please respond to all statements.

Please evaluate your Firm against each of the relevant statements, providing a rating between 1 and 5. A rating of 5 would indicate you strongly agree with the statement, whilst a rating of 1 would indicate you strongly disagree with the statement.

Please provide some explanation in support of the rating you assign. The explanations you provide should be concise.

The terms 'Firm' and 'you' used throughout the questionnaire refer to the relevant Authorised Firm.

Answers must be typed in electronic format and the questionnaire must be signed by the Senior Executive Officer.

| |
|---|
| Full name of Authorised Firm and DFSA Reference Number. |
| |

Section 1: Corporate Governance and Business Strategy (if you are a branch, statement 3 does not apply to you)

| Statement | Rating (1-5) | Supporting Explanations |
|---|--------------|-------------------------|
| 1. The Firm's Governing Body approves, on an annual basis, the Firm's business plan which sets out a viable business strategy and control environment. | | |
| 2. The Firm's Governing Body is given appropriate management information to discharge its responsibility for ensuring the Firm's compliance with DFSA requirements. | | |
| 3. The Firm's shareholder/partnership agreement contains appropriate arrangements for dispute resolution that seek to minimise disruption to the Firm's operations and its ability to comply with DFSA Rules. | | |
| 4. The Firm's compliance and audit functions have direct and effective access to the Governing Body; access includes regular meetings with the Governing Body and reporting to the Governing Body. | | |
| 5. The Firm's remuneration strategy prevents excessive risk taking or other non-compliant behaviour such as mis-selling or financial crime. | | |
| 6. The Firm has carried on only the Financial Services that are stated on its DFSA Licence and in line with any relevant conditions and restrictions that apply to the Firm. | | |

Section 2: High Level Systems and Controls

| Statement | Rating (1-5) | Supporting Explanations |
|---|--------------|-------------------------|
| 7. Risk management systems that include identification, assessment, and prioritisation of risks, are embedded in the Firm's business planning, budgeting, capital allocation, and audit planning processes. | | |
| 8. The Firm's compliance resource is adequate and commensurate with the size and complexity of the Firm's business. | | |
| 9. The Firm takes into account the adequacy of its compliance arrangements when considering any change in business model. | | |
| 10. Outsourcing arrangements are adequate and oversight by the Firm of such arrangements is effective. | | |
| 11. The Firm has in place effective systems and controls to ensure that its Employees are fit and proper, are competent and capable to perform the functions assigned to them, and are familiar with DIFC and DFSA requirements. | | |
| 12. The Firm has in place effective systems and controls to ensure that its Employees do not engage in market misconduct, Money Laundering, or any other financial crime and that the Firm reports promptly to the DFSA any issues that arise in this area. | | |
| 13. The Firm has effective systems and controls in place to manage conflicts of interest that may a rise in carrying out its activities. | | |

Section 3: Money Laundering and Financial Crime

| Statement | Rating (1-5) | Supporting Explanations |
|--|--------------|-------------------------|
| 14. The Firm has in place effective systems and controls to prevent fraud against the Firm. | | |
| 15. The Firm has in place effective systems and controls to prevent Money Laundering. | | |
| 16. The Firm has effective systems and controls to obtain and make appropriate use of any findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conditions issued by the DFSA, the Central Bank of the UAE, the Financial Action Task Force and other relevant UAE or international organisations. | | |
| 17. The Firm is in compliance with United Nations Security Council Resolutions 1737, 1747 and 1803 that impose sanctions on Iran. | | |
| 18. The Firm has conducted or has scheduled to conduct, anti-money laundering training sessions for all Employees in 2009. | | |

Section 4: Financial Resources (if you are a branch, only respond to statement 22)

| Statement | Rating (1-5) | Supporting Explanations |
|--|-------------------------|--------------------------------|
| 19. The Firm forecasts its Capital Requirement as part of its business planning and has taken steps to secure additional funding as required. | | |
| 20. The Firm has in place systems and controls to ensure that the Firm meets its Capital Requirement at all times. | | |
| 21. The Firm carries out effective stress testing of its Capital Resources, commensurate with the size and complexity of its business, to ensure it can meet its Capital Requirement at all times. | | |
| 22. The Firm has in place effective systems and controls that ensure it submits its financial regulatory returns to the DFSA on time, in line with DFSA Rules. | | |

Section 5: Compliance Arrangements

| Statement | Rating (1-5) | Supporting Explanations |
|---|-----------------|-------------------------|
| 23. The Firm can demonstrate that it has carried out regular and adequate compliance monitoring procedures during the period. | | |
| 24. The Firm has made all required notifications to the DFSA on time, in line with DFSA Rules. | | |
| 25. The Firm has a complete record of any breaches of DFSA Rules and has rectified any such breaches in a timely manner. | | |
| 26. The Firm can demonstrate that it has effective systems and controls for Complaints in line with DFSA requirements. | | |
| 27. The Firm can demonstrate that it has record keeping procedures in line with DFSA Rules. | | |

Section 6: Declaration

Declaration by the Firm

1. I declare that, to the best of my knowledge and belief, having made due enquiry, the ratings and supporting explanations given in this questionnaire, as well as any applicable supporting documents, is complete and correct. I understand that it is an offence under Article 66 of the Regulatory Law 2004 to provide to the DFSA any information which is false, misleading or deceptive or to conceal information where the concealment of such information is likely to mislead or deceive the DFSA.
2. I confirm that I have the authority to submit this questionnaire, to declare as specified above and sign this form for, or on behalf of, the Authorised Firm.
3. I confirm that the ratings and supporting explanations given in this questionnaire have been approved by the Authorised Firm's Governing Body.

Signature of Senior Executive Officer

Date

Name of Senior Executive Officer

Please return the completed questionnaire by 31 July 2009 to:

Special Surveillance Team
Supervision Department
Dubai Financial Services Authority
Level 13, The Gate Building, Dubai International Financial Centre
PO Box 75850, Dubai, UAE

Firms are advised to retain a copy of this questionnaire for their records.