

CONSULTATION PAPER NO. 129



DFSA LISTING REGIME FOR SMEs

13 November 2019

PREFACE

Why are we issuing this Consultation Paper (CP)?

1. This paper sets out our proposals for a regulatory regime that permits Small or Medium Sized Enterprises (SMEs) to list their shares on an AMI in the DIFC.
2. These proposals will, we believe, help SMEs by providing appropriate and proportionate regulatory standards, while at the same time providing adequate levels of investor protection. We would appreciate stakeholders' views on these issues.

Who should read this CP?

3. The proposals in this Paper should be of interest to:
 - a. potential SME applicants;
 - b. Persons who operate or intend to operate an Authorised Market Institution or ATS that facilitates trading in the Shares of a SME;
 - c. Persons providing legal, accounting, audit, or compliance services to SMEs in the DIFC or those who wish to provide such services; and
 - d. potential investors in listed SMEs.

Terminology

4. In this CP, defined terms have the initial letter of a word, or of each word in a phrase, capitalised and are defined in the Glossary Module (GLO). Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.
5. One new term and definition is proposed: SME - Small or Medium-Sized Enterprise. See paragraphs 23 to 25.

What are the next steps?

6. Please send any comments online by clicking [here](#). You will need to 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. The deadline for providing comments is **12 January 2020**.
7. Following public consultation, we will proceed to make any relevant changes – amended as appropriate to reflect points raised in consultation - to the DFSA's Markets Rules (MKT), Fees Module (FER) and Glossary Module (GLO). You should not act on the proposals until any relevant changes to the DFSA's Rules are made.¹ We shall issue a notice on our website telling you when this happens.

Structure of this CP

8. The remainder of this CP contains:

¹ If you have queries on listing SMEs or operating a SME platform in the DIFC, please contact the DFSA Markets Division at markets@dfsa.ae

Background information;

Section 1 – Proposal for a Listing Regime for SMEs;

Section 2 – Proposals for Fees for SME Applicants and Listed SMEs;

Appendix 1: Draft amendments to the MKT Rulebook;

Appendix 2: Draft amendments to the FER Module;

Appendix 3: Draft amendments to the GLO Module; and

Appendix 4: Questions in this Consultation Paper.

Background information

Small and Medium Enterprise growth in the UAE

9. Start-ups and SMEs contribute significantly towards the UAE's economic growth. According to the UAE Ministry of Economy, SMEs are the key engines of the national economy and are identified as one of the most important strategic drivers to support productive sectors. More than 94% of the companies operating in the UAE are SMEs and the SME sector provides jobs for more than 86% of the private sector's workforce.² At the same time, SMEs are known to have difficulty accessing funding. Given the importance of start-ups and SMEs, it is important to develop financing solutions to bridge the commercial funding gap and ease cash flow issues.
10. A DFSA listing regime that provides SMEs access to the equity capital markets in or from the DIFC, we believe, could contribute towards addressing this funding gap and be beneficial to the growth of the DIFC, Dubai and the UAE. Our proposals also align with various UAE government initiatives to support and grow the SME sector. At the same time, investing in SMEs carries its own specific risks to investors, following from, for example, small size, limited operating history and limited management experience. Specifically, such risks include investors having insufficient information on how management have managed business operations, corporate governance failures that may result in general mismanagement or financial crime, the risk that key individuals exit the company soon after listing, the inability to comply with secondary market-disclosure obligations and a lack of liquidity in the after-market. Our proposals have been drafted keeping these risks in mind, for example, by requiring compliance with the DFSA corporate governance regime and by imposing a lock-up period on pre-listing shareholders, as set out below.

Summary of benefits of the proposed SME regime

11. In summary, the intended benefits of the proposed regime are that it potentially allows SME companies:
 - a. to obtain equity financing through the capital markets, bridging a funding gap; and
 - b. in comparison to the established equity listing regime, to:
 - i. list with less than three years' track record;
 - ii. benefit from lower fees when filing a Prospectus for approval; and

² See: <https://government.ae/en/information-and-services/business/crowdfunding/the-impact-of-smes-on-the-uae-economy>

- iii. appoint a compliance adviser, rather than a sponsor, to assist it in complying with DFSA requirements at application and on an ongoing basis.

Practices in other jurisdictions

12. Many jurisdictions have developed their own approaches to the regulation of listing of SMEs. Generally, though, the relative market capitalisation of SME listings vis-à-vis total market capitalisation remains small.³ We have looked at the following in respect of listed SMEs: Nomu (The Saudi Stock Exchange (Tadawul)); TSXV (Toronto Stock Exchange, Canada); AIM (LSE, UK); ACE (Bursa Malaysia); Catalyst (Singapore Exchange); Mothers (Japan Exchange Group); and the Prospectus Directive (Growth Prospectus) requirements in the European Union.
13. We found that these SME regimes distinguish themselves from their respective regular listing regimes through different requirements on issues such as prospectus content; market capitalisation (minimum/maximum); permitted investor type (retail and/or institutional); minimum shareholder base; minimum public float; minimum offer percentage; sponsor/compliance advisor; SME definition criteria; accounting standards; lock-in arrangements; and minimum working capital.
14. We have considered these different requirements across the various jurisdictions in arriving at our proposals, which are set out below.

Section 1: Proposals for Listing Regime for SMEs

15. In our view, the current DFSA rulebook is drafted sufficiently broadly to accommodate a SME listing framework with limited new Rules. We propose, therefore, that key elements of our existing listing regime - as it applies to larger issuers - should also apply without change to SMEs. In our view, only a limited number of new requirements are needed to achieve a complete SME listing framework.
16. We believe that the following aspects of the existing DFSA listing regime should be incorporated into the proposed SME regime without change:
 - a. Primary Disclosure – Prospectus;
 - b. Secondary Disclosures – periodic: financial reporting and audit standards;
 - c. Secondary Disclosures – ongoing: inside information;
 - d. Corporate Governance; and
 - e. Shares in public hands.

Primary Disclosure – Prospectus

17. We propose that a SME applicant must produce a prospectus that complies with the Markets Law 2012 ('Markets Law') and Markets Rules, to be approved by the DFSA, unless there is an exemption from the obligation to do so. We expect that this will not result in a disproportionate regulatory burden because, in many instances, disclosure requirements will likely not be applicable to a SME applicant due to, amongst other factors, its size and nature or limited years in operation. While some benchmarked jurisdictions have simplified prospectus disclosure requirements for SMEs, we consider that our existing regime and Rules on disclosure already anticipate that various

³ See: [July 2015 IOSCO \(Growth and Emerging Markets Committee\) report on financing of SMEs through the capital markets \(FR11/2015\)](#), p.8.

requirements may not be applicable in some circumstances. We consider it more straightforward to rely on the flexibility of existing requirements.

Secondary Disclosures – periodic: financial reporting and audit standards

18. Our Rules provide the DFSA with the discretion to permit standards acceptable to us, instead of the default – IAASB and IFRS. We propose to permit SMEs to list using their existing audited historical financial statements, prepared in accordance with their national audit and accounting standards, on the basis that those standards are acceptable to the DFSA. In considering whether a given set of national standards are acceptable, we would, for example, consider the position a national audit regulator is taking in respect of convergence with IAASB and IFRS.
19. Once listed, we propose to require the SME to produce audited accounts prepared in accordance with IFRS (or other standards acceptable to us) and auditing standards of the IAASB (or other standards acceptable to us) for the next and subsequent financial years.

Secondary Disclosures – ongoing

20. We consider it important for the protection of investors and maintaining an orderly market that the market is properly informed. Therefore, we propose to require listed SMEs to comply with the existing requirements under the Markets Law and Markets Rules in respect of inside information and disclosure, including disclosure of interests by Connected Persons and of Directors' material interests.

Corporate Governance

21. We consider that a listed SME, like any other Reporting Entity, should have a corporate governance framework in place at the time of listing. The jurisdictions we reviewed (see paragraph 12) all require listed SMEs to have a corporate governance framework in place, going into varying levels of detail and prescriptiveness. Our 'comply-or-explain' corporate governance regime is already designed to provide a degree of flexibility and we expect that it will permit a SME to achieve the outcomes intended whilst taking into account the nature, scale and complexity of its business.

Q1: Do you agree with our proposal to introduce a SME framework making use of key elements of our existing regime?

Proposed new requirements

22. We consider that, to introduce a complete SME framework, Rule changes and new requirements are needed in the following areas:
 - a. introducing a definition of a SME;
 - b. minimum market capitalisation requirements for regular listing;
 - c. trading record;
 - d. lock-in arrangements;
 - e. prohibition on share repurchases;
 - f. website disclosures;
 - g. compliance adviser; and
 - h. fees.

Definition of a SME

23. Across other jurisdictions (see paragraph 12), various tests are used to define what constitutes a SME. These include minimum and maximum market capitalisation; revenue earned; profit earned; gross and net assets; and number of employees.
24. We propose a definition of SME based on a maximum market capitalisation: companies with an expected market capitalisation at time of listing of less than USD 100 million⁴ could be listed as a SME. We propose to not require a minimum market capitalisation for a SME.⁵ A SME will have a number of tailored requirements applicable to it at the application stage and afterwards.
25. We believe it is undesirable from an investor protection point of view that companies with a very high market capitalisation should be subject to alleviated ongoing requirements. A company listed as a SME will cease to be a SME, and become subject to the regular DFSA Rulebook requirements applicable to Listed Entities that are not SMEs, if the average aggregate market value of its listed Shares exceeds USD 500 million, measured over any period of 90 consecutive days. We propose that the SME definition and, by extension, the SME framework, apply to new applicants for listing only. We do not intend that companies that are already listed on an AMI (or ATS) in the DIFC, at the time the Rules based on this proposal enter into force, should be subject to the definition of a SME and SME framework. We note that, at the current time, no such companies fall within the proposed definition of a SME.

Please refer to draft MKT Rule 1.3.3 in Appendix 1 and the draft GLO definition in Appendix 2.

Issues for consideration

Q2: Do you agree with our proposed definition of SME? If not, why not and what alternative definition would you suggest?

Q3: What do you consider the appropriate criteria, other than capitalisation, for a SME to cease to have that status?

Minimum market capitalisation for regular listing

26. Currently, the minimum market capitalisation for a regular listing of Shares is USD 10 million at time of listing. In light of the proposed SME definition, and in particular the proposed maximum SME market capitalisation of less than USD 100 million at time of listing, we propose to increase the existing minimum market capitalisation required for a regular share listing correspondingly. Doing so will create a proper and clear distinction between the two regimes. To achieve this, we propose to raise the minimum market capitalisation for applicants for a regular listing to USD 100 million at time of listing, an increase from the current minimum of USD 10 million.

Please refer to draft MKT Rule 9.3.9 in Appendix 1.

⁴ Subject to any minimum capitalisation requirement for public companies under the laws of the country of incorporation of the applicant. For example, where the applicant is a DIFC public company, its minimum allotted share capital would need to be no less than USD 100,000 at all times (Article 35(3)(a) of the Companies Law, DIFC Law No. 5 of 2018).

⁵ Similar to the majority of the reviewed jurisdictions, including the LSE AIM regime.

Issues for consideration

Q4: Do you agree with our proposal to raise the minimum market capitalisation for a regular listing to USD 100 million? If not, why not and what alternative threshold would you suggest, and why?

Trading record

27. Our Rules require an applicant to have three years' operating history accompanied by audited financial statements for those three years. However, we have flexibility in this regard. For the purposes of our SME listing framework we propose to require a minimum operating record of one year accompanied by audited financial statements for that year in the prospectus. Audited financial statements for at least one year provides investors with some comfort as to existing management's experience and governance. For good measure, where an applicant SME has a track record of longer than one year, it would have to include any additional audited financial statements, up to three years. It should be noted that we do not intend to permit the listing of Special Purpose Acquisition Companies (SPACs) and cash shells, or listings without a capital raising.

Please refer to draft MKT Rule 9.3.2 in Appendix 1.

Issues for consideration

Q5: Do you agree with our proposal to require a SME to have, at the least, an operating record and accompanying audited financial statements for one year to be eligible to apply for listing as SME? If not, why not?

Lock-in arrangements

28. We propose to impose a mandatory lock-in period, for 24 months, for all pre-listing shareholders for listed SMEs. The reason for our proposal is that, in many cases, the pre-listing shareholders of a SME will be senior management or founders of the company and, as such, they will be one of the applicant's core assets. We consider a mandatory lock-in for secondary trading appropriate, to reduce the risk that key shareholders, directors and senior managers sell out early. Instead, through the lock-in we want to ensure that their interests align with the interests of post-listing investors.⁶

Please refer to draft MKT Rule 9.3.11 in Appendix 1.

Issues for consideration

Q6: Do you agree with our proposal to impose a mandatory lock-in period for all pre-listing shareholders of the SME during the first 24 months from listing? If not, why not?

Prohibition on share repurchases

29. Under our Markets Rules, a listed company may reduce its share capital by undertaking a share repurchase.⁷ However, we propose to prohibit share repurchases for SMEs

⁶ A lock-in for all pre-listing shareholders of a SME exists in most of the reviewed jurisdictions, imposed either at the discretion of the listing authority or by rule for periods of an absolute minimum of 12 months.

⁷ Provided the company meets any applicable requirements for being permitted to undertake a share repurchase under the laws of its country of incorporation. This would normally include, as a minimum, a requirement that the company be solvent, and remains solvent post-share repurchase.

during the first 24 months from listing. This is to prevent corporate money being transferred to pre-listing shareholders, denying the company of the working capital it needs for its operations and growth, as well as to align the interests of key pre-listing shareholders, directors and senior managers with the interest of post-listing investors.

Please refer to draft MKT Rule 3.3.4 in Appendix 1.

Issues for consideration

Q7: Do you agree with our proposal to introduce a prohibition on share repurchases during the first 24 months from listing? If not, why not?

Company information disclosure

30. We propose to require listed SMEs to maintain on their website certain key information relevant to investors. Our proposal is similar to the requirement for ongoing company information disclosure on the company website imposed by the LSE AIM (“Article 26 disclosures”).⁸ This is to reduce the risk of investors having inadequate or delayed information. This information would, amongst other things, include the current articles of association, details of the company’s corporate governance code, names of the directors with biographies, the annual accounts for the last three years (or less, if the company still has a shorter trading record) or since admission.

Please refer to draft MKT Rule 4.8.1 in Appendix 1.

Issues for consideration

Q8: Do you have any comments on our proposal to require listed SMEs to maintain key company information on their website? If so, what are they?

Compliance adviser

31. The DFSA has the discretion to require an applicant to appoint a sponsor firm to assist it with its offer and admission to trading.⁹ Sponsors are typically investment banks. Market feedback suggests that requiring a sponsor would hinder the growth of a SME market in the DIFC due to the limited number of firms in the UAE capable of undertaking the role and the potential cost involved.

32. We propose, using our discretion, not to require a SME applicant to appoint a sponsor firm. Instead, we propose to require the applicant to appoint a compliance adviser to advise it on the listing process. We would expect the compliance adviser to have sufficient senior competent staff and to have a proven track record of relevant corporate finance transaction experience. We would also normally expect the compliance adviser to be domiciled, or have a presence, in the DIFC.

33. While the role of a sponsor appointed in accordance with section 7.1 of the Markets Rules¹⁰ terminates at the end of the offer period, we propose that a compliance adviser appointed to assist a SME would have an ongoing role, for the duration of the period for which the company remains a SME with listed Shares.

⁸ See [London Stock Exchange AIM Rules for Companies, March 2018 \(updated July 2019\)](#), pages 11 and 12.

⁹ See MKT 7 on sponsors and compliance advisers.

¹⁰ Elaborated on in more detail in [Policy Statement 1/2012 Policy Statement on Appointment of a Sponsor](#).

34. To a large extent, the ongoing role we envisage for a compliance adviser appointed to assist a SME corresponds with the existing role of a compliance adviser described in section 7.2 of the Markets Rules and Policy Statement 2/2012 Policy Statement on Appointment of Compliance Adviser.¹¹ Currently, such compliance advisers could, for example, be a compliance consultant or a boutique corporate finance advisory firm, a law firm or the corporate advisory side of an accountancy firm. We envisage the same type of companies acting as a compliance adviser to a SME. Therefore, we propose to use MKT section 7.2 as the basis for appointing a compliance adviser. It is key to our proposals that SMEs are also properly advised in the application stages prior to listing. We propose to introduce a new Rule to make it clear that a SME may be required to appoint a compliance adviser to assist the SME both with the listing process and on an ongoing basis once its Shares are admitted to the List.

Please refer to draft MKT Rule 7.2.3A and draft Guidance under MKT Rule 7.1.2 and Rule 7.2.1 in Appendix 1.

Issues for consideration

Q9: Do you have any comments on our proposed requirement for SMEs to engage a compliance adviser, both pre-listing and on an ongoing basis? If so, what are they?

Section 2: Proposals for Fees for SME Applicants and Listed SMEs

35. We propose to introduce a fee structure which is proportionate, transparent and simple, broadly comparable to the other SME listing regimes we reviewed and that is efficient to administer. The fee structure includes filing fees and an annual fee.
36. We propose to introduce a new prospectus review filing fee for SME applicants of USD 10,000. This is substantially less than the USD 35,000 we currently apply for a prospectus review for equity securities. We propose to apply the same listing fee of USD 2,500 that we currently apply.
37. For SME applicants that submit supplementary prospectuses, or any other document requiring approval of the DFSA, we propose to apply the same fee structure that we currently apply for equity securities.
38. Currently, a listed issuer of Shares is required to pay an annual fee of at least USD 2,500, with possibly additional amounts based on the year-end market capitalisation of the issuer.
39. We propose to introduce an annual flat fee for SME equity listings of USD 10,000. This USD 10,000 annual fee is on the low end in comparison to other jurisdictions, which charge annual fees of between USD 10,200 (equivalent) and USD 19,000 (equivalent).

Please refer to draft FER Rule 3.11.1 and Rule 4.1.1 in Appendix 3.

¹¹ The DFSA may, in due course, consider whether it is desirable to supplement or revise [Policy Statement 2/2012 Policy Statement on Appointment of Compliance Adviser](#) to reflect the role of a compliance adviser assisting a SME.

Issues for consideration**Q10: What are your views on the proposed fees for applicant SMEs and listed SMEs?****Other issues**

40. In our view, these proposals suffice to create a complete framework for listed SMEs.

Issues for consideration**Q11: Are there in your view any other elements (new or amended) required to create a complete regime for listed SMEs, in addition to our proposals?**

Appendix 4: Questions in this Consultation Paper

- Q1: Do you agree with our proposal to introduce a SME framework making use of key elements of our existing regime?**
- Q2: Do you agree with our proposed definition of SME? If not, why not and what alternative definition would you suggest?**
- Q3: What do you consider the appropriate criteria, other than capitalisation, for a SME to cease to have that status?**
- Q4: Do you agree with our proposal to raise the minimum market capitalisation for a regular listing to USD 100 million? If not, why not and what alternative threshold would you suggest, and why?**
- Q5: Do you agree with our proposal to require a SME to have, at the least, an operating record and accompanying audited financial statements for one year to be eligible to apply for listing as SME? If not, why not?**
- Q6: Do you agree with our proposal to impose a mandatory lock-in period for all pre-listing shareholders of the SME during the first 24 months from listing? If not, why not?**
- Q7: Do you agree with our proposal to introduce a prohibition on share repurchases during the first 24 months from listing? If not, why not?**
- Q8: Do you have any comments on our proposal to require listed SMEs to maintain key company information on their website? If so, what are they?**
- Q9: Do you have any comments on our proposed requirement for SMEs to engage a compliance adviser, both pre-listing and on an ongoing basis? If so, what are they?**
- Q10: What are your views on the proposed fees for applicant SMEs and listed SMEs?**
- Q11: Are there in your view any other elements (new or amended) required to create a complete regime for listed SMEs, in addition to our proposals?**