

BY RULE
INDUSTRY COMMENTS & FEEDBACK ON CONSULTATION PAPER FOR OFS MODULE – RULE BY
RULE FEBRUARY 2014

General Comments on OFS

NC – No Change

Industry Comments	CMS Comments	CMS Recommendations/Action
The Module OFS reads fairly acceptable from a regulatory process and initiation perspective of the issuer and regulator.	NC	NC
<ul style="list-style-type: none"> - The requirements are clearly stated and are workable. - We agree with the approach taken on the various proposals. - The guidance provided by CBB is adequate. 	NC	NC
The guidelines do not have ambiguities; the module contains extensive set of requirements which indeed provides guidance and will facilitate the issuance of securities (Capital Market Industry) within Bahrain.	NC	NC
<ul style="list-style-type: none"> - A bank supports this important paper from the CBB and endorses the main recommendation aimed at facilitating the raising of capital through the offer of securities. The tents of this paper, enhance transparency and clarity and will strengthen the market integrity in the capital markets in Bahrain. - The term “Permanent Insider” has been referenced throughout the consultation paper. We note that as far as the Bahrain Bourse is concerned, the terminology of insiders has been replaced by “Key persons” in 2010. The scope and activities permitted by key persons are less onerous vis a vis those of insiders. Please include the term “key persons” in 	<p>NC</p> <p>Key Persons clarified the administration of insider from an exchange perspective. Refer to MAM – 2 of MAM module and Art. (105) of CBB Law, there is still reference to the term “Insiders” and “Permanent insider”. The “Permanent Insider” definition stated in the OFS module is same as the definition in</p>	<p>NC</p> <p>NC</p>

<p>the glossary and reference it appropriately in the context of the offer of securities in Bahrain.</p>	<p>MAM module (MAM-B.2.17)</p>	
<p>From our perspectives, the amended OFS Module is clearly stated and adequate. We believe that this new framework will promote fairness, investor protection and market integrity. The amended OFS Module will help the licensees to comply with OFS regulatory framework better.</p>	<p>NC</p>	<p>NC</p>
<ul style="list-style-type: none"> - Market Maker may be deleted as it does not have any role for issuing and/or offering of securities to the public. - Name of the designated Stock Exchange need to be specified in the offer document if proposes to list the securities on more than one Stock Exchange. - Before listing of securities, declaration from the Issuer shall be submitted to the Exchange about completion of allotment of securities, refund of excess money and also completion of uploading the details of securities in electronic form into the Depository System. 	<p>Disagree – Market Maker may be an integral part of any public offering. See April 2013 amendments to Module MIR giving more importance to Market Maker.</p> <p>Agree.</p> <p>Agree. This is catered for in the Module under OFS-7.1.7 and OFS 7.4.2</p>	<p>NC</p> <p>Under OFS-5.5 (xiii), OFS-5.2 k (iv), OFS-7.1.6 and Appendix 1 section 1 (3)</p> <p>NC</p>
<p>There are a number of regulations for private placements that as drafted appear either unduly onerous on lead managers, not market standard or simply unacceptable for most international banks acting as lead manager on an offering. As a result if these remain as drafted this may effectively result in many international fixed income offerings not being marketed in Bahrain via private placement preventing accredited investors in Bahrain from investing at primary distribution stage potentially impacting their competitiveness. In order to avoid this issue we would recommend that the CBB considers adding certain offerings (e.g. cross border fixed income/Eurodollar offerings) to the Exempt</p>	<p>Disagree. Due to the state of the development of the Bahrain capital market, the offering by way of private placement cannot be unregulated. After the financial crisis, there has been a move to further regulate private placements and other types of investment that were not adequately regulated (e.g. off market derivatives). The requirements are not unduly onerous and are aligned with EU Directives which is where many of the products the bank originates. There are also lesser filing provisions where the product is listed on an exchange or approved by a foreign regulator. These issues, which would likely include cross border fixed income are exempt from</p>	<p>NC</p>

<p>Offers list if such a security is listed on a reputable exchange such as the London Stock Exchange (“LSE”). As such the requirements of the Offering of Securities (“OFS”) module would be waived for that Issue subject to any disclaimer language the CBB wishes to apply.</p>	<p>the general requirements as they do not fall under Art. 81 of the CBB Law.</p>	
<p>A law firm provided a comprehensive review of Module by suggesting new/amended working via track changes on the document.</p>	<p>Their input will be reviewed for inclusion in final draft.</p>	<p>As necessary.</p>
<p>The consultation paper is well drafted, and has included many elements that will provide Bahrain capital market with more robust and clear legal framework.</p> <ul style="list-style-type: none"> - We highly recommend that the Bourse carries the right to comment on the preliminary prospectus before it is issued as a final official document and object any preliminary prospectus as the Bourse is considered SRO. - We suggest to include ETF’s and MF’s in the glossary. - In the purpose of having consistency between our Market Rules and CBB Modules we suggest to limit Members definition to: Brokers, Market Markers, and Custodians. - It was observed that the definition of Control and Controlling Share Holder states different percentage for control. - We suggest to define the Free Float to those shares that are readily available for trading to follow international standards. - We observed the term “Securities Ownership Transfer Agent” is not defined in the glossary. We highly recommend to include it in the glossary. - It is unclear whether the Module refers to days as Business Days or Calendar Days. - 	<p>NC</p> <p>This will be catered for in the Listing Module and can be included in the exchange’s listing rules.</p> <p>Not necessary until these terms are used.</p> <p>This is defined in Module MIR and the Glossary and both exchanges must ensure consistency.</p> <p>Control in the context of a listed company is set by the CBB at 30%.</p> <p>This is generally understood.</p> <p>This function is clearly defined and stipulated in other Volume 6 modules in general</p> <p>Specific mention will be made of type of days.</p>	<p>NC</p> <p>NC</p> <p>NC</p> <p>NC</p> <p>Change Controlling Shareholder to Major Shareholder.</p> <p>NC</p> <p>NC</p> <p>Where needed the term ‘days’ has now been underlined in the Module OFS and in the HTML version links</p>

<ul style="list-style-type: none"> - - - - Following the approval of an issuer’s prospectus, we highly recommend to publish their prospectus on BHB website. - We suggest that the OFS Module should emphasize on dematerialize securities only. As an alternative for article OFS 7.5.9, OFS Module may refer to Article 96 and 178 of the CBB Law for issues related to the evidence of securities ownership. 	<p>This can be a listing requirement of the exchange.</p> <p>Module OFS is required to cater for all securities. It does however encourage or require dematerialization where possible in line with the CBB Law Articles.</p>	<p>directly to the Glossary: ‘Days’: unless, specifically referred to as business days, means calendar days.</p> <p>NC</p> <p>NC</p>
<p>In summary, the New Module in its entirety would make it very difficult for the bank to operate its business. Our most fundamental concern is that the New Module purports to apply a myriad of rules that may be sensible in the context of an initial public offering (an “IPO”) to private placements.</p> <ul style="list-style-type: none"> - Require the offering document to contain a myriad of disclosures regarding the issuer of the securities that are very similar in some respects to the topics required to be covered by an IPO offering document filed with US or UK regulatory authorities; - Require the offering document for a newly established issuer to contain projected financial statements that must be reviewed and reported on by an independent reporting accountant or other expert whose report must be set out in the offering document; - Require the issuer’s annual financial statements to be audited; - Limit the fees that can be charged in a private placement; 	<p>The OFS module provides clear distinction between the issuer of securities and the private equity fund operations.</p> <p>These disclosures relate to responsibility statements of directors. A private placement does not mean that the issuer takes no responsibility on the information he provides.</p> <p>This has always been required by the CBB.</p> <p>Previous requirement.</p> <p>Key issue for the capital market is transparency. Fee limit is to protect the investor and the reputation of the Bahrain</p>	<p>NC</p> <p>NC</p> <p>NC</p> <p>NC</p>

<ul style="list-style-type: none"> - Require the submission to the Central Bank of declarations signed by the lead manager and the legal advisor relating to due diligence; - Permit the Central Bank to disapprove an offering by an overseas issuer if the overseas issuer's securities do not have a primary listing on its home regulated exchange; - Require that the Central Bank approve the allocation of shares in private placement; <p>These new requirements are disproportionately burdensome and literally impossible to satisfy for firms that offer private equity base investment products through private placements.</p> <p>Our investment products are held by investors through special purpose vehicles ("SPVs") that themselves hold an indirect interest in the relevant investment. For each investment, there are normally multiple SPVs. The SPVs are newly-established at the time of the offering of the investment and they have no historical financial statements. These SPVs would never be listed on any exchange at the time that the investment is offered to investors. The SPVs do not conduct any activity other than holding such indirect investment, and it would be disproportionately expensive to have the annual financial statements of each such SPV audited.</p>	<p>financial market.</p> <p>These declarations, which are merely each party declaring they have done their job, are introduced so that the CBB can be assured that the document is in good order and can therefore process its approval quicker. The alternative is that the CBB will be required to perform a full review and investigation of the stated facts and this would mean a lengthy approval process.</p> <p>The CBB law provides the CBB authority of any securities issues into Bahrain.</p> <p>The CBB will be assuring the process of allocation not the actual subscribers.</p> <p>These provisions are currently being imposed and met by many issuers of private placements.</p> <p>The CBB does not dictate in any way the structuring of an investment.</p>	<p>NC</p> <p>NC</p> <p>NC</p> <p>NC</p> <p>NC</p>
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<p>In addition, the requirement to have projection in the PPM reviewed and reported on by an accounting firm or other expert would be extraordinarily expensive and practically impossible.</p> <p>Investment firms usually charge a performance fee on an investment provided that performance exceeds a threshold level of return for the investors. These fees are, and should be, clearly disclosed to investors. The investors, who are sophisticated, can of course choose not to make the investment if they believe the fees are excessive.</p> <p>The licensee cannot understand why it should be necessary to seek Central Bank approval for performance fees that are clearly disclosed to investors.</p> <p>The New Module limits the number of offerees in a private placement to 50.</p> <p>This limitation is untenable for us and we would not be able to operate our business with such a limitation.</p> <p>It is very typical for us to offer a private placement investment to hundreds of accredited investors across the Gulf.</p> <p>The New Module would subject an institution operating in Bahrain to both Central Bank requirements and the requirements of the jurisdiction in which it offers securities.</p> <p>We strongly believes this duplication of regulation is unduly burdensome and it puts Bahrain firms at a competitive disadvantage.</p>	<p>This is currently being done by other issuers/institutions.</p> <p>The CBB is required to ensure transparency and the reputation of the financial market.</p> <p>There is international precedent for this threshold. Its inclusion here makes it clear. In many international jurisdictions they do not put a threshold on PPM directly but they do indirectly through define what constitutes a public offer. If it doesn't meet that threshold it is automatically a private offer. The general threshold is between 50 and 200.</p> <p>This is the case across the world. The CBB has lesser filing requirements where the issue has already been approved.</p> <p>Disagree. The international issuers want to see what the regulation is in the other markets and are not prepared to business in jurisdictions</p>	<p>NC</p> <p>NC</p> <p>The OFS module was amended and the limit of 50 persons has been replaced, when the private placement offer needs to be offered to accredited investors below 100 persons and the public offering for 100 persons and above only.</p> <p>NCNC</p> <p>NC</p>
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<p>New Pre-Emptive Rights Rule This provision is inconsistent with the Bahrain Commercial Companies Law (the “CCL”). Under the CCL, holders of ordinary shares do not have pre-emptive rights to subscribe for shares of a different class. We also note that the CCL does not provide pre-emptive rights to shareholders to subscribe for debt securities proposed to be issued by the issuer.</p> <p>Firstly, the New Module does not distinguish between different types of securities. Secondly, the New Module does not distinguish between a new issue of equity securities and an offering of treasury shares. Under the CCL, shareholders do not have pre-emptive rights to subscribe for an offering of treasury shares.</p>	<p>with no or unclear requirements.</p> <p>Pre-emptive rights are by type of security and no change is intended in this module. This will be clarified where necessary.</p> <p>There is a distinction where necessary for pre-emptive rights and there is no conflict with the CCL (which only deals with equity securities).</p>	<p>NC</p>
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OFS-A.1.1

Industry Comments	CMS Comments	CMS Recommendations/Action
Should this Module in fact always apply with respect to issues “from” Bahrain?	No, there are many foreign issues that are marketed to Bahrain residents and the CBB should have some control over the offering of such securities.	NC

OFS-A.2.4 g

Industry Comments	CMS Comments	CMS Recommendations/Action
We recommend that the SRO ensure immediate dissemination and publication of relevant information related to issuers in both English and Arabic. This is slowly becoming the standard practice in other Bourses of the GCC.	This is already practiced in Bahrain under the CBB’s disclosure standards and will remain a requirement in the updated listing requirements of the CBB and licensed exchanges.	NC

OFS-A.2.5

Industry Comments	CMS Comments	CMS Recommendations/Action
<ul style="list-style-type: none">- There seems to be a word missing here, should read issuer of securities issuing/offering in/from Bahrain. As it seems like an incomplete statement.- What about requirements for overseas issuers offering in Bahrain by way of its representative physically being in Bahrain for the offer and if the offer is made from abroad into Bahrain?	<p>In order for securities to be offered they must first be issued.</p> <p>The place of incorporation of the issuer will determine whether it is being issued in or offered into Bahrain.</p>	<p>NC</p> <p>NC</p>

OFS-A.2.6 (c)

Industry Comments	CMS Comments	CMS Recommendations/Action
Not all subscribers, allottees and holders of securities will necessarily receive equal treatment – some securities may be subordinate to others from the same issuer but of a different issue.	Equal treatment is per type of security.	NC

OFS-B.1.1

Industry Comments	CMS Comments	CMS Recommendations/Action
Refer to “.... securities offered” rather than “.....securities issued” in/from Bahrain.	The scope applies to both issuing and offering as per Article 81 of CBB Law.	Include reference to “offered”.

OFS-B.1.2

Industry Comments	CMS Comments	CMS Recommendations/Action
- Does “in Bahrain” mean the offering/issuing is	It is clear that an offer is made in Bahrain	

<p>happening in Bahrain or does it also mean an entity from abroad offering in Bahrain. What about the reverse solicitation would that trigger this rule?</p> <ul style="list-style-type: none"> - What would happen if such securities are offered to existing clients of the overseas issuer or its agents? - What will happen if only marketing is made in Bahrain from abroad and the offer is accepted out of Bahrain? - Is cross-border offering prohibited? If so, this needs to be made clear. - We recommend inserting the definition of Issue? 	<p>where such offer would lead to a resident in Bahrain taking up subscription of that security.</p> <p>It would not fall within the scope of this module.</p> <p>Then it is treated as a roadshow and limited filing requirements will be in place.</p> <p>Cross-border offering is not prohibited.</p> <p>The Module provides separate definition of “issuer” and the whole Module describes the process of issuing securities.</p>	<p>NC</p> <p>NC</p>
<p>Even though (a) talks about “<i>another person in the Kingdom</i>”(suggesting both offeror and offeree are in Bahrain), presumably this applies whether the offeror is in or outside Bahrain.</p> <p>Is this module really intended to apply, for example, to an offshore SPV that is a subsidiary of a Bahrain parent and wishes to increase its share capital?</p>	<p>Yes.</p>	<p>NC</p>

OFS-1.2.1

Industry Comments	CMS Comments	CMS Recommendations/Action
<ul style="list-style-type: none"> - Should be made clear to include all types of shares in WLL, BSC(c) and BSC companies. - Would shares in a non-public company (under incorporation) be considered as “Equity Securities”. - What does approved by the CBB mean? 	<p>This section relates to public offer only so no reference is made to WLL or other non-public securities.</p>	<p>NC</p>
<p>Refers to futures and derivatives on currencies and commodities but this has to be more specific. i.e. are</p>	<p>This section relates only to those securities that are eligible to be offered to the public</p>	<p>NC</p>

these components of a structured note or is this to cover all Treasury activity?	within the general meaning of the terms.	
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OFS-1.2.1 c,d,e

Industry Comments	CMS Comments	CMS Recommendations/Action
<ul style="list-style-type: none"> - To enhance clarity, the clause “by both Bahrain and non-Bahraini companies that are approved by the CBB, should be added to be consistent with OFS 1.2.1 a and b. 	These other types of securities are not necessarily issued by companies.	NC

OFS-1.4 (d) – Exempt Offers

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Does this exemption cover bilateral loans and borrowing by banks in the normal course of business?</p> <ul style="list-style-type: none"> - Given the nature of banking business, all bilateral loans/senior debt or subordinated debt raising by the bank should be exempt from the module requirements, whether collateralized or not and without being subject to the Listing and Trading Modules. - Banks can currently issue eligible Tier I securities post AGM and CBB approval. Banks can issue eligible Tier II securities (non-convertible) post Board and CBB approval. This process should stay the same as it ensures quick capital raising while ensuring fair treatment to all stakeholders, keeping in mind the banking business module. 	No new provisions relating to these types of capital raising will be affected.	NC

OFS-1.4.1

Industry Comments	CMS Comments	CMS Recommendations/Action
Consider widening the list of exemptions, for example		

<p>to include these:</p> <ul style="list-style-type: none"> - Offer directed at accredited investors only - Offer directed at fewer than 50 persons (other than accredited investors) in Bahrain (see comments on OFS-2.4.1 below) - Minimum consideration which may be paid by any person for securities acquired pursuant to the offer is at least \$X - Offered securities are denominated in amounts of at least \$X - Total consideration for offered securities cannot exceed \$X - Issues of commercial paper, certificates of deposit or bills of exchange - Certain issues by licensees already subject to significant disclosure obligations (e.g. rights issues; issues to other group members; debt-for-equity swaps) - Issues related to employee share benefit plan 	<p>The above comments all relate to private placement which is directly regulated by this module.</p> <p>These are all part of the definition of “securities” and disclosure is not the only regulatory concern.</p>	<p>NC</p> <p>NC</p>
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OFS-1.4.1 (c)

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Reword. Presumably the intention is to exempt dividends paid out to existing shareholders in the form of shares of the same class as the shares in respect of which the dividends are paid.</p>	<p>This is what it says.</p>	<p>NC the statement is clear and no harm of keeping it as it is.</p>

OFS-1.4.3

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Structured products should be more clearly defined in the Glossary as to instruments such as Structured Warrants.</p>	<p>This is not possible as each security is structured differently.</p>	<p>NC</p>

OFS-1.4.3 (a)

Industry Comments	CMS Comments	CMS Recommendations/Action
It's unduly restrictive to limit to persons who are <u>both</u> accredited investors <u>and</u> existing account holder.	This is restrictive as it is an exempt offer which benefits from lesser requirements.	NC

OFS-1.4.3 (b)

Industry Comments	CMS Comments	CMS Recommendations/Action
Presumably it's the <u>securities</u> that should be registered, not the <u>product</u> (see the wording of the notice in OFS-1.4.4)	Correct. Amended.	Include term "securities."

OFS-1.4.4

Industry Comments	CMS Comments	CMS Recommendations/Action
In the first line, underline "offering document" (it's defined in the Glossary).	Agreed.	Underline.
In the first line, consider inserting "exclusively" before "offered", as the statement would not be accurate if the securities could be offered inside Bahrain.	Agreed.	Include suggestion.
In the fourth line, refer " <u>offering</u> " (not "offer") document. See also OFS-4.4.1, 4.4.2, 4.4.4, 5.3.1, 7.1.7 and 7.3.1.	Agreed.	Amend and underline.
As regards the text of the required statement:		
- In the first paragraph, delete "In relation to investors in the Kingdom of Bahrain", (as "this prospectus" cannot be used to offer securities to investors in Bahrain) and also delete "existing account holders and" (see comments on OFS-1.4.3 (a) above).	These securities will be marketed to accredited investors who are existing account holders in Bahrain.	Amend to include concept of marketing.
- At the end of the second paragraph, delete ", other than to accredited investors for an offer outside	Keep the reference but clarify marketing concept.	Add marketing to last sentence.

<p>Bahrain”</p> <ul style="list-style-type: none"> - In the third paragraph of the statement, delete “, whether in or outside the Kingdom of Bahrain” as the offer will never be made in Bahrain. 	<p>This is retained but with emphasis on marketing as it will be marketed to accredited investor existing account holders.</p>	<p>Delete “offered” and replace with “marketed”.</p>
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OFS-1.4.6

Industry Comments	CMS Comments	CMS Recommendations/Action
<ul style="list-style-type: none"> - There should be a timing requirement for such filing. 	<p>Prior notification is the requirement to allow the financial institution to determine the roadshow timing.</p>	<p>NC</p>
<ul style="list-style-type: none"> - Will the CMSD provide a letter to show that the prospectus has been registered 	<p>It may do so in the normal course of events but it is not required as part of any approval.</p>	<p>NC</p>

OFS-1.5.1

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Is this section applicable to PPs? A number of these clauses appear onerous for cross border fixed income.</p>	<p>This section is not likely to apply to such products – see filing arrangements section.</p>	<p>NC</p>

OFS-1.5.2

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>In clause OFS – 1.5.2, the following additional requirements may be provided:</p> <ul style="list-style-type: none"> - It has net tangible assets of at least US \$ ----- in each of the preceding three years. - It has a minimum average operating profit of US\$ ----- in each of the preceding three years. (Reason: Since companies raise money from the public). 	<p>This is not specific to public offering and is a general eligibility requirement.</p>	<p>NC</p>
<p>1.5.2 (h) to have to get approval for allotment of debt issuance from the CBB is too restrictive and not common so do they mean for equities only? Whilst</p>	<p>If the issuance is from Bahrain and the prospectus is not exempt and is required to be approved by the CBB, all provisions apply.</p>	<p>Amended May not allocate or allot any securities without meeting the</p>

some of these are standard in cross-border markets, clauses (e), (f), (g), (h), (j), (m), (n), (o), (p), (r) and (s) are not.		CBB's requirements for that type of securities offering with respect to the final allocation or allotment.
Is this aimed just at Bahrain issuers issuing in/from Bahrain, or is it also intended to catch non-Bahraini issuers issuing into Bahrain?	Both. For non- Bahraini issuers, it will apply where the issue is not approved/registered with its home regulator.	NC

OFS-1.5.2 (c)

Industry Comments	CMS Comments	CMS Recommendations/Action
Both here and in OFS-1.7.12 there's a reference to the standards issued by International Auditing Practices Committee of the International Federation of Accountants. Audits are typically conducted in accordance with International Standards on Auditing as promulgated by the IAASB, AAOIFI and IFRS.	This is an auditing standard not an accounting standard. IFRS and AAOIFI are stated in 1.5.2 (b).	NC

OFS-1.5.2 (d)

Industry Comments	CMS Comments	CMS Recommendations/Action
Presumably no need for them to be audited.	Correct. Word "reviewed" has been used.	NC

OFS-1.5.2 (i)

Industry Comments	CMS Comments	CMS Recommendations/Action
Refer to "utilization of proceeds statement" Is it practical to require CBB approval for every alteration, however insignificant?	Do not want to include "significant" as a debatable term.	NC

OFS-1.5.2 (q)

Industry Comments	CMS Comments	CMS Recommendations/Action
This is unworkable, as there will inevitably be many	The intention is not to override any existing	Amend wording to exclude any legal

<p>restrictions on the rights of securities holders imposed both by the law of the place of incorporation of the issuer and contractually. Subject to the intention of the part in brackets, it should be “granting” (not “exercising”) proxies. However, does the part in brackets mean <u>no</u> proxies (even revocable proxies) are allowed? Also, it conflicts with OFS-1.6.4</p>	<p>law but it is intended to prevent the abuse of a security holder’s right to vote in respect of his investment.</p>	<p>authority and to clarify the granting of proxies. These amendments will ensure no conflict with 1.6.4.</p>
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OFS-1.5.2 (r)

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>What is the test for determining the location of an asset? For example, a building in Manama is clearly in Bahrain, but it may be financed by a foreign entity that wished to securities receivable for the financing.</p>	<p>Where the physical asset is located.</p>	<p>NC</p>

OFS-1.5.2 (s)

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>What is a “approved corporate event”?</p>	<p>Issuer corporate action.</p>	<p>NC</p>

OFS-1.5.2 (t)

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Is this really necessary for private company issuers of unlisted securities?</p>	<p>This is in line with international recommendations and Bahrain has its own national numbering agent that does not charge for the ISIN.</p>	<p>NC</p>

OFS-1.5.3(e)

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>The Bahrain corporate governance code only applies to Bahrain public companies. Many issuers will be</p>	<p>Hence the terms used “as applicable”.</p>	<p>NC</p>

foreign private companies.		
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OFS-1.5.3(f)

Industry Comments	CMS Comments	CMS Recommendations/Action
Where would such confirmation appear?	In its application to the CBB (normally in cover letter) – can also be in the prospectus.	NC

OFS-1.5.3 g

Industry Comments	CMS Comments	CMS Recommendations/Action
The two independent valuation reports in respect of the assets used as underlying assets for the securities being issued or offered, should be approved by the Board of Directors/proposed founding shareholders.	These reports are required to be independent.	NC

OFS-1.5.5

Industry Comments	CMS Comments	CMS Recommendations/Action
All securities issued after the effective date of the Module, must be in dematerialized form.	Correct. This does not apply to private issues.	NC

OFS-1.5.7

Industry Comments	CMS Comments	CMS Recommendations/Action
It's doubtful the proceeds will ever be placed with the Board of Directors- they would go into an account in the name of the issuer – and mature issuer may no longer have its first board in place.	The directors are responsible for the account of the issuer. Will delete reference to ‘first’ as this is implied.	Delete “first”.

OFS-1.6 – Eligibility to Issue and Offer Equity

Industry Comments	CMS Comments	CMS Recommendations/Action
Any issue at a “Flat Par Value” will not involve issue	This possible exemption relates to	NC

<p>premium and hence the exemption mentioned in 1.6.3 with reference to a “Flat Par Value” is invalid.</p> <p>Clarification is required as to what is CBB’s intent behind including the exemption for issue at “Flat Par Value”.</p>	<p>underwriting and where there is no premium, there is less need for an underwriter.</p>	
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OFS-1.6.1

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>From our experience with the Ministry of Industry & Commerce a no objection will not be provided until a CBB’s approval is obtained.</p>	<p>The requirement is for the application to be made to MOIC – who will ask for CBB approval when necessary.</p>	<p>NC</p>
<p>- In case the issue of equity securities pertains to bank incorporated or proposed to be incorporated in the Kingdom of Bahrain, there are certain existing rules cited in the CBB Rulebook – Volume 1 – Module GR, that should be cross referenced or highlighted in this section. The important ones are:</p> <ul style="list-style-type: none"> • A natural person will not be allowed to own or control more than 15% of the voting capital of Bahraini conventional bank licensee. • An unregulated legal person (including companies, trusts, partnerships) will not be allowed to own or control more than 20% of the voting of the voting capital of a Bahraini conventional bank licensee. • In respect of applications for bank licenses, at least one controller must be a regulated financial institution holding at least 20% of the proposed licensee’s share. <p>- Equal care should be taken to ensure that the requirements of Bahrain’s Commercial Companies Law (2001) are not breached. It is</p>	<p>Market participant are required to be aware of all legal and regulatory obligations placed upon them and this Module will not repeat these provisions.</p>	<p>NC</p>

<p>important to cross reference this and highlight the following:</p> <ul style="list-style-type: none"> • The founders shall subscribe for shares representing at least 10% and not exceeding 40% of the company's capital. • The founders may be authorized, subject to the approval of the Council of Ministers, to subscribe for more than 40% of the company's capital. 		
<p>In clause OFS 1.6.1, the following additional clauses may be provided:</p> <ul style="list-style-type: none"> - Equity securities may be offered for sale to public if such equity securities have been held by the sellers for a period of at least one year prior to the filing of draft offer document with the CBB. 	<p>This is restrictive and not required.</p>	<p>NC</p>

OFS-1.6.1 (b)

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>We feel this clause is highly restrictive two principle reasons:</p> <ul style="list-style-type: none"> - There are few companies, if any, in Bahrain that re likely to go public in the near and medium term future that have a 100 shareholders. - The most likely candidates for listing for the time being are government companies, who by definition have less than 100 shareholders on their shareholder roster. <p>We would like recommend that this minimum number be left to the CBB to consider and allow, subject to meeting other criteria.</p>	<p>The module provides the general requirements in respect of the main board (blue chip companies) which need to be provided separately and in more details by the licensed exchange. Moreover, according to Resolution No. (17) of 2012 in respect of listing and trading of securities and financial instruments on a licensed exchange issued in the Official Gazette No. 3057 on 21 June 2012, such licensed exchange is required to provide a separate listing board for different type and class of eligible securities as per Article (5) of the Resolution and therefore, such type of companies (with number of shareholders below 100) can be listed. Currently, Article (40) of Bahrain Bourse</p>	<p>NC</p>

	Internal Regulations is applicable and accommodate for such companies.	
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OFS-1.6.1 (c)

Industry Comments	CMS Comments	CMS Recommendations/Action
We believe that the clause as drafted is unclear. If the purpose of the clause is to have a minimum free float of 20% in the scrip, than the clause is unclear. Note that again an exception should be made, whereby the CBB has the right to accept a lesser free float (e.g. ALBA is a case in point where 10% of the stock was placed). We would rephrase the clause to read: <i>The issuer must issue a minimum free float of 20% of the total issued outstanding shares, however the CBB at its prerogative has the right to lower this limit;</i>	Agree. The CBB prerogative would be limited to the interest of the market.	The minimum free float changed to 10% and the second part of the paragraph was amended to include The CBB reserves its right to amend this amount taking into account the interest of the market.
We suggest the percentage to be reduced to 10% to be consistent with BHB Listing Rules and more encouraging for listing.	Agree to reduce minimum free float percentage from 20% to 10%. This will however be subject to discretion of the CBB as the companies wishing to offer and list may vary to a large degree.	Minimum float changed to 10%.

OFS-1.6.1 (e)

Industry Comments	CMS Comments	CMS Recommendations/Action
Note that this is at odds with OFS-3.7.12, which requires a firm underwriting commitment for <u>all</u> public offerings (not just <u>equity</u> securities issued at a <u>premium</u>)	No conflict, look at 3.7.12(b) where this exclusion is mentioned.	NC

OFS-1.6.3

Industry Comments	CMS Comments	CMS Recommendations/Action
Delete form the end “, or where it is issued at the flat par value” as 1.6.1 only applies where the issue is at a premium (not par)	This is an exclusion clause and is possibly excluding any issue not at a premium.	NC

OFS-1.6.7

Industry Comments	CMS Comments	CMS Recommendations/Action
What’s the intention here? Even if an irrevocable agreement with the financiers in place, it may be conditional or uncommitted. Also this may not be workable in practice, as the finance may not be in place (even conditionally) by the time of the issue. Proceeds from an issue in these circumstances would typically be credited to an escrow account in the short term and would be refunded if the project did not proceed.	The agreement related to the escrow account, if this is used, would be provided. This is to ensure that where a prospectus states that the necessary financing is in place, such financing has actually been agreed and is evidenced by an agreement.	NC

OFS-1.6.11– CBB Right of Refusal

Industry Comments	CMS Comments	CMS Recommendations/Action
Sixty calendars day period for CBB approval is too long and will delay the Equity Offering substantially. <ul style="list-style-type: none"> - The CBB approval period should be reduced to 30 calendar days at a maximum. - Lapse of approval period should constitute automatic approval and not rejection. 	This period is in line with the timelines of the CBB for similar approvals in the CBB Law (licensing and listing appeals). Moreover this period is a maximum period and not definitive. The usual practice of the CBB is to provide its comments before this timeframe.	NC
We would suggest that the rejection should be made in writing and not assumed by the applicant if the CBB have not responded within 60 days and should include the reasoning of such rejection.	Written reply to be given.	Add necessary wording for written reply from CBB with reasons for decision and delete reference to deemed rejection.
We believe that the applicant has the right to be given the justification for the rejection, in order to present his	Agree as above.	As above.

<p>reasons on why the application is eligible for reconsideration. Additionally we feel that it is unfair for the applicant to surmise when his application is “deemed rejected”, without either a reason or date the decision was taken by the CBB. We would rephrase the clause to read as follow: <i>The CBB will decide on the application within sixty calendar days from the date of its submission. This period can be extended by a further thirty (forty-five) calendar days by the CBB. In case the application has been rejected, the CBB shall give the reasons that have justified its decision. The applicant whose application has been rejected has the right to be heard by the CBB within forty-five days from the date of notifying it of the rejection of its application. The CBB’s decision is final.</i></p>		
<p>Sixty days is a long time, particularly if no reply means rejection rather than approval. As an example of practice elsewhere, 10 working days (20 for a new issuer) is the norm under section 87C of the UK’s Financial Services and Markets Act 2000.</p>	<p>Agree as above.</p>	<p>As above.</p>

OFS-1.6.12

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Presumably “reapply” rather than “apply” is intended. Is this only aimed at an initial issue? For subsequent issues, other apart from the founders may be involved.</p>	<p>Correct. This clause to be reworded so that re-apply can only happen after 6 months and reason for rejection addressed.</p>	<p>Amend wording for clarity.</p>

OFS-1.7.1

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>What about Bahraini issuers? Will any evidence of due incorporation/conformity be required?</p>	<p>Applies to any issuer – will be amended.</p>	<p>Amend to include any issuer.</p>

OFS-1.7.2

Industry Comments	CMS Comments	CMS Recommendations/Action
Reference to approval from the General Assembly, this is more relevant to equities rather than debt issuance.	General assembly approval required as debt issuance will impact on the value of the shareholding.	NC

OFS-1.7.3

Industry Comments	CMS Comments	CMS Recommendations/Action
These does not allow for materiality e.g. manifest error.	This is interpreted generally.	NC
As regards the second sentence, the trustee would never offer such advice to holders. Even if it did, holders should take their own independent advice.	The Trustee is required to be independent so as to protect the interests of the securities holders. This is essential to avoid the malpractice in the past of Trustees acting being or acting on behalf of the Issuer.	NC

OFS-1.7.5

Industry Comments	CMS Comments	CMS Recommendations/Action
They will rarely if ever be entirely freely transferable – there are usually restrictions (for example, on transfer to US Persons)	The term of the security must be freely transferable. The American restriction is imposed by American regulation not by the term of the security.	NC

OFS-1.7.6

Industry Comments	CMS Comments	CMS Recommendations/Action
Appears to restrict zero-coupon or Basel III based structures utilizing deferral mechanisms.	This will be reworded to be subject to the terms of the instrument.	Amend to refer to terms of the instrument.
Contingent convertible instruments starting to appear on the market specifically remove, in certain circumstances, the right to receive the nominal value upon maturity.	As above.	As above.

OFS-1.7.7 – Eligibility to Issue and Offer Debt

Industry Comments	CMS Comments	CMS Recommendations/Action
In case of bank issuers, debt securities are issued in the normal course of business. It will be impracticable for a bank issuer to offer debt securities to existing shareholders/obtain a whitewash resolution at every debt offering. - This clause should be removed.	This clause applies only to listed issuers. It will be amended in line with Article 150 of CCL which stipulates that convertible debt must first be offered to existing shareholders and that ordinary debt must also be offered to existing shareholders where the terms of the security or the issuers M+A stipulate.	Amend according to comment reply.
This appears to contravene the Commercial Companies Law (Article 150) and in most cases the issuers Articles of Association as a whitewash resolution stipulated in the CBB Rulebook will not be able to provide an exemption to the law.	As above.	As above.
Unclear why there is a requirement for debt securities to be offered to shareholders and this is not standard in cross-border fixed income.	Pre-emptive right as per CCL and standard international practice (law).	NC
Not all listed issuers necessarily grant pre-emption rights to shareholders in their constitutional documents.	See distinction between convertible and non-convertible in Article 150 of CCL.	NC

OFS-1.7-10

Industry Comments	CMS Comments	CMS Recommendations/Action
Covers Eligibility and issuance of Debt Securities by way of public offers. We seek clarity on distribution of plain vanilla bonds in the primary market and trading of Debt Securities on the secondary market. New issuances of debt securities is announced in the market with a timing that makes it impossible to obtain prior CBB approval. It is also not practical for a distributor to seek CBB approval for every specific fixed income/debt securities to be purchased in the secondary market.	This is an eligibility condition for issue and is not related to the timing of an approval to offer. There is no requirement for approval to purchase. The module does require prior approval to issue and offer.	NC
Should not this refer to a lead manager that is	The eligibility to be a lead manager is dealt	NC

licensed by the CBB? Or is a foreign lead manager sufficient?	with in OFS-3.	
A primary Dealer must be CBB licensed, which is again restrictive for debt issuance.	This is a regulated service under the CBB Law.	NC

OFS-1.7.11

Industry Comments	CMS Comments	CMS Recommendations/Action
OFS-1.7.11, 1.7.12, 1.7.13, 1.7.14, 1.7.15, 1.7.16, 1.7.17. This should clearly specify that the issue is in Bahrain (issue inside Bahrain)	This is also applicable to foreign issues.	NC
The issuer may be an SPV with no financials yet. Contrast with the SPV exception in OFS-1.8.3	This is a requirement for a conventional debt issue.	NC

OFS-1.7.14

Industry Comments	CMS Comments	CMS Recommendations/Action
Do the independent valuers have to be Bahraini valuers?	No, but the CBB reserves its right not to accept from certain valuers.	NC
This could be practically impossible to implement. For example, the assets underlying the July 2012, issue by EIB Sukuk Company Ltd. of U.S \$500,000,000 Trust Certificates due 2018 comprised 136 individual leases of buildings in the UAE.	These types of valuations are currently being provided and disclosed. This is to prevent the malpractice in the market over past years, especially in respect to real estate transactions.	NC

OFS-1.7.16

Industry Comments	CMS Comments	CMS Recommendations/Action
We would recommend that the issuer must confirm that it will maintain an APPROVED paying agent. The objective is to have an approved <u>primary</u> agent domiciled in Bahrain, rather than in another jurisdiction, where conditions are laxer. We have seen that in the case of an IPO, where one of the paying agents was non-domiciled, a rather non-	The eligibility criteria for paying agents is laid out in 3.8.	NC

traditional and dubious approach being taken with subscribers funds. We also do not support an issuer performing the function itself.		
Where the issue is by an issuer outside Bahrain to a person in Bahrain, it's very unlikely the paying agent will be located in Bahrain.	There can be more than one paying agent.	NC

OFS-1.8.4

Industry Comments	CMS Comments	CMS Recommendations/Action
Since “licensed exchange” means an exchange <u>licensed by the CBB</u> under MAE in Volume 6, this would preclude equity securities listed overseas. Is that really the intention?	Correct, this should not refer to the defined term but should read an exchange.	Amended to an exchange.

OFS-1.8.5

Industry Comments	CMS Comments	CMS Recommendations/Action
In the first line, is “debt securities” correct or was “asset-backed” intended? Either way, this requirement is not in line with market practice, where the trustee is usually the same entity as the issuer. See the comment on OFS-.3.6.4 below.	That market practice is not in keeping with the reason for the appointment of the Trustee – see comment above on this issue.	NC

OFS-1.8.6

Industry Comments	CMS Comments	CMS Recommendations/Action
We observe that it is possible for issuers to issue debt securities guaranteed by mortgages on its property or any other collateral. Such securities should not be marketed or offered to non GCC citizens, as the latter are forbidden to hold property (unless the property is freehold). Should the guarantee be called in the event of default, there will be legal obstacles from the non GCC citizens, obtaining their rights.	It is the value of the asset not the asset itself that is the security.	NC

OFS-1.9

Industry Comments	CMS Comments	CMS Recommendations/Action
Is this section applicable to PPs?	Yes.	NC

OFS-1.9.2

Industry Comments	CMS Comments	CMS Recommendations/Action
Onerous for cross border fixed income.	This is specific to Shari'a compliant securities.	NC
Unclear why "private" is specified.	The word "private" provided here to distinguish between governmental issues and private issues.	NC

OFS-1.9.3

Industry Comments	CMS Comments	CMS Recommendations/Action
Given the range of differing global views on acceptable principles and concepts, this risks excluding a great many issues from the Bahrain market.	OFS 1.9.3 is a guidance. The module provides such guidance due to the variety of the different applications in general and Shari'a principles and practices in particular.	This rule amended to guidance and the wording has been changed to clarify that the CBB would assess Islamic securities in terms of structure, risk and the legitimate interests of investors as required by Article 4(10) of the CBB Law.

OFS-1.10 .5 – Eligibility to Issue Convertible Debt

Industry Comments	CMS Comments	CMS Recommendations/Action
To maintain flexibility in expanding capital base and funding options, an issuer should be able to offer convertible debt securities to a non-shareholder on the basis of renunciation of pre-emptive rights by the AGM and CBB approval.	This is in line with Article 150 of the CCL.	NC

<ul style="list-style-type: none"> - The option issue convertible debt securities to a non-shareholder on the basis of an AGM waiver of pre-emptive rights should be added. 		
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OFS-1.10.6

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>The terms of convertible debt securities are unlikely to entitle holders whose conversion rights have not yet become exercisable to share in such bonus issues or profit distributions. Such holders are not yet shareholders (not having exercised their conversion rights) and may never exercise those rights, so it's not clear why they would need protection.</p>	<p>This rule is imposed by the Commercial Companies Law (CCL). However, the rule does not require to deal equally with current shareholders and convertible debt securities holders rather than intend to protect the convertible debt securities holders by mandating the issuer to adhere to such interest before declaring any bonus shares.</p>	<p>NC</p>

OFS-1.10.7

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>This is already covered by OFS-1.10.4, which requires the approval of (not just alerting) the CBB.</p>	<p>Will add approval.</p>	<p>Add approval of CBB.</p>

OFS-1.11.4

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>We believe this number is too high and does not reflect the reality of the market. In large markets like the US or Bahrain, institutional investors would be the dominant takes of these instruments and usually would number far less than 50.</p>	<p>According to the previous and current practices, the CBB keeps receiving applications of exemption from the requirement of 50 persons to enable them to market any instrument or structured products. However, the rule provides clear exemption from this requirement where there is a designated market maker.</p>	<p>NC</p>

We recommend 25% to increase the liquidity of warrants.	As above.	As above.
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OFS-1.11.6

Industry Comments	CMS Comments	CMS Recommendations/Action
While not privy to the thinking behind this limitation, we feel that a three year limitation on the tenure of the warrant is arbitrary.	In line with international practice to ensure relevance to underlying security.	NC

OFS-1.11.8

Industry Comments	CMS Comments	CMS Recommendations/Action
In the event that a warrant is issued on a security that is regarded as illiquid, it is proposed that a cash settlement price determination be agreed between the issuer and the CBB for that particular security. What is the timing for such an agreement where the cash settlement price is determined?	To be determined by the Issuer and CBB.	NC

OFS-1.11.16

Industry Comments	CMS Comments	CMS Recommendations/Action
It is not clear exactly what it is that depends on whether the guarantor is listed or is the guarantor of other listed securities. What if the guarantor is neither listed nor the guarantor of other listed securities.	The information requirements of the underlying securities must be provided.	NC

OFS-1.12.1

Industry Comments	CMS Comments	CMS Recommendations/Action
We cannot understand the background to this clause; however it opens all kinds of risks if the requirements are not met, starting from the illegality	This is standard practice and currently in use (e.g. recent IMF transaction)	NC

of the issuance to the lack of disclosure.		
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OFS-1.14

Industry Comments	CMS Comments	CMS Recommendations/Action
Registered and approved securities should be clearly differentiated along with whether a local agent is required for offering purposes.	This is done throughout 1.14.	NC

OFS-1.14.1

Industry Comments	CMS Comments	CMS Recommendations/Action
This suggests that the preceding sections only apply to local issuers.	No, as this clause specifically states that the requirements for a local issue apply to a foreign issue.	NC

OFS-1.14.6

Industry Comments	CMS Comments	CMS Recommendations/Action
Recognized jurisdiction and their products should be defined or referred to the jurisdictions set out in the CIU Module.	It is better for the CBB not to be prescriptive. The general criteria of IOSCO membership and exchange listing is provided.	NC

OFS-2.1

Industry Comments	CMS Comments	CMS Recommendations/Action
Is this section applicable to PPs? This would require a Bahraini bank to be appointed as lead manager on any offering where accredited investors were to be approached.	Correct.	NC

OFS-2.1.1

Industry Comments	CMS Comments	CMS Recommendations/Action
Why haven't investment firms (category 1 and 2) been included to undertake such activity if it is eligible to do.	Agree, Cat 1&2 Investment Firms should be eligible.	Delete specific reference to Bank licensee.

OFS-2.3.3

Industry Comments	CMS Comments	CMS Recommendations/Action
Security issuance to be listed in Bahrain or is debt excluded?	If it is public it must be listed.	NC

OFS-2.3.3 (a)

Industry Comments	CMS Comments	CMS Recommendations/Action
Refer to "its place of incorporation" rather than "the country of its domicile" as domicile is a complicated subject and a company's place of incorporation and its domicile for various purposes may not be the same.	Agreed.	Amend to replace domicile with incorporation.

OFS-2.3.3 (d)

Industry Comments	CMS Comments	CMS Recommendations/Action
What about the overseas issuers in other exchanges?	If it is a public offer where any person can participate, it must be listed in Bahrain (this does not preclude another listing in another jurisdiction).	NC

OFS-2.3.6

Industry Comments	CMS Comments	CMS Recommendations/Action
There is some confusion with the conjunctions use. Does the requirement in (c) apply to both (a) and (b)	It applies to both a & b.	NC

or just to (b).		
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OFS-2.3.7 – Underwriting

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>An issuer may not be able to disclose full underwriting arrangements to public in the prospectus given confidentiality.</p> <p>The requirements for the agreement inspection by subscribers alleviates any concerns regarding subscriber knowledge on key underwriting terms.</p> <p>The disclosure in the prospectus must be limited to “salient” features of the underwriting agreement and not full details.</p>	<p>These “full details” would be the “salient features” sufficient for an investor to make an informed decision.</p>	<p>NC</p>

OFS-2.3.9 – Underwriting

Industry Comments	CMS Comments	CMS Recommendations/Action
<ul style="list-style-type: none"> - The price stabilization period for one year is extremely and will result in significant administrative/cost implications on the issuer. - Such an elongated price stabilization period will impede price discovery for a long time horizon, which is in essence the principle purpose of stock market listing. - In many western markets, the stabilization is not mandated and if arranged, is typically for 30-40 trading days. - Price stabilization mechanism should be made mandatory for a maximum of 30 calendar days. 	<p>1 year is long by international standards but is required in developing markets. To cater for those issues that are well priced and managed, the CBB may be flexible.</p>	<p>Amend 1 year to 6 months and provide authority for CBB to determine longer period where necessary.</p>

OFS-2.3.10

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>We feel this clause is onerous and does not reflect the case were a situation of “force majeure” may apply. There have been many recent occasions, internationally and regionally, were the situation had so radically changed that unless a case of force majeure both the transaction and the underwriters – without their fault – would have been bankrupted or substantially impaired. we would rephrase that clause to read as follows: <i>Details of the underwriting agreement must be disclosed in the offering document and the agreement must be capable of being enforced under every circumstance, other than case of “force majeure”.</i></p>	<p>Force majeure is merely a contractual exception to certain enforcement provisions of an agreement. This clause is general in nature and means that a contract of underwriting must be a legally enforceable contract with rights and obligations of the parties clearly set out (this agreement may include a clause on force majeure).</p>	<p>NC</p>

OFS-2.3.12

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Is a red herring prospectus required in all cases, or is it merely optional? See too OFS-4.4</p>	<p>Required for all public offerings.</p>	<p>NC</p>

OFS-2.3.14

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Clause 2.3.14 may be modified as under:</p> <ul style="list-style-type: none"> - The issuer may mention a price or price band in the preliminary/red herring prospectus (in case of a fixed price issue) and floor price or price band in the red herring prospectus (in case of a book built issue) and determine the price at a later date before registering the prospectus with the Ministry of Industry and Commerce. <p>Provided that the prospectus registered with the Ministry of Industry and Commerce shall contain</p>	<p>Not necessary. Prospectuses will not be registered with MOIC.</p>	<p>NC</p>

only one price.		
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OFS-2.3.17

Industry Comments	CMS Comments	CMS Recommendations/Action
In clause 2.3.17, manner of Book Building process need to be specified.	The definition of book building is sufficient as contained in the glossary.	NC

OFS-2.4

Industry Comments	CMS Comments	CMS Recommendations/Action
Would only a handful of investors still trigger private placement rules? Would the CBB consider exempting an offer made to 2 or 3 investors?	The CBB does not give exemption based on number of investors. This can only be considered after reviewing the structure of the offerings where the exemption is given for example to strategic partnerships or direct investments. Possible carve out of those situations where persons are identified and there is no general marketing to accredited investors.	NC

OFS-2.4.1

Industry Comments	CMS Comments	CMS Recommendations/Action
This mentions requirements stipulated under this module however it would be helpful if the specific clauses applicable were listed for clarity. Regarding the general eligibility criteria we assume this refers to OFS 3.2 which we have commented on below. - Refers to Private Placements from an equity perspective but this is ambiguous given Private	The wording clearly states that the general eligibility as contained in OFS 1 applies to PPM. This has been repeated here for clarity so that there is no debate that for PPM, the requirements of this module apply. See comment below.	NC

Placements form a debt issuance perspective.		
This needs to be much clearer. Is it saying that the only part of the Module that applies to private placement is OFS-1.1? if more of the Module applies to private placements, this would be a significant change from previous practice and (despite the stated objectives in the consultation paper covering letter) contrary to best international practice.	All of the module applies in that there are general provisions such OFS 1, 3,4,6,7,and 8 specific sections of OFS 2 & 5 that apply to PPM.	NC

OFS-2.4.3– Private Placement

Industry Comments	CMS Comments	CMS Recommendations/Action
- Given the nature of the banking business, bank issuers commonly issue non-convertible debt securities on a private placement basis. This is an important part of the bank’s funding strategy and any onerous regulation in this regard such as this will stifle the bank’s ability to raise funds on a timely basis.	The subscribers to these debt instruments should be fully informed and protected by this module.	NC
- Pre-emptive waiver of rights should not apply to non-voting securities issued by a bank in its normal course of business that do not result in any dilution in the shareholding of existing shareholders.	Pre-emptive rights only apply to securities of the same class.	NC
- Specific exemptions to banks from the provisions under Private Placement section is required, except for issuance of securities which involve any potential dilution in the shareholding of the bank’s existing shareholders.	An investor in a bank should not have less protection than an investor in other issuers.	NC
See comment on OFS 1.7.7	See reply in OFS 1.7.7	NC

OFS-2.4.5

Industry Comments	CMS Comments	CMS Recommendations/Action
This would restrict an accredited investor form	The lead manager must take reasonable care	NC

selling an investment in a cross-border fixed income issuance for a period of 1 year which seems unduly onerous on the investor. If this is the intention, how does the CBB propose that this should be managed by a lead manager in order to ensure regulatory compliance?	to ensure that the investor's intention in subscribing is not only for reselling within a short time. The issue is to accredited investors and not to an accredited investor who then sells to others who may not be.	
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OFS-2.4.6

Industry Comments	CMS Comments	CMS Recommendations/Action
What constitutes dissemination to the public? Cross border Eurodollar transactions are typically well reported on by the financial press which is accessible to the general public.	They are reported but this reporting is not an invitation for subscription.	Clarify and add wording to prevent any public dissemination prior to close of subscription and any public dissemination that may be viewed as an inducement to dealing in such securities after issuance.

OFS-2.4.7 - Fees

Industry Comments	CMS Comments	CMS Recommendations/Action
It is not an international standard for cross border fixed income transactions to report fees and generally international lead managers would be unwilling to do so.	Investors must be aware of fees to make an informed decision and regulators must be aware to prevent market abuse.	NC
While we understand the background of this imposition, we believe that it is unusual for a regulator to impose a fee schedule on a transaction, letting market forces decide on the level. We also note the leeway given subsequently our primary concern is that the fees in many cases may not cover either the expense of putting together the transactions(s), which in many cases is of a non-public nature, or the distribution effort they entail. Our recommendation is to broaden the fee scales and to indicate that these fees are a "strong guidance".	The market integrity and the cost of capital market transaction is within the role of the securities regulator and public investors as well. However, this provision is to provide a threshold for placement fees only rather than any other type of fees or charges that might be part of the transaction. Therefore, the Module needs to provide a guidance or benchmarking for such fee.	Fees are now indicated as guidance under new Paragraph OFS-2.4.8.

OFS-2.5.3 – Rights Offering

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Please clarify whether financial statements in this clause include Interim Reviewed Financial Statements as well.</p> <ul style="list-style-type: none">- As Interim Financials are reviewed by the auditors, an entity should be able to offer rights close to announcement of interim results.	<p>This includes interim as the policy is that the investor must have the most up to date information known to the issuer.</p>	<p>NC</p>

OFS-2.5.5 – Rights Offering

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>The term “high share price” is ambiguous and leaves a lot of discretionary room for arbitrary decision making.</p> <ul style="list-style-type: none">- “High share price” needs to be quantitatively defined. Book Value per share of the issuer can be used as a benchmark for pricing and if the Rights Price is above the book value, the suggested provisions could apply.	<p>“This rule states “high share premium” and not “high share price”. Moreover, as a rule the module is required to provide fixed and definite number or figure where the market situation is well known in advance. The share premium and the rights issue price are related to changeable market conditions, as well as, to the performance of listed companies itself, which could not be predicted in advance and therefore, no specific definite threshold needs to be provided in the module.</p>	<p>NC</p>

OFS-2.5.11

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>The wording should be redrafted as it is not clear on what the 10 days refers to. Please note that Article 128 of the Commercial Companies Law states that “each shareholder shall express his willingness to exercise his priority right in subscribing for new</p>	<p>Amended to 15 calendar days.</p>	<p>Amend 10 to 15.</p>

shares within fifteen days from the date of publication of the statement.” Please also note that this timing would be different in accordance with the issuers Articles of Association.		
We recommend to use the term “Business Days” to be in line with other CBB modules.	This is calendar days to be in line with the CCL.	NC

OFS-2.5.13

Industry Comments	CMS Comments	CMS Recommendations/Action
The clause is unclear and we believe to be redrafted. While the first sentence can be interpreted to mean that all rights issues have to be renounceable, the second sentence “unless the issue made the necessary arrangements with a licensed exchange to trade the rights, subject to such renunciation” . Is very unclear. We recommend that it read as follow: <i>The CBB will only allow rights issues in which the rights can be renounced. The rights can be renounced by the entitled shareholder in part or whole, in favor of a third party.</i>	The suggested wording does not cover the exception where no third party is nominated and those rights will be then traded on the exchange (and renounced in favor of whoever purchases them on the market).	NC

OFS-2.6.2 – Employee Stock Option Plan

Industry Comments	CMS Comments	CMS Recommendations/Action
Clarification of the term “Offered Securities” is required. - “Offered Securities” should be replaced with “Outstanding Shares”	To be replaced with “issued”.	Replace “offered” with “issued share capital”.

OFS-2.6.4

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>The ESOP plan is expected to contain provisions relating to the entitlement in terms of number and amount of securities for any one participant. In reality, ESOP is a privilege to employees granted by the Board of Directors and Executive Management, depending on the performance of the institution and the performance of the employee. It is normally allocated in tranches. It is impossible to determine upfront, the number and amount of securities for any one ESOP participant. This condition should be removed.</p> <ul style="list-style-type: none">- The overall ESOP should be approved by the shareholders and the Board of Directors. The determination of each participant's share is subject to the approval of the Board of Directors and Executive Management.	<p>The conditions for entitlement (discretionary or contractual) must be included – these conditions are set by the BOD.</p>	<p>NC</p>

OFS-2.6.7

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Please clarify. If shares are held in a trust, the employee themselves will not be able to trade – only the trustees (or the trust company) will be able to do so.</p>	<p>The trustees trade on their behalf hence the exclusion of directors and executive management.</p>	<p>NC</p>

OFS-2.6.14

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Instead of referring to insider trading laws, it is better to cross reference these to Module MAM (Market Abuse and Manipulation) or similar equivalents in other jurisdictions.</p>	<p>Agreed. Reference included.</p>	<p>Include non- exclusive reference to Module MAM.</p>

OFS-3.1 –Capital Market Advisory Services Provider

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>An inclusive section that has much merit, and a significant advance on the existing module. However we have an observation that in the definition of advisers (OFS-3.1.2 a) “Auditors” and “Financial Advisors” have been amalgamated, noting of course that the two are totally separate professions and undertake different functions, in case of capital raising exercise or a mergers & acquisition undertaking. Indeed it brings us to the point that of the “conflict of interest” when external auditors also undertake the role of financial advisors and auditors concurrently, as happens frequently.</p>	<p>The requirement to be independent and have no conflict of interest can be found in OFS-3.2.19.</p>	<p>NC</p>

OFS-3.2.1

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>The list should automatically include any holder of a CBB wholesale banking license.</p>	<p>The right of the CBB to create a separate list for each Capital Market Advisory Services Provider has been ruled out. However, as per OFS-3.2.25, the CBB retains its right to decide on the eligibility of such appointed advisor(s) on a case by case basis.</p>	<p>The Module has been amended by introducing a new OFS 3.2.25.</p>

OFS-3.2.4

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>This refers to authorization to provide services. In relation to PPs is this relating to the registration fee requirement for approval by the CBB?</p>	<p>No, this relates to who the advisor is.</p>	<p>NC Paragraph renumbered to OFS-3.2.1.</p>

OFS-3.2.9

Industry Comments	CMS Comments	CMS Recommendations/Action
Refers to examination and qualification requirements of the CBB. What is proposed and will a statutory qualification be imposed?	These are to be determined in the Training and Competency Module.	NC Paragraph renumbered as OFS-3.2.6.

OFS-3.2.17

Industry Comments	CMS Comments	CMS Recommendations/Action
A due diligence statement is not market standard in cross border fixed income prospectuses. Minimum due diligence guidelines are advised by the international Capital Markets Association (ICMA) however are typically not imposed by listing authorities and are left to lead managers to interpret.	These due diligence statements are required for all offerings so as to speed up the CBB review process and for investor information and protection.	NC Paragraph renumbered as OFS-3.2.14.

OFS-3.2.22 – Independence and Avoidance of Conflict of Interest

Industry Comments	CMS Comments	CMS Recommendations/Action
OFS 3.2.22 (b) – Please advise if there is a waiver to this clause in the event that e.g. 2 lead managers adviser on an offering where 1 of the lead managers meets this independence criteria. It is typical market practice in the financial sector that related investment banking arms of financial institutions will be appointed as one of the lead managers on an offering.	Where there are two advisors appointed, the CBB may review this on an ad hoc basis.	NC Paragraph renumbered as OFS-3.2.19.
We commend you for the insertion of this clause by the CBB. And would also recommend that an additional sub-clause be added in regards to the inadmissibility of one advisor acting for both, or more parties, in case of M&A transactions. This seems to be covered in OFS-3.2.23 but perhaps more emphasis should be put on this aspect.	No conflict of interest will be allowed.	NC

OFS-3.2.22 (c) – General Eligibility

Industry Comments	CMS Comments	CMS Recommendations/Action
In case of an existing issuer, its auditors may continue to remain in place pre and post the offering, as allowed by the CBB. - Existing Auditors should be allowed to act as Auditors/Financial Advisors as long as the Auditor's financial independence is maintained.	This would be a conflict of interest.	NC Paragraph renumbered as OFS-3.2.19.

OFS-3.2.23

Industry Comments	CMS Comments	CMS Recommendations/Action
OFS.2.22 (c) and OFS 3.2.23 – These clauses appear to conflict. OFS 3.2.22 (c) is restrictive in terms of limiting a lead manager acting for the same issuer on a number of repeat offerings. This is not typical in other jurisdictions.	This is not specific to services to the issuer which is the case in OFS-3.2.22(c). Independence and prevention of conflict of interest is a requirement in all developed markets.	NC Paragraph renumbered as OFS-3.2.20.

OFS-3.2.25

Industry Comments	CMS Comments	CMS Recommendations/Action
Issuer should be obligated to submit the names of advisors and any related party which might have access to material inside information in order to be identified as temporary insiders.	This is already a requirement under Module MAM for listed securities.	NC Paragraph renumbered as OFS-3.2.22

OFS-3.2.27

Industry Comments	CMS Comments	CMS Recommendations/Action
Does this apply to PPs? If so, how often is this declaration supposed to be made (i.e annually or per offering). For lead managers who are not regulated by the CBB it is unlikely that they will be aware of this	It is required for each offer and it is the issuer's obligation to ensure that their advisors are aware of this provision.	NC. Paragraph renumbered as OFS-3.2.24.

requirement.		
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OFS-3.3.3 (d)

Industry Comments	CMS Comments	CMS Recommendations/Action
Does this mean that foreign advisors are acceptable?	Yes but certain exceptions such as receiving bank.	NC

OFS-3.4

Industry Comments	CMS Comments	CMS Recommendations/Action
Does this apply to PPs? The requirements appear onerous for cross border fixed income.	Yes, it applies to all offers of securities.	NC

OFS-3.4.2

Industry Comments	CMS Comments	CMS Recommendations/Action
See comment on OFS 2.1	See reply to OFS-2.1	NC

OFS-3.4.3 (c)

Industry Comments	CMS Comments	CMS Recommendations/Action
Lead managers are unlikely to be prepared to accept this degree of responsibility to investors for the contents of the offering document.	If the lead manager is not able to provide his opinion to the CBB, the CBB would be very concerned about the level of due diligence and this would impact on the ability of the CBB to approve the offering (or substantially delay it due to additional CBB review).	NC

OFS-3.4.3 (d)

Industry Comments	CMS Comments	CMS Recommendations/Action
Same again. It's the responsibility of the issuer, not the lead manager, to ensure such compliance.	As above.	NC

OFS-3.4.8

Industry Comments	CMS Comments	CMS Recommendations/Action
Keen in encouraging the use of E-Subscription by issuer's in their IPO process. This will attract both national and international investors/clients.	The procedures for this should be included in the exchange Rulebook.	NC

OFS-3.6

Industry Comments	CMS Comments	CMS Recommendations/Action
We request to be notified immediately when terminating the custodian agreement, before the effective date in order to facilitate the transfer of shares.	Under OFS-3.3.6, the CBB is required to approve any removal and this approval will not be granted where the exchange has not been notified where relevant.	NC

OFS-3.6.1

Industry Comments	CMS Comments	CMS Recommendations/Action
Delete "Borrowing corporation and", not all borrowing corporations will be issuers of debt securities and this module doesn't apply to borrowers that are not issuers of debt securities.	This is the same wording used in the Debt Guidelines since 2003 and is used as a description of the issuer and any associated entity that is the ultimate beneficial borrower.	NC

OFS-3.6.4

Industry Comments	CMS Comments	CMS Recommendations/Action
The trustee and the borrowing corporation are often the same entity.	This creates a conflict of interest and is prohibited.	NC

OFS-3.6.5

Industry Comments	CMS Comments	CMS Recommendations/Action
The trustee may well not be independent. Also if the trustee is not a Bahrain entity it should not be	Independence is a requirement. The Trust Law will be applicable where the issue is	NC

required to observe the Trust Law 2006.	made in Bahrain or a Bahraini Trustee is appointed.	
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OFS-3.6.6

Industry Comments	CMS Comments	CMS Recommendations/Action
Violations of the Trust Law 2006 should not be relevant if the trustee is not a Bahrain entity.	As above.	NC

OFS-3.6.16

Industry Comments	CMS Comments	CMS Recommendations/Action
The Trustee is expected to exercise reasonable diligence to ascertain whether or not the assets of the borrowing corporation of each of its guarantor corporations are sufficient. As it read at present, this is done only at the time of issue of the prospectus. We recommend that the trustee do this on an on-going, annual basis, to provide quality assurance to the investors.	This is required under OFS-3.6.18	NC

OFS-3.6.19 (a)

Industry Comments	CMS Comments	CMS Recommendations/Action
The issuer may not have an office in Bahrain.	Section OFS-3.5 is providing rules on the role and responsibilities of the trustees and custodians rather than on the issuer or originator of debt securities. According to Bahrain's Trust Law, the appointment of trustee where the trust assets are located in Bahrain, such trustee must be a "Bahrain domiciled trustee" as per OFS-3.5.2 and must be registered with the CBB.	NC and paragraph renumbered to OFS-3.5.19(a)

OFS-3.6.21

Industry Comments	CMS Comments	CMS Recommendations/Action
For certain matters, the trustee for the holders of debt securities is authorized to apply to the courts of Bahrain. We recommend that this be expanded to include the courts of Bahrain or the Bahrain Chamber of Dispute and Resolution (BCDR), as the case may be.	The BCDR is not an authorized forum for ex parte applications (where a single entity is asking a court for direction).	NC

OFS-3.6.24-32

Industry Comments	CMS Comments	CMS Recommendations/Action
These provisions relate to borrowers and guarantors, whereas according to its title the section is supposed to relate to trustees and custodians.	The Section deals with trustees and custodians mainly.	NC Paragraphs renumbered to OFS-3.5.24-32

OFS-3.6.25

Industry Comments	CMS Comments	CMS Recommendations/Action
The issuer's exposure to connected counterparties as at year end should be disclosed.	This is covered under (f) and is not limited to an annual disclosure.	NC

OFS-3.7.1

Industry Comments	CMS Comments	CMS Recommendations/Action
What if the underwriter is offshore? This provision may be workable as regards an offer <u>from</u> Bahrain as contemplated by OFS-B.1.3, but will not necessarily be workable as regards an offer <u>in</u> Bahrain as contemplated by OFS-B.1.2.	They will be "otherwise authorized" as stated in this section.	NC

OFS-3.7.12

Industry Comments	CMS Comments	CMS Recommendations/Action
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<p>This section covers traditional underwriting commitments but excludes the possibility of a “Book Building” mechanism, now the common issuing standard, where a traditional underwriting has been dispensed with. We would recommend that you exclude the Book Building method and add: <i>(c) If the issue utilizes a Book Building method for placemen.</i></p>	<p>Book building is primarily a price discovery process and is not an indication of the level of public acceptances.</p>	<p>NC</p>
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OFS-3.8.3

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>A paying agent would not normally be responsible for arranging replacement securities.</p>	<p>The issuer may be a paying agent and responsible under OFS-3.8.2</p>	<p>NC</p>

OFS-3.10.2

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>It’s highly unlikely any lead manager would accept responsibility for making such a declaration as is contained in Appendix OFS-8 see comments against OFS-3.4.3 (c) above and see also OFS-2.3.6, 4.2.1 (d), 4.2.2, etc.</p>	<p>See previous reply on this issue.</p>	<p>NC</p>

OFS-3.11

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>We suggest that the issuer’s appoint at least one lead receiving bank to facilitate the subscription process.</p>	<p>This is required.</p>	<p>NC</p>

OFS-3.11.1

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>In accordance with Article (87) of the Commercial Company Law, receiving banks have to meet the</p>	<p>This is required for the initial incorporation of the company.</p>	<p>NC</p>

<p>criteria that “Subscription shall be undertaken at one or more of the commercial banks licensed to operate in Bahrain or at one of its branches or representatives abroad or through securities companies or other parties approved by the Ministry of Commerce and Industry”.</p> <p>- Please cross reference the fact that a part from the CBB’s approval, the prospectus has to be approved by the Ministry of Commerce and Industry and the Bahrain Bourse, in accordance with Article (86) of the commercial companies Law. This states that “the founders shall upon offering shares for public subscription, issue a prospectus approved by the Ministry of Commerce and Industry and Bahrain Stock Exchange calling the public for subscription and including the particulars specified in the Executive Regulation”</p>		
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OFS-3.11.3

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>We would add that for the designated account, if interest bearing or has a profit sharing feature, the interest/profit sharing proceeds would be only for the account of the issuing institution. Thus no intermediaries would be allowed to hold deposits in transit in their name, other than the designated sub-receiving banks, with any interest/profit sharing proceeds being for the account of the issuing institution. We are suggesting this mechanism in case of an IPO or any other equity or debt issuance being placed outside Bahrain.</p>	<p>The use of funds is catered for in OFS-3.11.10 (now OFS-3.10.10) and the relationship between issuer and receiving bank is dealt with under normal banking agreements.</p>	<p>NC</p>

OFS-3.11.4

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>If a bank acting is a Receiving Bank for an overseas</p>	<p>Yes, where an offer is subject to this Module.</p>	<p>NC</p>

client, is it necessary to advise the CBB?		
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OFS-3.11.11

Industry Comments	CMS Comments	CMS Recommendations/Action
It is important to include the time limit for subscriptions by receiving banks, as per Article (88) of the Commercial Companies Law. This stipulate that “Subscription shall remain open for a period of not less than ten days and not exceeding there months”.	This is covered in the offering period.	NC

OFS-3.11.12

Industry Comments	CMS Comments	CMS Recommendations/Action
We recommend that there be an outer limit for a deadline of refunds eg. 3 months from the last date of the closure of subscription.	The deadline is within 7 days from close of the offering period. See OFS-7.4 dealing with allotment.	NC
This appears to be saying the receiving bank/issuer/lead manager are jointly responsible for paying interest where the CBB has delayed granting approval. That would not be acceptable.	It says they are responsible to pay interest where they have not obtained CBB approval as required under this Module.	NC

OFS-4.1

Industry Comments	CMS Comments	CMS Recommendations/Action
Is this section applicable to PPs?	Yes	NC

OFS-4.1.1

Industry Comments	CMS Comments	CMS Recommendations/Action
In particular the 30 day notice period is not feasible for cross border fixed income.	This is required to ensure timely approval.	NC

OFS-4.1.2

Industry Comments	CMS Comments	CMS Recommendations/Action
As long as it's duly signed by the applicant, it should not matter how many signatures there are.	This has been market practice to ensure Issuer has provided proper authorization.	NC

OFS-4.2

Industry Comments	CMS Comments	CMS Recommendations/Action
The information submission requirements are unduly onerous on the Issuer/Lead Managers.	This is the minimum required for the protection of investors.	NC

OFS-4.2.1

Industry Comments	CMS Comments	CMS Recommendations/Action
OFS-4.2.1 (a) and (b) – again reference to the General Assembly?	Yes, they are required to approve an issue of securities.	NC

OFS-4.2.2

Industry Comments	CMS Comments	CMS Recommendations/Action
International lead managers may not be aware of the declaration requirement and appears onerous for cross border fixed income.	The Issuer is responsible for bringing it to the attention of the lead manager.	NC
- The final term sheet can only be provided following an issue, in case of bond issue.	Terms sheets are provided after issue but before offer.	NC

OFS-4.2.3

Industry Comments	CMS Comments	CMS Recommendations/Action
Is a no-objection required for PPs?	Yes	NC

OFS-4.3.2

Industry Comments	CMS Comments	CMS Recommendations/Action

OFS4.3.2 (c) and (d) – appear to contradict earlier requirement to list within Bahrain?	This is in addition to the listing in Bahrain. Will clarify.	Add “in addition to the listing in Bahrain”.
We suggest that the publication of prospectus on the licensed exchange’s website to be compulsory.	This can be included in the Listing Rules of the Exchange.	NC

OFS-4.3.4

Industry Comments	CMS Comments	CMS Recommendations/Action
Private Placement – does this apply to debt and equity, again ambiguous? International lead managers are unlikely to be aware of the requirements under (a) and (c). Under (b), cross border fixed income transactions do not utilize subscription forms.	It applies to any private placement of securities that does not fall within the filing arrangements category. This will be clarified.	Add “of any securities that do not fall within the filing arrangements category”.

OFS-4.3.9

Industry Comments	CMS Comments	CMS Recommendations/Action
We highly recommend that Swapping, Managers and Acquisitions that involves listed securities to go through the exchange trading engine or treated as exempted cases.	This will be done on exchange.	NC

OFS-4.3.12

Industry Comments	CMS Comments	CMS Recommendations/Action
Is this section applicable to PPs? See comment on OFS 4.2.2 above.	Yes	NC

OFS-4.3.14

Industry Comments	CMS Comments	CMS Recommendations/Action
Is this section applicable to PPs? See comment on OFS 4.2.2	Yes, where they are Shari’a compliant securities.	NC

OFS-4.3.16

Industry Comments	CMS Comments	CMS Recommendations/Action
Is this section applicable to PPs? See comment on OFS 4.2.2 above.	Yes, where it is an overseas issuer.	NC

OFS-5.1.1

Industry Comments	CMS Comments	CMS Recommendations/Action
The CBB only has to approve a prospectus regarding offers of securities <u>in</u> Bahrain.	Correct.	NC

OFS-5.1.8(c)

Industry Comments	CMS Comments	CMS Recommendations/Action
We believe that this clause is at odds with full disclosure requirements that the module outlines, particularly if the issue is seriously detrimental to the issuer, which waves all kind of “red flags” in our opinion. A redrafting of this clause therefore would be appropriate.	These are very limited exceptions so there is no dilution of the full disclosure principle.	NC

OFS-5.1.12

Industry Comments	CMS Comments	CMS Recommendations/Action
The CBB only has to approve a supplement to a prospectus regarding offers of securities <u>in</u> Bahrain.	Correct.	NC

OFS-5.1.18

Industry Comments	CMS Comments	CMS Recommendations/Action
As regards the <u>original</u> prospectus, only a summary is required to be published (see OFS-4.3.2 (a), 5.1.31 (b) and 7.2.1, which accord with Art. 81 (b) of the CBB Law 2006). The requirements for the <u>supplementary/replacement</u> prospectus should be no	Agreed. A summary should be published and this should show any material amendments.	Add wording to indicate it is a summary of the prospectus but that the material changes must be highlighted.

more onerous, so this provision should only require a summary (if this can be squared with Art. 84 of the CBB Law 2006). Requiring publication of the full document would add considerably to the cost (money and time) of the issue without adding significantly to investor protection.		
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OFS-5.1.19

Industry Comments	CMS Comments	CMS Recommendations/Action
How would such information be made public in Bahrain if the issuer is not listed in Bahrain?	On the exchange website if listed and published in the newspaper.	NC

OFS-5.1.24 (d)

Industry Comments	CMS Comments	CMS Recommendations/Action
Advisers would rarely if ever accept direct responsibility to the world at large for the contents.	They are responsible to the investors and regulators.	NC

OFS-5.2 (n) (viii)

Industry Comments	CMS Comments	CMS Recommendations/Action
We suggest that the allotment method and criteria to be clearly highlighted including the mechanism, methods, oversubscription, and other scenarios that may occur such as (shares to be allotted to small subscribers, or allocation method pro-rata)	This is covered under the allotment section.	NC

OFS-5.2.5

Industry Comments	CMS Comments	CMS Recommendations/Action
Is this section applicable to PPs?	Yes, it is a current requirement.	NC

OFS-5.2.9

Industry Comments	CMS Comments	CMS Recommendations/Action
Is this section applicable to PPs? This may result in a requirement for the provision of information exceeding typical international standards for cross border fixed income.	Yes, most of this is a current requirement.	NC

OFS-5.3

Industry Comments	CMS Comments	CMS Recommendations/Action
Is this section applicable to PPs? A number of these requirements are not market practice in cross border fixed income e.g. OFS 5.3.2 f, g (for advisors other than lead managers) and p	Yes.	NC

OFS-5.8.6

Industry Comments	CMS Comments	CMS Recommendations/Action
We suggest that the component of the “Index Basket” and mechanism of modifying (adding, removing, editing, capital reduction/increase, or other scenarios) should be clearly identified.	Will add component of index in (a). Modification is covered under (d).	Add component of index to (a).

OFS-5.9.1

Industry Comments	CMS Comments	CMS Recommendations/Action
Lists a number of clauses applicable to PPs however it is not clear whether these are the only applicable clauses.	They are the only applicable clauses related to the content of the prospectus.	NC

OFS-5.9.2

Industry Comments	CMS Comments	CMS Recommendations/Action
How often is this confirmation required (i.e per	This is a current requirement. The CBB may	NC

<p>transaction or annually)? This appears unduly onerous for investors and lead managers on a per offering basis for cross border fixed income due to the nature of the transaction and speed with which they are often executed. A solution may be for all accredited investors to annually submit a confirmation to the CBB and the CBB provide the update list of accredited investors on their website.</p>	<p>accept a previous form provided it is recent.</p>	
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OFS-5.9.4

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>The terminology here is indicated as strict requirement. Often “securities” may be described as “notes” or “bonds” in cross border fixed income transactions. Some leeway on terminology would reduce the regulatory burden.</p>	<p>The definition of “securities” specifically includes “notes” and “bonds”.</p>	<p>NC</p>

OFS-5.9.8

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>It is unlikely for cross border fixed income offerings that international lead managers would be willing to disclose or limit their fees which are typically deducted from the proceeds of an offering.</p>	<p>This is required to be disclosed so that the investor can make an informed decision and the regulator can be assured the market is not being abused.</p>	<p>NC</p>

OFS-5.9.9

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>It is unlikely for cross border fixed income offerings that international lead managers would be willing to disclose or limit their fees which are typically deducted from the proceeds of an offering.</p>	<p>See above.</p>	<p>NC</p>

OFS-5.9.10

Industry Comments	CMS Comments	CMS Recommendations/Action
It is unlikely for cross border fixed income offerings that international lead managers would be willing to disclose or limit their fees which are typically deducted from the proceeds of an offering.	See above.	NC

OFS-6

Industry Comments	CMS Comments	CMS Recommendations/Action
Is this section applicable to PPs? Other than a few select jurisdictions it is unusual to require such submissions to the regulatory authority for cross border fixed income and the potential timing impact may be considered unduly burdensome resulting in offerings to accredited investors in Bahrain being prevented due to impracticality.	Yes, where securities fall within the scope of this Module – these provisions apply.	NC

OFS-7.1

Industry Comments	CMS Comments	CMS Recommendations/Action
Is this section applicable to PPs? Timings, statements, submissions/confirmations etc as highlighted above are all restrictive for cross border fixed income.	As above.	NC

OFS-7.1.3

Industry Comments	CMS Comments	CMS Recommendations/Action
You will need a different offer period for equity securities in a BSC, Article 22 of the Implementing Regulations of the Commercial Companies Law states that subscription period shall remain open for not less than 10 days and not more than 3 months.	Will make this section subject to the law.	Add “determined by the law” to the beginning of the sentence.
Article 7.1.3 offer period:	This is a minimum period so Issuers may have	NC

<ul style="list-style-type: none"> - We suggest that the period should be at least 15 business days to allow overseas subscribers/investors to participate and to give them enough time to liquidate. - We suggest that the period should at least 10 business days to give investors more flexibility to liquidate and participate. 	<p>a longer period subject to the maximum closing date.</p>	
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OFS-7.4 – Subscription Results and Allotment

Industry Comments	CMS Comments	CMS Recommendations/Action
<ul style="list-style-type: none"> - Given that the allotment report is required to be approved by the Board of Directors of the issuer and also by CMSD, the 7 calendar day requirement is extremely stringent. - Similarly, that other turnaround times specified in the clauses mentioned are extremely stringent and are not practicable. - The time limit should be changed from 7 calendar days to 10 business days instead for the given clauses. 	<p>This is current practice and is needed to ensure the investors receive their securities and the funds can be utilized by the issuer.</p>	<p>NC</p>
<p>Is this section applicable to PPs? OFS 7.4.11/7.4.12 are not practical for cross border fixed income offerings.</p>	<p>Yes.</p>	<p>NC</p>

OFS-7.4.1

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Again reference to allotment to be approved by the CBB, which should not be the case with regards to debt issuance?</p>	<p>The CBB is required to ensure that the investors receive their securities as offered and subscribed and in good time. Currently only applicable to publicly issued securities.</p>	<p>NC</p>
<p>Is it really necessary for the final allotment to be approved by the CBB before distribution can happen, since the receiving bank must by definition have first been approved by the CBB?</p>	<p>Yes, as above.</p>	<p>NC</p>

OFS-7.4.2

Industry Comments	CMS Comments	CMS Recommendations/Action
Again is this reference to debt or equity as this is not practice for debt issuance?	This is for a public offer.	Add wording to indicate public offer only.

OFS-7.4.12 (b)

Industry Comments	CMS Comments	CMS Recommendations/Action
We firmly believe that the a Book Building mechanism should be excluded from this guidance, as by virtue of this process a preferential treatment may be given to larger subscribers that may offer a higher price or may condition their participation of the basis of a bigger allotment therefore would recommend that the clause be drafted as follow: <i>All subscribers are treated equally and in accordance with the allotment basis in all aspects, particularly when the rounding up rule is applied; however if a Book Building process is adopted than the it would be expected that accepted market practice would be the applicable mode of allotment.</i>	A book building practice cannot be excluded from the module as referred to the international best practices to establish the offer price which needs to be performed under its mechanism and standards, subject that such arrangement is clearly stated in the OFS module. However, OFS-7.4.12 (b) requires that all subscribers within the same issue or tranche needs to be treated equally in accordance with already declared allotment basis. So, there is no contradiction between offering of securities on book building mechanism and maintaining equal treatment to all subscribers within each issue or tranche which needs to take place at two different stages.	NC

OFS-7.5 – Refunding and Dispatching

Industry Comments	CMS Comments	CMS Recommendations/Action
<ul style="list-style-type: none">- Given that the allotment report is required to be approved by the Board of Directors of the issuer and also by CMSD, the 7 calendar day requirement is extremely stringent.- Similarly, that other turnaround times specified in the clauses mentioned are extremely stringent and	The timing is stringent as the investors have paid for their investment and should therefore receive it as soon as possible.	NC

are not practicable. The time limit should be changed from 7 calendar days to 10 business days instead for the given clauses.		
OFS4.3.2 (c) and (d) – appear to contradict earlier requirement to list within Bahrain?	See above comment in OFS-4.3.2.	NC
We recommend that the prospectus should mention the treatment of over subscription and how the funds will be returned to subscribers with a deadline on the period. The same is also applicable for rejected or over subscription forms.	This is covered in OFS-7.4.9 and the deadline will remain the same as in OFS-7.4.3.	NC

OFS-7 .5.6

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Clause 7.5.6, need to be modified as under:</p> <ul style="list-style-type: none"> - For the purposes of dematerialization, each subscriber or shareholder will have to open an account with a licensed central depository through depository participant and then request for dematerialization of his certificates through such the depository participant. <p>(Reason: Since the Depository Participant intermediates between the licensed central depository and the beneficial owner of securities as an agent of the depository as defined under CSD Module B.2.16)</p>	This is not the case with another licensed exchange so this is a general requirement with each CSD determining their process for dematerialization.	NC

OFS-7.5.9

Industry Comments	CMS Comments	CMS Recommendations/Action
All securities issued after the effective date of this Module must be in dematerialized form.	All securities issued to the public.	NC

OFS-7.5.10

Industry Comments	CMS Comments	CMS Recommendations/Action
In case of physical certificates, 7 calendar days is not sufficient time frame. We suggest 10 business days instead.	This would not be equal treatment.	NC

OFS-8.3

Industry Comments	CMS Comments	CMS Recommendations/Action
This indicates that any lead manager who wishes to offer securities on a cross border fixed income must be registered with the CBB to do so. Some international banks may be unaware of this requirement.	They will be informed by the CBB on receipt of the prospectus in which they intend to act as a CMSP.	NC

OFS-8.4

Industry Comments	CMS Comments	CMS Recommendations/Action
This indicates that approvals are required by the CBB for all PPs which to date has not been market practice (see comment on OFS 6 above). In addition a fee will be chargeable on a per transaction basis which is not international practice.	It is a current directive of the CBB that all PPM are approved by the CBB. Fees are charged per prospectus.	NC

OFS-8.4.3

Industry Comments	CMS Comments	CMS Recommendations/Action
In Clause 8.4.3, the registration fees for Commodities, Futures or Derivatives Contracts may be deleted as they do not come under Offering of Securities Module.	New products are being offered to investors. This will be reviewed in the Listing Module of CBB Rulebook Volume 6.	NC