



CONSULTATION PAPER NO. 100

8 DECEMBER 2014

PROPOSED AMENDMENTS TO MARKETS-RELATED FEES

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Why are we issuing this paper?

1. The DFSA proposes to amend the fee regime for markets-related activities within the Dubai International Financial Centre (DIFC). This paper sets out those proposals for public consultation.
2. The proposals in this paper are designed to support on-going DFSA efforts directed towards cost recovery, while:
 - (a) giving due consideration to the commercial considerations of affected parties; and
 - (b) ensuring that we fulfil our regulatory objectives.

Who should read this paper?

3. The proposals in this paper would be of particular interest to:
 - (a) Authorised Market Institutions (AMIs);
 - (b) firms considering applying for a licence to Operate an Alternative Trading System (ATS);
 - (c) Listed Entities;
 - (d) Recognised Bodies;
 - (e) Recognised Members;
 - (f) applicants for recognition by the DFSA for exchange-related activity;
 - (g) potential issuers and their advisors; and
 - (h) others with an interest in exchanges in the DIFC.

Terminology in this paper

4. In this paper, defined terms are identified throughout by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the Glossary Module (GLO) or in the proposed amendments in this paper. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

How to provide comments

5. All comments should be in writing and sent to either of the addresses specified below. Please refer to Consultation Paper 100 in the subject line of any email. You may identify the organisation you represent in providing your comments. The DFSA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments.

Comments to be addressed to:

**Consultation Paper No. 100
Policy and Legal Services
DFSA
PO Box 75850
Dubai, UAE**

or emailed to:

Email: consultation@dfsa.ae

Tel: +971(0)4 3621500

What happens next?

6. The deadline for providing comments on the proposals is 8 February 2015. Once we receive your comments, we shall consider if any refinements are required to these proposals. We shall then seek approval from our Board of the finalised proposals. Once the proposals are approved, we shall issue a notice on our website to this effect.
7. In transitioning to the new regime, we anticipate that any proposed application and transaction-based fees (e.g. for prospectus approval) would, if approved, take immediate effect.
8. For the proposed periodic fee changes, if approved sufficiently early in 2015 (i.e., so that they would be in effect for at least six months) these would be applied on a *pro rata* basis for the remainder of 2015. However, if the proposals were only finalised later in 2015, then changes to periodic fees would apply from the start of 2016.

Background

9. There are currently two Authorised Market Institutions in the DIFC – NASDAQ Dubai Ltd (NASDAQ Dubai), which was launched in September 2005 as DIFX, and Dubai Mercantile Exchange Ltd (DME), which was launched in June 2007. NASDAQ Dubai has a licence to Operate an Exchange as well as a Clearing House for Investments such as equity, debt (both conventional and Islamic), funds, equity derivatives and structured products. DME is licensed to operate a commodity derivatives exchange. There are no Alternative Trading Systems (ATS) licensed in the DIFC currently.
10. In addition to the AMIs, there are currently seven Recognised Bodies – that is exchanges or clearing houses located outside the DIFC that offer their services electronically to firms within the DIFC. There are also over 60 Recognised Members in the DIFC – that is, firms that have no physical presence in the DIFC though they transact on an AMI.
11. The last wide-ranging review of markets-related fees was undertaken in 2007. Following public consultation, no amendments were made to the relevant elements of the DFSA fee regime, in large part due to the very early stage of AMI development. As such, markets-related fees are unchanged since the opening of the first AMI in 2005.
12. A significant change since the 2007 fee review was the transfer of the listing authority function from NASDAQ Dubai to the DFSA in October 2011. As the listing authority, the DFSA:
 - (a) approves Prospectuses;
 - (b) admits Securities to the Official List for the purposes of being able to trade on an AMI (i.e. NASDAQ Dubai currently);
 - (c) sets minimum standards for initial listing and continuing obligations; and
 - (d) enforces the standards and monitors issuers' continuing obligations.
13. Following recent consideration by the Board, the DFSA proposes as a matter of policy to seek to recover a larger proportion of its costs from the regulated community, aiming in the long term to achieve full cost recovery.
14. Other principles used by the DFSA to set its fees remain unchanged since the 2007 review, namely:
 - (a) the cost of regulation to the market should be proportionate, transparent and flexible;
 - (b) fees should not be a disincentive to locate in the DIFC, as opposed to broadly comparable centres;
 - (c) fees should not provide or create any undesirable behavioural incentives; and
 - (d) fees should be efficient to be administered.
15. In assessing potential changes to the markets-related fees, the DFSA has undertaken benchmarking. The significant variation in responsibilities for the regulation of trading venues and market infrastructure between jurisdictions has

added complexity to this work. In some jurisdictions, some or all regulatory responsibilities are assigned to the exchanges while, in others, all such responsibilities sit with the regulator. There are also variations between the regulators, notably whether they are responsible for regulating a number of financial sectors including banking, insurance and securities ('integrated,' like the DFSA) or focus solely on one sector of the financial industry (e.g. Hong Kong (HK), USA, the United Arab Emirates (UAE)). Driven by these and other considerations, the funding philosophies of regulators, and consequently their fee regimes, vary significantly.

16. The following jurisdictions were considered for various aspects of benchmarking: the federal regulatory regime applying in the UAE more broadly; the UK; USA; HK; Japan; Luxembourg; Ireland and the Netherlands.

Structure of this paper

17. The remainder of this Consultation Paper is structured as follows:
 - (a) Part 1: AML application and periodic fees;
 - (b) Part 2: Recognition fees;
 - (c) Part 3: Listing Authority and Listing fees;
 - (d) Part 4: Listed Entity periodic and filing fees;
 - (e) Part 5: Miscellaneous;
 - (f) Appendix 1: draft amendments to the FER Module; and
 - (g) Appendix 2: draft amendments to the REC Module.

Part 1: AMI application and periodic (on-going) fees

Current AMI fees & benchmarking

18. Since 2005, all AMI fees imposed by the DFSA have remained unchanged. The application fee to be an AMI, which carries on the activities of Operating an Exchange or of Operating a Clearing House, continues to be USD 125,000. If both activities are sought to be undertaken, a USD 250,000 application fee is applied. For on-going supervision, a flat fee of USD 60,000 is levied annually on an AMI for each of the activities of Operating an Exchange and Operating a Clearing House. If both activities are licensed, then a periodic fee of USD 120,000 is applied.
19. There are a range of fee models pursued in benchmarked jurisdictions reflecting variations in the allocation of responsibilities between the regulator and exchanges. The approach to funding - though often not explicitly specified - also varies, resulting in partial, full or even over-recovery of regulatory costs.
20. Application fees are nominal in a number of jurisdictions (e.g. UAE – ≈USD 270, Australia – ≈USD 1,400, HK – ≈USD 3,000) although, in some such cases, recovery of regulatory costs appears to be pursued via fees for on-going supervision. The nature of fees for on-going supervision is commonly determined by the level of market activity (e.g. UAE, HK) or by estimated direct regulatory effort (e.g. UK). In the UK, the equivalent cost for an AMI application is ≈USD 167,000 and the periodic (annual) fee was in the range of ≈USD 502,000-1,666,000 in the latest period.

Proposed AMI fees

21. The DFSA proposes to retain a fixed application fee for an AMI that wishes to Operate an Exchange or to Operate a Clearing House. To support a greater level of cost recovery, while striving to avoid barriers to entry, the DFSA proposes that the application fee be adjusted from USD 125,000 per operating licence to USD 150,000.
22. As for periodic fees, we propose that a fixed periodic fee of USD 100,000 per activity be levied on AMIs for on-going supervision. This has been determined by an adjustment to the current periodic fee of USD 60,000 per activity, to reflect general increases in DFSA costs over the past nine years.
23. Given the similarity of activity and requirements for on-going regulatory oversight, the DFSA proposes that a similar fee applies to Authorised Firms or AMIs operating an ATS. For Authorised Firms with a licence to Operate an ATS, the DFSA proposes that the fixed periodic fee be levied in addition to its other application and periodic fees. Given that the same nature activity would be conducted on these facilities, this approach would ensure that AMIs are not disadvantaged.
24. Reflecting the rising costs over the past nine years, we propose that the application fee to Operate an ATS be increased from USD 40,000 to a fixed level of USD 65,000 and the on-going fee be set at USD 65,000. In cases where the nature of an application to Operate an ATS or the on-going supervision of an ATS does not require extensive regulatory effort (for example, due to prevailing understanding of an Authorised Firm's or AMI's operation), the DFSA may waive part of the application fee and/or the periodic fee.

25. We propose to retain the power to require a person to pay the DFSA a supplementary fee where the DFSA expects to incur substantial additional costs in dealing with an application, notification or conducting on-going supervision. Using this targeted approach to recover extraordinary regulatory costs supports cost recovery efforts while ensuring fairness for firms that do not cause substantial additional costs relative to the norm.
26. Where a supplementary fee may be applied, the DFSA will give advance notice of such a fee being under consideration and, where possible, an indication of the scale of the fee. Any such indication provided may be adjusted as the DFSA's work progresses if it becomes clear that the regulatory effort exerted and anticipated is greater (or less) than originally estimated by the DFSA.
27. In determining what accounts for 'substantial additional' effort, the DFSA will, amongst other things, make reference to data available on existing norms (e.g. the average DFSA regulatory cost historically incurred for similar activity and/or the regulatory cost incurred relative to DFSA base application or on-going fees). Those subject to a supplementary fee would have, as now, a right to seek judicial review of such a fee.

Issues for consideration

1. Do you have any concerns about the proposed application and periodic fees for AMIs? If so, how should they be addressed?
2. Do you have any concerns about the proposed application and periodic fees for ATS activities? If so, what are the reasons for such concerns and how should they be addressed?
3. Do you have any concerns about our proposal to retain the power to impose supplementary fees? If so, what are they and how should they be addressed?

Part 2: Recognition fees

28. Fees for Recognised Body applicants have remained unchanged at USD 10,000 since 2005. Within the relatively limited set of available benchmarks, there are different models for applying fees to Recognised Bodies and their equivalents.

Jurisdiction (Regulator)	Application Fee	Annual Fee
	(USD equivalent)	
Australia (ASIC)	• ≈1,400	• Variable – dominated by regulatory transaction fees
Singapore (MAS)	• ≈3,200	• none
UK (FCA) ¹		
• Recognised Overseas Investment Exchanges (ROIEs)	• ≈83,700	• ≈93,800
• Recognised Auction Platforms (RAP)	• ≈58,600	• ≈83,700

29. In keeping with efforts to recover regulatory costs, noting increases in those costs over the past nine years and an improved understanding of resourcing required,

¹ Additional fees can be applied to the 'base' application fee, depending on the form of recognition, for offering safeguarding and administration services, permission to administer a benchmark, use of substantially new and untested IT systems.

combined with efforts to support the development of the Centre, the DFSA proposes to raise the application fee for Recognised Bodies to USD 15,000.

30. Recognised Bodies are currently not subject to any on-going fees. While there is precedent from other jurisdictions to subject Recognised Bodies to fees for on-going supervision, the DFSA believes that it is not warranted at this time.
31. However, DFSA operational experience suggests that there is room for improvement in reporting practices. To encourage adherence to reporting requirements, the DFSA proposes that an administrative fee of USD 1,000 be introduced for failings in both timeliness and completeness of reporting. The level of the fee has been guided by the USD 1,000 administrative fee for late submission of EPRS returns proposed in CP88 and introduced in 2013.
32. Currently, there are no fees for Recognised Members either to apply for recognition or on an on-going basis. This is consistent with known practices in jurisdictions which have recognition regimes. The DFSA does not see any compelling reason to deviate from the current arrangement. As such, no application or periodic fees are proposed to be introduced for Recognised Members.
33. While no periodic fee is proposed to be applied to Recognised Members or Recognised Bodies, in the case that substantial additional regulatory effort is devoted to either a Recognised Member or Recognised Body for processing recognition applications and/or any activities relating to Recognition on an on-going basis, the DFSA proposes to introduce a power to levy a fee similar to the supplementary fee set out in paragraph 25.

Issues for consideration

4. Does the proposed approach for application and periodic fees for Recognised Bodies and Members seem appropriate? If not, why not?
5. Is the level of application fees for Recognised Bodies considered to be appropriate? If not, what alternative would you suggest?
6. Is the introduction of an administrative fee for Recognised Bodies - specific to the failure to adhere to reporting requirements - felt to be appropriate? If not, what other mechanism should be used to promote greater compliance?
7. Are there any objections to the imposition of a 'supplementary fee'-equivalent where substantial additional regulatory effort has been exerted? If, so what are they, and how can they be addressed?

Part 3: Listing Authority and Listing fees

Existing & Proposed Listing Fees

34. The fees for application for admission to the Official List of Securities have remained unchanged since their introduction in 2012.
35. The application fee for the admittance of Securities to the Official List of Securities is USD 2,000, payable by the issuer (including Exempt Offerors). It is proposed to increase this to USD 2,500, guided by the general rise in DFSA costs and our experience of the regulatory effort involved with this activity.
36. The DFSA proposes that amendments be made to the structure and scope of fees relating to Prospectus activity (i.e. vetting and listing activity). In limited

cases, an upward adjustment to the level of fees is also proposed. In addition to the application fee mentioned in the previous paragraph, when filing a Prospectus with the DFSA, the following fees (in USD) are currently payable:

Security Type	Prospectus Offer Filing (single or two documents)	Issue Note Filing
Shares, Certificates over Shares and Warrants over Shares	20,000	5,000
Debentures, Certificates over Debentures and Warrants of Debentures	10,000	2,500

37. In keeping with the changes made to the Markets Rules in 2012, we propose that the structure of fees be amended for the submission and approval of a prospectus. The changes provide clarity on the individual elements of a prospectus submitted for approval where multiple documents are produced and reflect the revised terminology used in the Markets Module.
38. The DFSA proposes that the scope of the fees be extended to cover a wider variety of securities. We propose that Listed Funds and Structured Products should be subject to relevant fees. Due to an oversight, these instruments are omitted from the current filing fee regime. Filing fees for such products are common to many jurisdictions, and they are usually treated as debt-like instruments.
39. For products that are currently not anticipated, a provision is proposed in the FER Module for the DFSA to charge appropriate filing fees – either those for equity-like instruments or for ‘other’ instruments.
40. The scope of the regime for filing fees is also proposed to be extended to capture a broader range of regulatory activities, that are currently being undertaken, and to ensure that relevant parties are charged appropriately. In particular, we propose that a fee of USD 2,000 be introduced for filing a supplementary prospectus.
41. A supplementary prospectus is required to be lodged with the DFSA in the event there is a significant change required to, or material mistake in, the (base) Prospectus, or if there has been a significant development following the launch of the Prospectus before trading commences. The introduction of this fee would be beneficial to the DFSA, as it would assist in recovering its costs.
42. For debt securities, the DFSA proposes that a ‘Programme Update’ fee be introduced. After 12 months, regulatory approval for a debt programme expires. If the Issuer intends to continue the programme, the DFSA must review and approve a revised Prospectus. Currently, a prospectus vetting fee of USD 10,000 is charged for a ‘Programme Update’ fee. As this generally requires less regulatory effort than the initial approval, we propose that a USD 8,000 fee be introduced.
43. The DFSA proposes that the fixed fee approach be retained for filing activity. There is mixed benchmarking support for this, notably for equity-like securities filings. The UK (both the London Stock Exchange and the Alternative Investment Market (AIM)), Luxembourg, USA, HK (both the Hong Kong Stock Exchange and the Growth Enterprise Market (GEM)) all vary their filing fees depending on the market value of the filing for equity-like instruments. By contrast, the Netherlands, Germany and Ireland all charge a flat fee. As the market value of the filing is not

necessarily an indicator of the regulatory effort involved in processing the filing, the DFSA prefers to retain the fixed fee approach for all filings.

44. As for the level of such fixed fees, the DFSA proposes that the filing fees for Shares and share-like instruments be increased. Specifically, we propose that the fee for Filing a Prospectus or equivalent document should be set at USD 35,000.
45. In some instances, an issuer may choose to file a Registration Statement in the first place, which would later be supplemented by a Securities Note/s and a Summary/ies for the first and each subsequent offer/admission of securities. In such cases, we propose that a Registration Statement, and Securities Note and Summary (which together form a Prospectus), be charged separately and fees be set at USD 27,500 and USD 7,500 respectively.
46. For other instruments (including Listed Funds and Structured Products), we propose that filing fees remain unchanged. Given the estimated regulatory effort and cost associated with such filings, there is no current need – on cost recovery grounds - to increase fees. The particular importance of listed debt issuance activity in the DIFC relative to other jurisdictions also supports this position.
47. In summary, the following listing activity-related fees are proposed. All fee amounts are listed in US Dollars.

Activity	'Equity-like' Securities ²	'Other' Securities ³ (to include Listed Funds and Structured Products)
	USD	USD
Admission to the Official List of Securities	2,500	2,500
Filing of a Prospectus or equivalent document ⁴	35,000	10,000
Filing a Registration Statement	27,500	7,500
Filing a Securities Note & Summary	7,500	2,500
Filing a Supplementary Prospectus	2,000	2,000
Filing a Programme Update	n/a	8,000

48. For clarity, for any of the filings mentioned above, the relevant fee should be paid at the time of submission, even if the submission is only in a draft format.
49. In instances where substantial additional regulatory effort is exerted, we propose that the DFSA retain its power to apply a supplementary fee to recover the costs directly relating to the relevant processing and/or approval activity, as set out in paragraph 25. In such cases, the DFSA will usually discuss with the Issuer the potential level of supplementary fee prior to the submission of an application for Prospectus approval. Any supplementary fee would be payable prior to Prospectus approval.

Existing & Proposed Listing Authority Fees

50. The application fee for an AMI seeking to maintain an Official List of Securities is USD 100,000, while the periodic fee is USD 50,000. Currently, the DFSA maintains the only Official List of Securities in the DIFC. While the DFSA expects to maintain the Official List of Securities for the foreseeable future, given the infrequent review of the Fee Module, it is thought prudent to amend the fee in keeping with the general rise that has occurred in DFSA costs. As such, the

² Shares, Certificates over Shares and Warrants over Shares.

³ Debentures, Certificates over Debentures and Warrants of Debentures, Listed Funds and Structured Products.

⁴ This is equal to the cost of Filing a Registration Statement and Filing a Securities Note & Summary.

DFSA proposes that the application and periodic fees, while currently not applicable to any AMI, be increased to USD 150,000 and USD 75,000, respectively.

Issues for consideration

8. Do any of the proposed changes to the scope of fees relating to Listing Authority responsibilities raise concerns? If so, what are they and how should they be addressed?
9. Do any of the proposed changes to the level of fees for listing-related activities pose any concerns? If so, what are they and how should they be addressed?

Part 4: Listed Entity periodic and filing fees

51. Currently, the DFSA does not have any on-going fee requirements for Listed Entities (commonly, a company that has its Securities admitted to an Official List of Securities). Among those market authorities who levy such fees (which may in some cases be exchanges), there is a variety of practices.
52. For debt listings, it is common that no on-going fees are charged (e.g. UK, the Netherlands, Germany, Ireland). Where a fee is charged, it tends to be nominal (e.g. Luxembourg charges ≈USD 2,000).
53. For equity listings, it appears to be more common to charge periodic fees for on-going supervision (e.g. UK, Hong Kong, the Netherlands, Luxembourg). Periodic fees are also charged by some SME markets (e.g. AIM in the UK, GEM in HK). Moreover, it is commonplace for such fees to vary according to the market value of the equity listed.
54. In keeping with efforts to increase cost recovery, it is proposed to introduce a periodic fee for equity and equity-like listings. In particular, it is proposed that a minimum periodic fee of USD 2,500 be applied and where such a listing has a market capitalisation greater than USD 100mn, additional fees would apply, the scale of which would depend on the size of market capitalisation. This fee structure is in line with those used in benchmarked jurisdictions. The proposal for equity and equity-like periodic fees is summarised in the following table.

Market Capitalisation ⁵ (USD mn)	Fee (USD)
	<i>Minimum fee: 2,500</i>
	<i>Additional fees:</i>
	USD per USD million
0 – 100	0
>100 – 500	5
>500 – 5,000	1
>5,000 – 10,000	0.5
>10,000	0.25

55. We also propose that the DFSA exercise a power to levy a supplementary fee (as set out in paragraph 25) in cases where substantial additional regulatory effort is

⁵ Market capitalisation would be measured using the official closing price from the AMI on the last business day of November prior to the year for which the fee is payable. For example, a fee for 2016 would be based on the market capitalisation measured on the last business day in November 2015.

exerted (e.g. a Listed Entity undertakes a merger or acquisition, or becomes insolvent).

56. The DFSA is also proposing to introduce a new filing fee which will apply to any document which is required by the Law or Rules to be approved by the DFSA (e.g. a document relating to a share repurchase transaction), as such approval requires – by design – regulatory effort by the DFSA. The proposed fee is set at USD 5,000 for Equity Securities and USD 3,000 for Non-Equity Securities.
57. The proposed fee would apply to:
 - (a) the approval of a proposal by a Listed Entity to purchase its own Shares under MKT Rule 9.7.4; and
 - (b) the approval of summary documents in relation to Exempt Securities under MKT rule 2.4.1(i).
58. However, in future the DFSA expects gradually to expand the number and type of documents which require DFSA pre-approval, in line with developments of regulatory best practice.

Issues for consideration

10. Does the proposal to introduce periodic fees for equity and equity-like listings raise any concerns? If so, what are those concerns and how should they be addressed?
11. Do you have any concerns about the DFSA's proposals to apply fees for documents where DFSA approval is required? If so, what are they and how should they be addressed?

Part 5: Miscellaneous

59. Given the infrequency with which the FER module is reviewed, we propose to make a partial inflation adjustment to Takeover fees, which have not changed since they were introduced in 2005. The DFSA has used the International Monetary Fund's average inflation rates for the UAE to guide these adjustments.
60. The structure of the fees payable on Bid Documents is proposed to be retained. This may be revised upon future review. Accounting for the rise in inflation, and noting the limited experience in processing takeover bids, the following revisions are proposed:

Value of the Bid (USD mn)	Current Fee (USD)	Proposed Fee (USD)
Less than 5	5,000	7,500
Over 5 to 25	10,000	15,000
Over 25 to 100	37,500	55,000
Over 100 to 500	100,000	150,000
Over 500	250,000	370,000

Issue for consideration

12. Are the proposed adjustments appropriate? If not, please explain why and suggest what alternative adjustments would be more appropriate. We would be particularly interested in any comparisons you wish to make with takeover fee regimes in other jurisdictions.

61. Please note that, in [CP96: Proposed Amendments to the DFSA Fee Regime](#), regarding changes in the DFSA fee regime in relation to Authorised Firms and Individuals in the DIFC, there was a proposal to introduce a USD 5,000 application fee for an endorsement to operate a Trade Repository subsequent to the initial application for a licence. That proposal has now been made as a rule by the DFSA Board and comes into effect on 1 January 2015. For consistency, it is proposed that the same fee be applied to AMIs, should they choose to apply for an endorsement to operate a Trade Repository subsequent to the initial application for a licence.