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New Regulatory Regime Would Allow Financial Firms to Establish Representative Offices in Dubai

In October 2009, the Dubai Financial Services Authority (“DFSA”) issued a consultation paper¹ (the “Consultation Paper”) requesting comments from market professionals on the amendments to certain rules and regulations regarding foreign financial firms. If approved, a new regime would allow financial institutions to establish a limited presence in the Dubai International Financial Center (“DIFC”) for the purpose of engaging in marketing activities in or from the DIFC.

The Consultation Paper closed for consultation on 4 November 2009. If approved, the new regime would require financial institutions to file an application with the DFSA to establish a Representative Office.

Representative Offices

Under the proposed rules, firms engaged in financial services sectors would be authorized to operate in the DIFC through a Representative Office, provided that they are regulated in an acceptable home jurisdiction, to be determined by the DFSA. A Representative Office would be subject to the authority and the supervision of the DFSA, although most of the rules and obligations applicable to supervised financial institutions would not apply to a Representative Office.

The activities of a Representative Office would be limited to the marketing of financial services and financial products (offered from a location outside the DIFC) by its head office or by an affiliate. A Representative Office would, however, be authorized also to engage in unregulated activities (*i.e., engaging in market or economic research*).

A Representative Office would not have a legal personality separate from its head office, and it would not be permitted to act as agent for any person or company other than its head office or an affiliate.

Scope and Activities

The activities carried out by Representative Offices would be limited to marketing and providing information relating to financial services and financial products. In addition, a Representative Office would be authorized to introduce clients to its affiliates. The DFSA specified in the Consultation Paper that ancillary services (such as conducting economic research, gathering financial, economic or commercial information) would remain unregulated services and would, therefore, not be subject to registration or authorization requirements.

¹ DIFC Representative Office Regime, Consultation Paper no. 65, October 5, 2009.

Through the establishment of a Representative Office, investment advisers based in the U.S. or in any other foreign jurisdiction would be able to conduct the following activities in the DIFC:

1. marketing financial services (*i.e.*, *advisory services*) that the Representative Office's head office (or its affiliates) offer outside the DIFC;
2. marketing financial products (*i.e.*, *securities*) that the Representative Office's head office (or its affiliates) offer outside the DIFC; or
3. introducing potential customers or investors to the Representative Office's head office (or to its affiliates).

The Consultation Paper defines "marketing" as:

- a. providing information on one or more financial products or services; or
- b. engaging in promotions in relation to (a).

The definition of "marketing" would not include activities such as providing tailored investment advice or managing clients' assets. Likewise, activities requiring an ongoing relationship with a specific client would fall outside the authorized scope of a Representative Office. A Representative Office would not be permitted to act as a broker or dealer or to trade securities on behalf of a client.

Rider

It should also be noted that whilst a Representative Office is permitted to market financial products that its head office offers outside the DIFC, any offer of securities to the public within the DIFC would still need to comply with the DFSA Offered Securities Rules. This may mean that in certain circumstances a prospectus will be required or other regulatory requirements met in connection with any such offer.

Authorization Process

In granting (or denying) an authorization, the DFSA would consider the firm's proposed business model as well as the legal form of the Representative Office. The DFSA would grant the requested authorization if:

1. The proposed activities are within the scope of the license.

2. The applicant established a place of business within the DIFC. The DFSA would also consider the premises of the applicant: the activities of a Representative Office would have to be kept separate from those of any other financial firm. Representative Offices would be permitted to use serviced offices inside the DIFC.
3. The applicant is a foreign financial institution incorporated in an acceptable home jurisdiction (firms incorporated in the DIFC will not be eligible), and the Representative Office has no separate legal personality.
4. The applicant has filed with the DFSA the requested documents (including the applicant's latest audited accounts and information on the applicant's "controllers"²).

The applicant would be required to file with the DFSA a consent from its home country regulator (*i.e.*, *the Securities and Exchange Commission*) and a confirmation of the applicant's good standing. The DFSA would not grant the authorization if it is not satisfied with the quality of the foreign regulation that applies to the applicant in its home country. Among other things, the DFSA would consider the country where the applicant is incorporated and the perceived anti-money laundering risks of this country. The Consultation Paper does not define terms such as "home state regulator," "acceptable home jurisdiction" or "quality of the home state regulation." If those terms are not further defined in the final rules, the new regime would provide the DFSA with discretionary authority to assess whether the Representative Office would be "fit and proper," such assessment to be made on a case-by-case basis.

The Consultation Paper highlights the core principles that should drive the activities of a Representative Office: integrity, management,

² Whilst "controller" is not defined in the consultation paper itself it is likely to be given the same meaning given to such phrase by the Dubai Financial Services Authority Glossary Rulebook Module. This includes any person who (i) holds 10% of the applicant's shares (ii) is entitled to exercise or control 10% of the applicant's voting rights or (iii) holds shares which allow that person to exercise significant influence over the management of the applicant.

adequate resources, conflicts of interest and relations with regulators.

Employees and Representatives

Representative Offices would be required to have one individual acting as “Principal Representative.” The Principal Representative would have an oversight role and would perform a number of other key functions. The DFSA would need to be satisfied that the nominated individual is fit and proper. Among other requirements, the Principal Representative must be:

1. suitably skilled and experienced, and
2. ordinarily resident in the UAE.

To avoid conflicts of interest, the individual would not be permitted to have day-to-day responsibilities for another authorized financial institution, whether or not this institution is based in the DIFC (*i.e., the Principal Representative will not be permitted to “wear two hats”*). In addition, two or more Representative Offices would not be permitted to share a single Principal Representative.

Employees of the Representative Office must be fit and proper, and the Representative Office would be responsible for ensuring that its employees remain fit and proper for the entire term of their employment.

Ongoing Reports and Communications

A Representative Office would be required to notify the DFSA of:

- any rule breaches,
- changes to the Representative Office’s name, legal status, address, controllers or Principal Representative,
- any information which would affect the Representative Office’s or the Principal Representative’s fitness and propriety, and
- circumstances where it may no longer be able to remain solvent. A Representative Office would not be required to submit a copy of its annual accounts. However, if the DFSA were to have concerns, it would request a copy of the annual accounts or address the matter as part of a supervisory visit.

Because the Representative Office would not have clients of its own, it would not be under an obligation to comply with most of the AML provisions applicable to regulated financial institutions. However, the Representative Office would be required to report, among other things, suspicious transactions.

The final rules would include specific filing procedures for authorized firms wishing to move to a Representative Office status (moving down in the category), and for Representative Offices wishing to acquire “authorized firm status” (moving up in the category).

Fees

Representative Offices would be subject to an application fee of \$2,000 and an annual fee of \$4,000.

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