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Dubai - The New DFSA Representative Office Regime is Effective

Effective Sunday, January 3, 2010, foreign financial institutions are authorized to establish representative offices in Dubai (see our client alert dated December 17, 2009, available [here](#)).

In response to several requests for information that the Dubai Financial Services Authority (“DFSA”) received in connection with the new regime, on December 24, 2009, the DFSA published a Q&A document addressing several operational issues affecting representative offices. Among other things, the Q&A addresses the issues identified below.

Permitted Activities

The DFSA clarified that a representative office cannot: (i) make arrangements regarding credit, investments or insurance, or (ii) provide advice regarding credit, investments or insurance. In particular, the DFSA noted that a representative office can merely make referrals, introductions, and provide generic information and that, if the representative office wished to receive and transmit orders or to provide investment advice, it would need to upgrade its license.

Distributing Investment Research

Under the new regime, “investment research” is not considered “investment advice.” Accordingly, a representative office will be authorized to distribute investment research to clients or prospective clients in the Dubai International Financial Center (“DIFC”), provided that the following conditions are met:

- the investment research does not contain advice on financial products or credit (including any recommendation, explicit or implicit, to buy, sell or hold a particular investment); or
- where investment research does contain advice (or a recommendation), the document includes a clear warning on its cover page within the following lines: *“The investment research is provided for information purposes only and it should not be relied upon, or acted on, by [the recipient]. The investment research is not a recommendation for [the recipient] to buy, sell or hold a particular investment.”*

Distributing a Prospectus

A representative office is authorized to distribute a prospectus from its premises in the DIFC, provided that the delivery of the prospectus would not constitute investment advice. In pursuing such an objective, the DFSA suggests including a warning on the first page of the prospectus to the following effect:

“This Prospectus is provided for information purposes only and it should not be relied upon, or acted on, by [the recipient]. This Prospectus is not a recommendation to buy, sell or hold a particular investment.”

Also, the DFSA stated that a representative office should take reasonable steps to ensure that the Prospectus does not include application forms or any other document that could be used by the recipient to make investments in the securities.

Marketing Mutual Funds

A representative office is authorized to market mutual funds, provided that doing so would not amount to the provision of investment advice. To avoid providing such advice, the representative office must include proper warnings and selling restrictions in the prospectus handed out to investors in the DIFC (see, for example, the warning above).

Furthermore, a representative office can market only those funds that qualify as “Designated Funds” or “Property Funds” (as defined by the DFSA).

Overseas Staff Undertaking Marketing Visits to the DIFC

The DFSA clarified that the overseas staff will be authorized to undertake marketing visits in the DIFC, provided that such visits are occasional and limited to the activities that the representative office itself is permitted engage in under its license. It will be incumbent upon the representative office to ensure that its overseas staff be made fully aware of

the rules and limitations applicable to the activities that can be undertaken in the DIFC.

Premises

A representative office will not be able to share an office with another financial institution. However, the DFSA would not consider that a financial institution is sharing an office if that firm were located in serviced offices (*i.e.*, corporate suites) that were also the place of business of another firm.

Eligible Sectors

The DFSA will accept applications from firms authorized to provide services in the banking sector, as well as in the securities, asset management and insurance sectors.

Licensed Financial Institutions

Financial institution already authorized to provide financial services in the DIFC (“Authorized Firms”) are not required to apply to the DFSA for a license to operate a representative office. Any Authorized Firm can carry on marketing activities in addition to, or as part of, the other financial services it is currently licensed to carry on.

Furthermore, an Authorized Firm that is currently constituted as a subsidiary will need to be reconstituted as a branch if it were to convert to a representative office (in these instances, the DFSA will negotiate a rebate on the applicable regulatory fees).

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