

Client Alert

Middle East & Islamic Finance – Investment Funds Practice Group

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Proposed New Regulations on Arrangement and Promotion Activity in the UAE

In early August 2016, the UAE Securities & Commodities Authority (the **SCA**) issued draft new regulations (the **Proposed Regulations**) on arrangement and promotion activity in the UAE. Only an Arabic version of the Proposed Regulations was made available by the SCA.

The Proposed Regulations set out the procedures and restrictions for the marketing and sale of securities in the UAE, the licensing and the ongoing obligations applicable to local promoters licensed by the SCA and changes to the eligibility criteria of certain investors to whom local promoters may offer financial products. The Proposed Regulations helpfully make certain activities, including reverse solicitation, intragroup activity and the promotion of government issued financial products, exempt from its application. However, there are concerns as to how the Proposed Regulations would interact with existing private placement rules for foreign funds. Relevant stakeholders, including investment fund managers, may wish to provide comments on the Proposed Regulations during the consultation period.

Regulation of Promoters

The Proposed Regulations are aimed at the regulation of arrangement and promotional activity in the UAE. Promotional activity is defined as the marketing, distribution, publishing or dissemination of data, information or promotional material with the purpose of enticing a person in the UAE to purchase financial products. Arrangement activity is the mediation by the promoter between a person in the UAE and SCA licensed entities with the purpose of offering financial services.

The Proposed Regulations require, with certain exceptions, that a person carrying on arrangement and promotional activity in relation to local securities, commodities, derivatives and foreign securities in the UAE must be licensed with the SCA. “Foreign securities” is defined broadly to include shares, bonds, sukuk, investment fund products, commodity contracts, foreign derivatives and other financial instruments issued by a foreign issuer. The Proposed Regulations:

- set out the licensing regime applicable to persons wishing to engage in arrangement and promotional activity in the UAE including the documents required in the licence application;

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- require a person licensed by the SCA to engage in arrangement and promotional activity (a **Promoter**) to provide the SCA with financial reports and obtain SCA's consent or notify SCA for specified corporate activities, including but not limited to amending its memorandum and articles, engaging in mergers and acquisitions, amending its commercial licence, changing shareholders or pledging the company's assets;
- require a Promoter to submit an application to SCA for any financial product that the Promoter wishes to promote in the UAE;
- set out additional obligations that apply in relation to foreign fund products, including a duty of care and diligence on the Promoter to examine, select and monitor foreign fund products in a way to protect the investors' capital and to verify the existence and status of the fund in its foreign domicile; and
- set out the powers of SCA in supervising Promoters and imposing penalties.

Under the Proposed Regulations, a Promoter may offer financial products only to certain eligible investors. If the investor is a natural person, the eligibility test is two-fold: the investor must have:

- (a) annual income of no less than one million dirhams or net equity of 5 million dirhams, excluding the investor's primary residence; and
- (b) sufficient knowledge and experience, whether on his own or using a financial advisor, to evaluate the offer document and the advantages and risk associated with or resulting from the investment.

Exemptions

The following activities or entities are exempt from the Proposed Regulations:

- reverse solicitation;
- intragroup arrangement and promotion activity;
- arrangement or promotion of securities, commodity contracts or derivatives issued by government entities or their wholly-owned subsidiaries;
- foreign securities where a request for listing has been made; and
- commodity brokers.

The Proposed Regulations also provide a more limited exemption for SCA licensed entities, issuers and advisors of public joint stock companies, and the promotion of investment funds by the fund manager or the fund sponsors.

Impact on Foreign Funds Private Placement Rules

In 2013, the SCA issued amendments to the investment funds regulations (the **2013 Regulations**), which provided that foreign funds which are privately placed only with the following categories of investors in the UAE are exempt from the SCA investment fund regulations:

- (a) investment portfolios owned by federal or local governmental agencies;

- (b) institutions or entities whose purpose is to invest in securities, provided that such institutions are acquiring the fund interests for their own accord; or
- (c) investment managers with discretionary management authority.

It is uncertain how the Proposed Regulations will interact with the foreign fund private placement rules and exemptions set out in the 2013 Regulations. The Proposed Regulations provide that the fund manager or sponsor shall be permitted to practice arrangement and promotion activity and shall not be subject to the Proposed Regulations, except for Article 2, Article 3, Article 8(4) and Chapter 4 of the Proposed Regulations. On its face, this appears to preserve the foreign fund private placement rules. However, Article 3(1) contains a blanket prohibition on the promotion of financial products that are unlisted or unregistered with the SCA. Further, Article 8(4) requires a Promoter to provide SCA with the Promoter's financial reports, but presumably a placement made in accordance with the foreign private placement rules will not involve a local licensed Promoter. Further clarification from SCA on these issues will be required. Fund managers who have relied on the foreign fund private placement rules may wish to comment on the Proposed Regulations and seek clarification from the SCA.

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