

# UAE securities regulator creates regime for promotion and introduction to UAE investors

Following public comment on last year's Securities and Commodities Authority (SCA) consultation on the Promoting and Arranging Regulations, the SCA has recast the regulations as SCA Board Decision No.3 of 2017 regarding the Promotion and Introduction Regulations (PIRs). The SCA published the PIRs on 10 January 2017. We set out in this Client Briefing the key highlights of these new regulations. The PIRs will come into effect on the day after they are published in the UAE's Official Gazette.

## Overview

In summary, under the PIRs, the promotion of financial products to persons in the UAE requires an SCA licence for which an onshore UAE business presence is required. Any person introducing UAE investors to a service provider in order to receive financial services, including trading services, needs to get the SCA's approval. However, neither the SCA licence nor the SCA approval requirements apply when an exclusion is available. For example, promoting to, or introducing, institutional investors and licensed financial institutions, or government bodies and entities owned by them are excluded as is acting on the basis of a reverse solicitation. Promoting or introducing in relation to UAE retail or high net worth individuals is not permitted without the relevant licence/approval. Finally, while licensed promoters need only notify the SCA of any promotions they make in the UAE, promoters proposing to market foreign funds in the UAE must obtain the SCA's prior approval.

These requirements apply to firms located in the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global market (ADGM) when they wish to approach retail or high net worth individuals who are located in the UAE. This represents a considerable extension of the regulated marketing regime to protect individual investors resident in the UAE.

The new regulations fill a gap in the UAE regulatory landscape and create some challenges for those carrying on marketing activities in the UAE. Various provisions merit careful reading. SCA officials are expected to clarify their

intentions in relation to the PIRs. When they do this, it may be possible to paint a more informed picture of the intended impact of these wide-ranging provisions.

The PIRs apply to activities in relation to UAE and Foreign Securities, commodities, derivatives and structured products.

The PIRs define "Promoting" and "Introducing" as follows:

- Promoting is the "marketing, distributing, advertising, disclosing the details or information" by any means, in relation to Financial Products. We note that this definition does not extend to include the promotion of financial services.
- Introducing is the activity of introducing a person who wishes to receive a "financial service" including the provision of trading services, to an SCA-licensed entity, or to any other entity which is regulated by a "regulatory authority similar to the SCA".

The term "financial service" in the PIRs should be interpreted broadly since it is not defined. However, it would exclude any banking and insurance activities which fall under the jurisdiction of the UAE Central Bank and UAE Insurance Authority respectively.

Under the PIRs, a "Regulatory Authority Similar to the SCA" is defined as any ordinary or associate member of the International Organization of Securities Commissions (IOSCO). The DIFC's Dubai Financial Services Authority (DFSA) and the ADGM's Financial Services Regulatory Authority (FSRA) are associate members of IOSCO.

## The Prohibitions

Article 3(1) of the PIRs prohibits persons (individuals or businesses) from:

- a. promoting Financial Products which are not "listed, registered or recorded" with the SCA, and
- b. making introductions in relation to financial services or activities which are not approved by the SCA.

However, the above prohibitions do not apply if an applicable exclusion is available to the promoter or introducer.

As noted above, the PIRs do not apply (including the requirement to get an SCA licence or approval) if a person's activities fall within any of the exclusions provided for under the PIRs, which we set out in the following section.

Additionally, where a person simply promotes the financial services that it carries on, rather than a financial product, this would not fall into the scope of the PIRs. This would permit general marketing of a firm's financial services in the UAE.

What is unclear from the PIRs is whether they prohibit the promotion of financial products to existing clients. In most cases, existing clients would expect to be approached by the firm with investment opportunities under the relevant contract or client agreement. In some cases, the contract might in fact require the firm to actively promote financial products to the client, eg in the case of an active advisory relationship. However, there is a distinction between

promoting a financial product and providing advice on a financial product, and we do not consider that the PIRs would prevent a firm from providing periodic investment advice to an existing client under a contractual arrangement, such as a client agreement.

## Exclusions

The PIRs contain a number of exclusions which we set out below:

### Institutional "Qualified Investors"

This exclusion applies to "private placements" to institutional investors. A firm is exempt from the PIRs when promoting to the following institutional "Qualified Investors":

- a. federal and local governments, the government establishments and bodies, and any companies wholly owned by them
- b. international bodies and organisations, and
- c. entities licensed to carry out commercial activities in the UAE, provided that investing is one of its business activities.

We note that this exclusion is not available when promoting to any natural person, including a high net worth individual. However, it would be available when dealing with an individual's personal investment vehicle or when promoting to a family office.

## Key definitions

"Securities" means: the shares, instruments and financial notes issued by joint stock companies and the instruments and notes issued by the Federal Government, the local governments, the public authorities and the public corporations in the State, and any other local or non-local financial instruments, as may be accepted by the Authority.

"Foreign Securities" means: the shares, instruments, sukuk, investment fund units, commodities and derivatives contracts and the other Securities or financial instruments issued by the foreign issuer.

"Financial Products" means: the securities, commodities contracts, or derivatives, structured products or any Foreign Securities.

## At a glance

- The PIRs prohibit the promotion of financial products unless the promoter is licensed by the SCA, or a relevant exclusion applies.
- The PIRs prohibit any person from introducing a UAE person to an SCA-regulated firm (or a firm regulated by an authority similar to the SCA) to receive financial services, unless the introduction is approved by the SCA or a relevant exclusion applies.
- Firms which promote and/or introduce in relation to investment companies or government entities will be exempt from the scope of the PIRs.
- The PIRs will have the greatest impact on firms which promote and/or introduce in relation to natural persons, such as private banking businesses.

### Reverse solicitation

Under this exemption, a firm can market "specific" Foreign Securities through reverse solicitation without having to obtain a licence from the SCA. We understand this to mean that a firm cannot rely on a previous reverse solicitation in relation to a specific financial product as a reason to promote an entirely new product to a client. However, our understanding is that if a firm has clear, recorded instructions from an investor that it wishes to be contacted about a particular type of financial product, such as "high-yield bonds" generally, promoting such products to the investor would not cause the firm to breach the PIRs.

### Financial Products listed in the UAE

This exemption is available when a firm is promoting Financial Products which are listed on "any of the Markets". However, under the PIRs a "Market" means an SCA-licensed UAE exchange, limiting the scope of this exemption to Securities listed in the UAE.

### Issuing company, foreign company and financial advisor

Under this exemption, foreign and local issuers, and financial advisors, are not required to:

- get an SCA licence to carry out promotions
- obtain the SCA's approval for making introductions
- abide by the PIRs' promoter general duties
- seek the SCA's prior approval for marketing foreign funds or notify the SCA when marketing Financial Products
- abide by the PIRs' requirements in relation to the marketing of foreign funds, and
- ensure its marketing materials comply with the PIRs' requirements.

### Introductions by financial advisors or analysts, and legal advisors

Introductions by financial advisors or analysts, or legal advisors (where the introduction is part of the legal service), are excluded from the PIRs. However, the exclusion is only available if the introducer discloses the commission received and his relationship with the parties involved.

### Promoting or introducing group and "related" entities

A person is exempt under the PIRs when it makes promotions or introductions to members of a same group or to "related parties".

## Notification and approval of promotions

A person making a non-excluded promotion of a financial product, other than an investment fund, in the UAE would be required to give notice to the SCA at the time of first making the promotion. The SCA may within ten days suspend the promotion for public policy reasons.

A person making a non-excluded promotion of an investment fund in the UAE would be required to make an application for approval prior to promotion of the fund. The SCA may approve or reject the application within 15 days from the date of filing.

In summary, for financial products other than funds, once a notification has been made, the relevant promoter may promote the relevant financial product in the UAE. For funds, the promoter must wait for SCA approval.

However, we understand that foreign funds must also be registered with the SCA, and promoted in the UAE through an SCA-licensed local promoter, under Article 35 of the SCA's Investment Fund Regulations. It is not clear from the PIRs whether a fund may be promoted under the PIRs which is not yet registered by the relevant fund manager under the Investment Fund Regulations.

## Investment funds

The exemptions in the PIRs apply to the promotion of foreign investment funds in the UAE. However, where none of the PIR exemptions are available, the PIRs impose additional requirements for the marketing of foreign funds in the UAE. These are set out in Article 12 of the PIRs and impact both public offers and private placements of foreign funds.

Public offers of foreign funds may only be made by funds established outside the UAE or funds established in a UAE free zone or financial free zone, provided that such funds are regulated by a regulatory authority similar to the SCA and are approved in the home jurisdiction for public offer.

Under the PIRs, private placements of foreign funds can only be made to Qualified Investors. As noted above, only private placements to Qualified Investors who are not natural persons are exempt. In practice, this means that private placements to Qualified Investors which fall under Article 12 would be limited to promotion to individual investors:

- a. by "direct contact"
- b. to pre-identified investors only, and
- c. to investors who have:
  - an annual income of no less than AED1 million, or
  - a net worth of AED5 million (principal residence excluded), and
  - sufficient knowledge and experience (either personally or with the assistance of a financial advisor) to assess the features and risks of an investment.

Note that SCA-licensed fund managers are exempt only from certain provisions under the PIRs. Although an SCA-licensed fund manager is not required to have a licence to promote "its funds", it is still required to obtain the SCA's approval before offering fund units. The SCA has 15 days to make a decision. SCA-licensed fund managers are also subject to the PIRs' general requirements for promoters.

## Rules for introducers

Where no exemption applies, any person wishing to undertake introducing activities in the UAE (outside the financial free zones) would need to comply with Articles 13 and 14 of the PIRs. The activity of introducing is essentially about introducing UAE investors to a firm which is regulated by the SCA or a similar regulatory authority, and appears to be designed to control and regulate the intermediation of Securities business in the UAE.

To be an introducer, a person would need to seek the approval of the SCA. It is not a licensing regime. The SCA would issue its approval decision within 15 days. The PIRs' provisions regarding introducing provide greater clarity for non-UAE firms and firms in the UAE financial free zones (DIFC and ADGM) whose activities include making referrals or introductions to group entities outside the UAE. For such firms, the PIRs' introducing regime will provide a convenient and proportionate way to interact with UAE investors.

## Supervision, sanctions and publication of violators

The PIRs require firms which propose to carry on promotions in the UAE to obtain an SCA licence, unless an applicable exclusion applies. For non-UAE firms and firms in the UAE financial free zones this would require establishing a UAE subsidiary or setting up a branch. This could prove onerous for firms in the UAE financial free

zones, where such entities already have a UAE office. Introducers are required to seek SCA approval for their activities.

The PIRs give the SCA powers to supervise promoters and introducers, including information gathering powers. The PIRs also prescribe broad sanctions powers, including warnings, fines, suspension and cancellation of a promoter's licence or an introducer's approval. SCA may publish the names of persons found in breach of the PIRs as well as the penalties imposed.

## Conclusion

For firms in the UAE financial free zones, which operate in the UAE but which are regulated by the financial free zone regulators, the PIRs provide some sensible exclusions for carrying on promotion and introduction activities in the UAE outside their respective financial free zone. This should be seen as an opportunity in light of previous uncertainty. Where no exclusion applies, financial free zone firms will need to ensure that their promotion and introduction activities take place inside the relevant financial free zone, or that promotional activity is limited to promoting their financial services and not financial products.

In our [Client Briefing published in September 2016](#) regarding the SCA's proposed Promoting and Arranging Regulations, we set out the general concerns that we perceived in regard to the proposed regulations. While not all of the concerns have been addressed by the PIRs, many have been, and the PIRs set out a more proportionate set of regulations for promotion and introduction activities in the UAE. Importantly, they also fill a gap in the regulations and, in doing so, provide greater certainty for the financial services industry.

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