



CONSULTATION PAPER NO. 78

6 OCTOBER 2011

PROPOSED DFSA LISTING RULES

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Why are we issuing this paper?

1. Following the announcements made by the DFSA and NASDAQ Dubai on 13 September 2011 that the responsibility for maintaining the Official List of Securities (the "List") was to be transferred from NASDAQ Dubai to the DFSA on 1 October 2011, the DFSA is obliged to make listing rules governing the admission of Securities to the Official List of Securities ("Listing Rules"). This Consultation Paper sets out the DFSA's proposals in this regard.
2. For the period between 1 October 2011 and the coming into force of the Listing Rules which are the subject of this consultation, the recently adopted NASDAQ Dubai listing rules apply with amendments (see rule-making instrument No. 80 of 2011). Once these proposed new Listing Rules come into force, the recently adopted NASDAQ Dubai listing rules will be repealed.

Who should read this paper?

3. The proposals in this paper would be of interest to:
 - (a) companies incorporated both in the DIFC and in other jurisdictions who wish to raise capital by offering their Securities to the public in or from the DIFC;
 - (b) Authorised Market Institutions ("AMI");
 - (c) companies whose Securities are, or are to be, admitted to trading on an AMI;
 - (d) Fund Managers where Units of the Funds they manage are, or are to be, admitted to trading on an AMI;
 - (e) Persons investing or intending to invest in Securities offered in or from the DIFC;
 - (f) Authorised Firms acting as advisors, underwriters, and placing agents in respect of offers of Securities or dealing or trading in Securities which are admitted to trading on an Authorised Market Institution;
 - (g) Persons providing legal, accounting and audit services or acting or proposing to act as sponsors or other third party advisers in respect of offers of Securities; and
 - (h) advisors to Persons in (a) to (g) above.

How is this paper structured?

4. The key aspects of these proposals are set out as follows:
 - (a) A background to the proposed new Listing Rules - Paragraph 9 - 12;
 - (b) Outline of our proposed changes – Paragraph 13 – 21;
 - (c) Other matters – Paragraphs 22 – 26; and
 - (d) Benchmarking – Paragraph 27.
5. The proposed Listing Rules and the changes to the Markets Law [2011], FER and GLO modules are in Appendices 1 - 4. Appendix 5 contains a table identifying key differences between the previous NASDAQ Dubai listing rules and the DFSA's proposed new Listing Rules.

How to provide comments?

6. All comments should be in writing and sent to the address or email specified below. If sending your comments by email, please use the Consultation Paper No. in the subject line. You may, if relevant, 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 or emailed to:

Consultation Paper No. 78
Policy and Legal Services
DFSA
PO Box 75850
Dubai, UAE
Email: consultation@dfsa.ae
Tel: +971(0)4 3621500

What happens next?

7. The deadline for providing comments on the proposals is **15 November 2011**. The DFSA hopes to ensure that the new Listing Rules are ready for making at the same time as the proposed new Markets Law and Rules, which were consulted on under CP75, and which should come into effect in early 2012. Once we receive your comments, we shall consider if any further refinements are required to these proposals. We shall then proceed to enact the relevant changes to the DFSA's Rulebook upon the coming into force of the new Markets Law [2011]. You should not act on these proposals until the relevant changes to the Markets Law and DFSA Rulebook are made. We shall issue a notice on our website telling you when this happens.

Terminology in this paper

8. 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. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

Background

9. Following the mutually-agreed transfer of the List from NASDAQ Dubai to the DFSA, the DFSA is obliged, pursuant to Article 17D(5) of the Markets Law 2004, to make Listing Rules. The proposed new Listing Rules are designed to be implemented as part of the new Markets Regime on which we sought public comment under CP75 in April 2011. The new Markets Regime will not come into effect until the new Markets Law is enacted by the Ruler. We expect this to be in the first quarter of 2012. The proposed new Listing Rules will form a new chapter 9 in those new Markets Rules.
10. For Issuers, one of the key benefits of the transfer of the List to the DFSA will be that it will permit the Prospectus and listing approval processes to be centralised at the DFSA. This should ensure less regulatory duplication and greater efficiency for Issuers.
11. In drafting the Listing Rules we have taken into consideration the need for proportionality, efficiency and competition. The rationale for this approach is that we wished to create a set of Listing Rules which are aligned with Articles 8(3)(a),¹ 8(4)(d)² and 8(4)(f)³ of the Regulatory Law 2004. In doing so, we consider that the proposed Listing Rules will provide appropriate levels of protection for direct and indirect users of the financial services industry in the DIFC which is a DFSA objective under Article 8(3)(e) of the Regulatory Law 2004.
12. We have sought to create proportionate rules which are of an international standard but which also reflect the nascent nature of the DIFC capital markets. The DFSA has been careful to ensure that the proposed Listing Rules do not put the DIFC at a competitive disadvantage to its financial centre peers, and where possible, has kept the Listing Rules simple.

Outline of our proposed changes

Scope of the Listing Rules

13. The DFSA's proposed Listing Rules are divided into the following seven key sections:
 - (a) The Listing Principles;
 - (b) General eligibility requirements;
 - (c) Application for admission to the List;
 - (d) Determination of applications and appeals;
 - (e) Suspending, delisting and restoring a Listing;

¹ "to foster and maintain fairness, transparency and efficiency in the financial services industry (namely, the financial services and related activities carried on) in the DIFC."

² "minimising the adverse effects of the activities of the DFSA on competition in the financial services industry."

³ "ensuring the cost of regulation is proportionate to its benefit."

- (f) Continuing obligations;
 - (g) Provision of information to the DFSA;
14. Each key section is outlined below:

The Listing Principles

15. We propose to introduce the high-level principles for Listed Entities. These principles will set out a broad compliance framework for Listed Entities. The objective of Listing Principles is to ensure that Listed Entities understand and pay due regard to the fundamental role played by them in maintaining market confidence and ensuring a fair and orderly market.
16. The Listing Principles will be in addition to and complement the Corporate Governance Principles for Reporting Entities but will have a narrower application, being applicable only to those Reporting Entities whose Securities are listed.

Issues for consideration

1. Do you have any concerns or comments about the proposed Listing Principles?
2. Are these five principles sufficient, or should the DFSA add additional mandatory principles? If yes, what additional principles should apply to Listed Entities?

General eligibility requirements

17. We propose to introduce new eligibility requirements applicable to an applicant and, where relevant, to the Securities which are to be listed. The detailed Rules can be found in Annex A. The following provides a brief description of the general eligibility requirements for admission of Securities to the List:
- (a) Incorporation, validity and transferability – these Rules deal with certain legal requirements which an applicant’s Securities must meet.
 - (b) Market capitalisation – we propose a minimum market capitalisation for listing of \$10 million for Shares and \$2 million for Debentures. These have been set deliberately low to reflect the nascent state of the DIFC capital markets.
 - (c) Audited financial statements – this Rule covers the requirement for audited accounts and other matters including preparation of accounts according to International Financial Reporting Standards.
 - (d) Working capital – an applicant will need to satisfy the DFSA that it has sufficient working capital available for the twelve months following its admission to the List.
 - (e) Shares in public hands – we propose a minimum of twenty-five per cent, in line with the EU approach.

- (f) Whole class to be listed – this requirement mandates that to be admitted to the List the whole class of the applicant’s Securities must be listed.
- (g) Settlement – to be listed, an applicant’s Securities must be eligible for electronic settlement and the DFSA must be satisfied with the arrangements for clearing and settlement.
- (h) General suitability – this is a general Rule which requires that an applicant’s business is suitable for listing and sets out the criteria that the DFSA will look at in assessing suitability.
- (i) Management experience and expertise – this Rule requires that the applicant’s Directors must have appropriate experience and expertise in the business operations of the applicant.
- (j) Controlling shareholder – this Rule imposes requirements of independence from controlling shareholders.
- (k) Conflicts of interest – this Rule imposes systems and controls requirements on applicants in relation to the management of material conflicts of interest.
- (l) Warrants – this Rule sets a ceiling of twenty percent of issued share capital on the number of Warrants which may be issued by an Applicant.

Issues for consideration

3. Do you have any concerns or comments about our proposed listing eligibility criteria?

Application for admission to the List

18. We propose to introduce Rules for new listing applications. These Rules will govern the administrative process and documentation required to be filed by an applicant to be listed. They are based on the procedures adopted by the UK Listing Authority (“UKLA”) and adapted accordingly. Essentially, the new procedures specify the types of documents which must be submitted to the DFSA prior to consideration of an application. We are currently drafting new operating policies and procedures to complement the Rules for listing application which we propose to publish on our website.

Determination of applications and appeals

19. In this section, we have reflected the Markets Law powers available to the DFSA in relation to the determination of applications to be admitted to the List. We have also added guidance on the appeals process for applicants who have been refused admission to the List by the DFSA.

Suspending, delisting and restoring a Listing

20. As with the determination of applications and appeals, in this section we have reflected the existing Markets Law powers available to the DFSA to suspend, delist and restore Securities to the List. We have also elaborated on the

circumstances in which the DFSA would suspend or delist a security. Much of the guidance is adapted from the UKLA rules. We have also added Guidance on the appeals process.

Continuing obligations

21. We propose to make a number of requirements ongoing obligations for Listed Entities. These requirements will have continuing application and must be complied with at all times. In summary, the proposed continuing obligations for Listed Entities are:
- (a) Information and facilities for shareholders – the proposed Rules would oblige a Reporting Entity to ensure that all the necessary information and facilities (including notices and circulars) are available to its shareholders to enable them to exercise the rights attaching to their Securities.
 - (b) Shares in public hands – a Listed Entity will need to ensure that it has sufficient Shares in public hands at all times.
 - (c) Notifications regarding admission to trading - a Listed Entity will need to ensure that it notifies the DFSA of changes to its trading status on an AML or to any events relating to the trading status of its Securities.
 - (d) Purchase of own Shares - we have adopted proportionate rules in this area to reflect the nascent nature of the DIFC capital markets. In future the DFSA will look to enhance these Rules should the DFSA see abuse in the area of Share repurchases.
 - (e) Other ongoing requirements – the DFSA has inserted a general Rule which makes the following initial eligibility requirements ongoing requirements for Listed Entities: whole class of Securities to be listed; suitability; controlling shareholders; and conflicts of interest.
 - (f) Security specific disclosures - along with a Listed Entity's disclosure obligations in chapter 4 of the proposed new Markets Law, we propose to add to the Listing Rules Security-specific disclosure obligations. These Rules have been placed in a table in an Appendix to the Rules (see Appendix 1) to keep the main body of the Listing Rules shorter, for ease of use and because their application is not general.

Issues for consideration

- 4. Do you have any concerns or comments relating to our proposal to introduce the new continuing obligations for Listed Entities?
- 5. In particular, do you have any concerns or comments relating to:
 - (a) our proposal to introduce the new Rules for purchasing of own Shares?
 - (b) the proposed continuing obligation to have at least 25% of Shares in public hands at all times?

Provision of information to the DFSA

22. We have added a number of Rules dealing with provision of information to the DFSA, timing of provision, publication to shareholders and contact details of persons at the Listed Entity authorised to act as the first point of contact with the DFSA.

Other matters

New definitions

23. The Listing Rules will introduce a number of new Definitions to the Glossary module. The new definitions are the “List”, “Listed Entity”, “Listed Securities”, the “Listing Principles” and the “Listing Rules”. The definitions can be found at Appendix 2.

Secondary listings

24. For applicants with a primary listing on a non-DIFC exchange who wish to seek a secondary listing of Securities on an AMI, we have added guidance reflecting our approach to waiving one or more requirements of the Listing Rules for an Issuer of a secondary listing. The guidance sets out the criteria that the DFSA will consider when assessing a waiver application for a secondary listing, including jurisdiction and cooperation with the relevant regulator in the Issuer’s location of primary listing or equivalent.

Exempt Offerors

25. Exempt Offerors (as defined in the proposed new Markets Law), which includes primarily government Issuers and quasi-government Issuers whose Securities are guaranteed by a government, will be exempt from the offer provisions of the proposed new Markets Law, including the Listing Rules. This would restrict an Exempt Offerors from having its Securities Admitted to trading on an AMI because listing is a prerequisite. Therefore, DFSA has included guidance in the Listing Rules about modifying the Listing Rules for Exempt Offerors who wish to voluntarily comply with the Listing Rules in order to include their Securities on the Official List and thereby seek admission to trading on an AMI.

Defence to Market Abuse

26. We propose to recommend to the Ruler that a new provision be added to the proposed new Markets Law which would provide a defence to a person accused of market manipulation if such person can show that he acted in accordance with the “purchase of own Shares” provisions in the Listing Rules. We already have a defence to market manipulation for price stabilisation so it seems sensible to include a similar defence for an Issuer which legitimately purchases its own Shares. We also have a defence to insider dealing where a person can show that he acted in accordance with the purchase of own Shares provisions in the Listing Rules. (See Appendix 4)

Application fee

27. The DFSA proposes a fee of \$2,000 for an application for admittance of Securities to the Official List of Securities, at this stage. We do not propose to levy an annual listing fee for Securities which are admitted to the List at this stage. However, we propose to introduce an annual fee in 2012 after public consultation on the subject.

Issues for consideration

6. Do you have any general concerns or comments about our proposed new Listing Rules?
7. In particular, do these proposed new Listing Rules create any unintended consequences?