

WORLD INVESTOR WEEK 2018

PROTECTING INVESTORS FROM ILLEGAL OR UNFAIR PRACTICES

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CAPITAL MARKETS AUTHORITY



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How the Financial Control Unit Product Review enhances Protection of Investors

Yasmine Fakhoury
Financial Control Unit
Capital Markets Authority

Racha Saadeh Chehab
Financial Control Unit
Capital Markets Authority



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Our presentation will be touching on various components of the CMA's Regulations which we hope will assist the investors present with us today

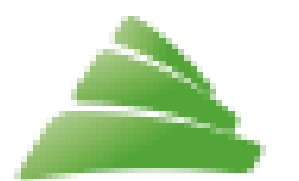
AGENDA

1. Introduction to the Regulations
2. Objective of the Offers of Securities Regulation
3. Main components of the Regulation
4. Public Offers of Securities
5. Exempt Offers of Securities
6. Process of review
7. Highlights on the Collective Investment Schemes Regulation (draft)

INTRODUCTION TO THE REGULATIONS

- **The CMA Regulations were drafted with the assistance of the World Bank to make sure that they reflect best business practices, which are being applied by various regulators around the world**
- The CMA's website reflects all CMA Regulations:
 - ✓ Business Conduct Regulation (BCR)
 - ✓ Market Conduct Regulation
 - ✓ Regulation on Offers of Securities (OSR)
 - ✓ Regulation on Listing Rules (draft)
 - ✓ Licensing and Registration
 - ✓ Collective Investment Schemes Regulation (draft) (CIS Regulation)

OBJECTIVE OF THE OFFERS OF SECURITIES REGULATION



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OSR – OBJECTIVE OF THE REGULATION

- Only registered person approved by the CMA (fit and proper) can solicit investors
- The registered persons should be working for an Approved Institution (AI) (fit and proper)
- The Capital Markets Authority (CMA) does not comment on the merits of any product, unless it considers that the proposed offer of securities may not be in the public interest or may result in a breach of the Law 161 or the CMA Regulations

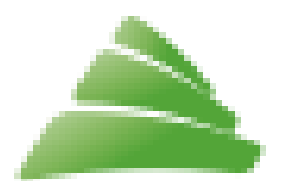
OSR – OBJECTIVE OF THE REGULATION

The objective of the Offers of Securities Regulation is to establish:

- Requirements to make a public offer of securities
- Requirements to make an exempt offer of securities

A person must not make an offer of Securities in Lebanon except in accordance with this Regulation

MAIN COMPONENTS OF THE REGULATION



OSR - MAIN COMPONENTS OF THE REGULATION

WHAT IS AN OFFER?

- Issuing Securities to investors
- Inviting the public or investors to subscribe for Securities
- Making a securities advertisement for a new issue of Securities (verbal, electronic, broadcast or written)



OSR - MAIN COMPONENTS OF THE REGULATION

WHAT IS MEANT BY A SECURITIES ADVERTISEMENT?

- Any security advertisement prepared in advance, and communicated, in any form, to one or more persons in Lebanon

- The security advertisement must contain the following:
 - ✓ Identification of the AI
 - ✓ Information clear, fair and not misleading
 - ✓ Sufficient information to make an investment decision
 - ✓ Source of the information
 - ✓ A warning in case the advertisement includes any future forecasts or past performance of securities

OSR - MAIN COMPONENTS OF THE REGULATION

WHAT SHOULD THE SECURITY ADVERTISEMENT INCLUDE? (sample - Annex 2 of BCR)

- 1– Guarantees: only if there is a legally enforceable arrangement with a third party (while disclosing the name of the third party)
- 2– Material interest in securities (possible conflicts of interest)
 - ✓ Whether the AI has or may have a position in the securities
 - ✓ Whether the AI has been provided within the previous 12 months, significant advice or securities business services to the issuer of the securities
- 3- Past Performance (simulation)
- 4- Foreign currency exposure, Fluctuations in value, Investment Income warnings
- 5– Illiquidity warning (if applicable)
- 6– Sales charges and fees disclosure
- 7- Suitability Warning (for public offers to the retail investors)

OSR - MAIN COMPONENTS OF THE REGULATION

OFFERORS

A Person who makes an offer of Securities:

- Issuer (legal entity that issues or offers to issue, a security)
or
- A person acting as an agent for an Issuer, if the issuer is not making the offer.

OFFEREEES

An individual, a company or any other legal entity to whom an offeror makes an offer of securities, either directly or through an agent



OSR - MAIN COMPONENTS OF THE REGULATION

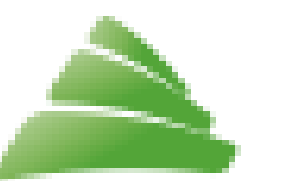
A. Public Offer

- To the Public and/or Professional Clients
- Suitability assessment by the AI is required (for public offers to retail investors)
- Language used should be clear, consistent, concise
- Full disclosure of information
- Meets the requirements of the OSR Regulation
- Requires the CMA's approval before marketing takes place

B. Exempt offer

- Target Market: Professional Clients only
- Suitability assessment by the AI is not required
- Documentation is less than what would be required under Public Offers
- Meets the requirements of the OSR Regulation
- Requires the CMA's prior approval

PUBLIC OFFER OF SECURITIES



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OSR - PUBLIC OFFER OF SECURITIES

The Offeror must send to the CMA:

- ✓ draft Prospectus that meets the requirements of the OSR (annexes 1&2)
- ✓ declaration by the Directors of the Issuer (annex 3)

The Offeror must:

- ✓ appoint an independent financial advisor (AI), unless the offeror is an AI
- ✓ submit its application to the CMA at least 4 weeks prior to the proposed date of the Offer

OSR - PUBLIC OFFER OF SECURITIES

The Prospectus:

- ✓ Document that should contain all necessary information for the Investor to make an informed investment decision
- ✓ Liability of the Prospectus falls on: The offeror, the issuer of the prospectus, its directors and other persons, such as experts, whose opinions are included in the Prospectus with their consent
- A prospectus must not be published to the public unless the CMA has approved it, or, unless it is in a “draft” format that includes the CMA requirements to accept “indications of interest” (in terms of disclaimers ...)

OSR - PUBLIC OFFER OF SECURITIES

Until the CMA approves a final prospectus, the AI should **not**:

- accept any orders or subscriptions
- require a client to sign a subscription form, or
- accept or arrange for any client money to be paid for the purchase of the offer.

Publication of the (final) prospectus:

- The issuer must make a prospectus available as soon as the CMA approves the Offer
- At least 2 days prior to the commencement of the offer
- In both electronic and printed form and free of charge to the Investor
- Publication on the issuer's or offeror's website on same day that it is made available to the public

OSR - PUBLIC OFFER OF SECURITIES

Application Requirements for a “Public Offer” (sample)

- ✓ Contact details of at least 2 individuals from the AI
- ✓ Checklist showing where all the information is set out
- ✓ Letter signed by the **Issuer’s** financial advisor (AI, unless the Offeror is an AI)
- ✓ Declaration form by the Directors of the Issuer
- ✓ In the case of an issuer licensed by the BDL, a copy of its approval of the issuance of the securities

OSR - PUBLIC OFFER OF SECURITIES

Main disclosure requirements in a Prospectus

1. CMA Disclaimer

- *The liability of the Content of the Prospectus lies with the Issuer and the Offeror (if not the same)*
- *The CMA's role is not to assess the merits of an investment; its role is to review the documentation to assess as to whether the necessary information is complete and transparent to the Investors*

2. Right of rescission

3. A Summary

4. Risk Section

5. Fees (captured in one section)

6. Terms and Conditions

7. Use of Proceeds

8. Related Parties (conflicts of interest)

EXEMPT OFFER OF SECURITIES



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OSR - EXEMPT OFFER OF SECURITIES

- An exempt offer of securities may be made:
 - ✓ through an AI that is licensed by the CMA
 - ✓ by an Issuer directly

- An Issuer or an AI must:
 - ✓ **Notify** the CMA of an exempt offer at least 14 days prior to the proposed date of the Offer
 - ✓ File all documents related to the Offer (Annex 5 of the Regulation)

- An Exempt Offer Application to the CMA should include a Notice to the CMA that should be signed by 2 Directors **of the Issuer**.

OSR - EXEMPT OFFER OF SECURITIES

List of Exempt Offers (sample) - Securities that are:

1. Issued by the Government of Lebanon (Eurobonds, T Bills, T Bonds ...)
2. Issued by a foreign Government or a supranational authority
3. Only offered through an AI to a maximum of **20 subscribers** that must be professional clients or counterparties (**minimum investment of USD 10,000**)
4. Offered by one **member of a corporate group** only to other members of that corporate group
5. Offered to a director, officer, employee or controller of the Issuer
6. Offered as a **stock bonus, a stock dividend** or on the exercise of a right of conversion, only to existing security holders of the issuer.
7. Offered in connection with a **merger or take-over bid**

OSR - EXEMPT OFFER OF SECURITIES

Exempt Offers as Series:

- An Offeror may apply for a Product issued as a Series: if the CMA approves the standard form disclosure document
- certain terms may vary from a series to another
- subsequent series of such securities may be offered for sale immediately after the Offeror files with the CMA the final terms sheet covering that series

Sample of Variable terms

- ✓ price
- ✓ rate of return, dividend or yield
- ✓ participation rate in any change in the underlying
- ✓ barrier or protection level for partly-protected products
- ✓ composition of a specific securities, commodities or financial index
- ✓ fees charged for, or included in the price of, the security
- ✓ identity of the calculation agent

OSR - EXEMPT OFFER OF SECURITIES

Private placements to raise equity or debt capital for a company

- Offer to maximum of 20 subscribers
- Professional clients or Counterparties
- Minimum subscription of USD 10,000 or equivalent in another currency
- Offeror must file a Private Placement Memorandum (PPM) with the CMA as required in the Regulation

A PPM must:

- ✓ contain all necessary **information** to enable an investor **to make an assessment of the issuer** of the securities (its assets, liabilities, financial position, business prospects..)
- ✓ details of the **type and terms and conditions** of the securities
- ✓ must state that the offeror is **responsible** for its content and is **liable for damages** if any material information is omitted from it, or if it includes any information that is false or misleading in a material respect



OSR - EXEMPT OFFER OF SECURITIES

Main disclosure requirements in a Disclosure Document (sample):

1. Summary of the Offer
2. CMA disclaimer
 - *The liability of the Content of the Prospectus lies with the Issuer or the Offeror (if different)*
 - *The CMA's role is not to assess the merits of an investment; its role is to review the documentation to assess as to whether the necessary information is complete and transparent to the Investors.*
2. Information about the Issuer (if applicable)
3. Characteristics of the Product
4. Target Market
5. Fees
6. Risks
7. Any conflicts of Interest

OSR - EXEMPT OFFER OF SECURITIES

Application Requirements for a Notice of an Exempt Offer (sample)

- Type of exempt offer (from the list as per the OSR)
- Name of the AI(s) through which the offer will be made
- The proposed opening and closing dates
- Number, type and class of any similar securities previously issued by the Issuer
- Details of the terms and conditions
- Proposed issue price of the securities
- Total value of the offer
- Minimum subscription amount

OSR - EXEMPT OFFER OF SECURITIES

The Notice must:

- Include a copy of all disclosure documents and sales materials relating to the securities to be offered
- state which document(s) will be provided to offerees, and which documents will be made available on request or electronically
- be signed by two directors or executive officers **of the issuer**
- include the following certificate:

We hereby certify that:

- 1- The board of directors of [name of issuer] has formally approved this exempt offer and the issuance of the securities covered by the offer.
- 2- The contents of this Notice, including the disclosure documents filed with it, are complete and accurate, and [name of offeror or issuer] has authorized the filing this Notice with the Authority.
- 3- The offeror or issuer acknowledges that after reviewing this Notice, and after providing an opportunity to be heard, the Authority may decide to delay or prohibit the making of the exempt offer.
- 4- The issuer authorizes the Authority to exchange any relevant information with any securities regulatory authority, or similar competent authority.

Date:

Signed on behalf of

By: (Names and titles of 2 executive officers of offeror or issuer)

.....
.....



OSR - EXEMPT OFFER OF SECURITIES

PUBLIC OFFER

- Offered to Retail and/or Professional Clients
- Suitability assessment required for the Retail investors (only)
- Disclosure requirements (Annex 2, 3)
- Liability of the Offering Documents on Issuer **and** Offeror of Document
- Information in the Offering Documents should be complete transparent, accurate and not misleading

EXEMPT OFFER

- Offered to 20 Professional Clients or Counterparties Only (for Private placements)
- No suitability assessment required by the AI
- Less disclosure requirements (Annex 5)
- Liability of the Offering Documents on Issuer **and** Offeror of Document
- Information in the Offering Documents should be complete transparent, accurate and not misleading

PROCESS OF REVIEW



OSR - PROCESS OF REVIEW

- The AI application to the CMA should include:
 - ✓ All documents or agreements that will be provided to the potential investors
 - ✓ The subscription form that will be submitted and signed by the investors
- The application should be submitted to the CMA through the CMA's General Secretariat
- Any document or agreements to be presented to potential investors during solicitation and subscription should be submitted to the CMA **prior to marketing the Securities**
- Once/**If** the FCU receives the application, it will:
 - ✓ Carry out enquiries relating to the Issuer, Offer and Content of the Offering documents
 - ✓ Ask for any additional information that will help in building a recommendation to the Board

OSR - PROCESS OF REVIEW

- Upon completing the review, the FCU submits its Recommendations to the CMA Board
- The CMA Board will make an independent decision, which will be communicated to the AI

If the CMA considers that the proposed Offer is not in the public interest or may result in a breach of Law 161 or the Regulations, it may refuse to approve a prospectus and prohibit or delay the offer, sale or transfer of the securities involved

HIGHLIGHTS ON THE COLLECTIVE INVESTMENT SCHEMES REGULATION (DRAFT)



HIGHLIGHTS ON THE CIS REGULATION

Highlights of the CIS Regulation

- CMA Decision 14 currently governs the marketing of the mutual funds
- The CIS Regulation was approved by CMA's board and is currently under final translation to Arabic
- To accommodate the demand of certain AIs, we have reviewed recent applications as per the CIS Regulation in order to apply exemptions covered by the new Regulation

HIGHLIGHTS ON THE CIS REGULATION

The objective of the CIS Regulation:

- Regulate the **establishment, offering and management** of CIS in Lebanon
- Set the framework and requirements to be implemented by the **CIS Managers** and the **Custodians** and the **Als**
- Any person who establishes, offers and manages a CIS in Lebanon must be an AI to undertake that activity under the Licensing and Registrations Regulation and the CIS Regulation

A CIS (local/foreign) must only be established, offered and operated in Lebanon in accordance with Law 161, Law 706 and the CIS Regulation

HIGHLIGHTS ON THE CIS REGULATION

Application to the CMA:

The AI's application must contain the information required in the CIS Regulation "Application Form" (Annex 1 of the CIS Regulation)

- The Applicant should submit the Offering Documents which should include the Prospectus
- The CIS prospectus shall include full disclosure of the information required by the investors to **make an informed decision** on the investment in the scheme or in the sub-fund of the scheme
- Whenever the CIS prospectus is amended, a copy of the revised CIS prospectus shall be filed with the CMA

HIGHLIGHTS ON THE CIS REGULATION

The prospectus should be dated and include the below information (or through an addendum to prospectus) - Sample:

- ✓ The presentation of the CIS (legal structure, objective, strategy..)
- ✓ Risk Warnings / CMA Disclaimer
- ✓ The Organization and Management of the CIS
- ✓ The CIS Manager
- ✓ Use of borrowing, leverage, hedging, taxation
- ✓ The conditions of operations (Subscriptions and redemptions process)
- ✓ Documents available for review
- ✓ Conflicts of Interest
- ✓ Authorized Signatories
- ✓ Investment Exposure
- ✓ NAV calculation and Frequency
- ✓ Fees (subscription, management, performance, administrative, exit...)
- ✓ Risks section

HIGHLIGHTS ON THE CIS REGULATION

Types of Funds : Open – Ended, Closed- Ended

➤ **Public CIS (borrowing requirements):**

1. Borrowing should not exceed 10% of the NAV for up to 80 days to meet redemptions
2. For closed ended scheme: borrowing should not exceed more than 20% of the NAV. The nature and duration of such borrowing must be clearly stated in the CIS prospectus
3. Closed ended scheme investing in real estate: Not more than 60% of the value of any one piece of real estate is secured by mortgage

➤ **Exempt CIS (borrowing requirements):**

1. Unlimited borrowing or use leverage permitted
2. Disclosure requirements: maximum amount, duration and type of borrowing used, ...

HIGHLIGHTS ON THE CIS REGULATION

While assessing the application, the FCU may:

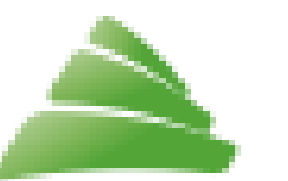
- Carry out any review, enquiry or investigation
- Require the AI to provide any relevant additional information or documents
- Require the AI to validate, verify, certify any information provided to the CMA

After completing its review, the FCU will submit its recommendation to the Board

The CMA Board will make one of the following decisions:

- Approve the application
- Approve the application subject to any conditions and limitations
- Refuse the application

QUESTIONS?



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