

**Appendix 8**

In this appendix underlining indicates proposed new text and striking through indicates deleted text.



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# The DFSA Rulebook

## Markets Rules

### **(MKT)**

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## 2 OFFER OF SECURITIES

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### 2.6 Approval and publication of a prospectus

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#### Approval of a prospectus

- 2.6.2** (1) The DFSA will only approve a Prospectus which has been filed with the DFSA in accordance with Rule 2.6.1 as soon as reasonably practicable where:
- (a) it is ~~reasonably~~ satisfied that:
    - (i) the Prospectus meets all the applicable requirements in the Law and the Rules; and
    - (ii) ~~it is satisfied that~~ the Board of the Undertaking whose Securities are to be offered complies with, and has adequate systems and controls in place to ensure on-going compliance with, the applicable requirements; and
  - (b) it has received all the necessary consents as required under the requirements in this chapter.
- (2) A Prospectus filed with the DFSA is not an Approved Prospectus for the purposes of Article 14(2) unless the DFSA has issued to the applicant a notice stating its approval:
- (a) of the Prospectus or the Supplementary Prospectus as the case may be; and
  - (b) in the case of a Prospectus in (a) comprising multiple documents, of all the multiple documents.
- ~~(3) Where the DFSA does not approve a Prospectus as specified in (2), it must notify the applicant as soon as reasonably practicable that the Prospectus has not been approved by the DFSA and the reasons for not doing so.~~
- ~~(4) The Regulatory Appeals Committee has the jurisdiction to hear and determine any appeal in relation to a decision by the DFSA not to approve a Prospectus.~~
- (3) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA not to approve a Prospectus under this Rule.
- (4) If the DFSA decides to exercise its power not to approve a Prospectus under this Rule, the applicant may refer the matter to the FMT for review.

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## 2.7 Offer documents from other jurisdictions

- 2.7.1** (1) The DFSA may, subject to (2), approve an offer document produced under legislation in a jurisdiction other than the DIFC for the purposes of meeting the Prospectus requirements in this chapter where:
- (a) it is satisfied that:
    - (i) the Prospectus contains information equivalent to that which is required for a Prospectus in this chapter; and
    - (ii) the offeror meets all the other requirements relating to a Prospectus Offer as prescribed in the Rules; or
  - (b) the other jurisdiction provides a level of regulation relating to the offer which is acceptable to the DFSA.
- (2) The DFSA may, subject to (3), approve an offer document referred to in (1) in accordance with the requirements and procedures set out in section 2.6 and, subject to such conditions or restrictions imposed by the DFSA as it sees fit.
- (3) An application for approval of an offer document produced in accordance with the legislation in a jurisdiction other than the DIFC must:
- (a) be made using the appropriate form in AFN;
  - (b) be accompanied by the relevant fee prescribed in FER; and
  - (c) include:
    - (i) where the offer document referred to in (1) is not in the English language, an English translation acceptable to the DFSA; and
    - (ii) a clear statement that it is an offer document prepared in accordance with the requirements applicable in the relevant jurisdiction and not in the DIFC.
- (4) An offer document referred to in (1) is an Approved Prospectus for the purposes of Article 14(1) of the Law where it has been approved by the DFSA in accordance with the requirements in this Rule and section 2.6.
- (5) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA under this Rule not to approve an offer document or to impose conditions or restrictions on an approval.
- (6) If the DFSA decides to exercise its power under this Rule not to approve an offer document or to impose conditions or restrictions on an approval, the applicant may refer the matter to the FMT for review.

**Guidance**

A Person considering filing an offer document pursuant to Rule 2.7.1 should approach the DFSA at the earliest possible time to discuss how to proceed. This is because the DFSA will undertake the assessment required under Rule 2.7.1 on a case-by-case basis. See Guidance item 1 under Rule 2.6.2 for details relating to the DFSA Prospectus approval process.

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**2.13 Miscellaneous**

**2.13.1** (1) The DFSA may require a Prospectus Offer to be underwritten by an underwriter acceptable to the DFSA.

(2) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA under this Rule.

(3) If the DFSA decides to exercise its power under this Rule, the Offeror may refer the matter to the FMT for review.

**2.13.2** If one or more Directors of an Issuer are offering Shares they hold in the Issuer as part of a Prospectus Offer, an Issuer must ensure that the Prospectus contains a prominent statement of:

(a) the identity of each Directors offering his Shares; and

(b) the number of Shares such a Director is offering, and the proportion of the Issuers share capital represented by the holding of that Director.

**2.13.3** (1) The DFSA may, during the Offer Period or such other longer period as specified, impose a requirement that the monies held by a Person making a Prospectus Offer or his agent pursuant to the Prospectus Offer or issuance are held in an escrow account for a specified period and on specified terms.

(2) The DFSA may also require the appointment of a paying agent during the offer period.

(3) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA under this Rule.

(4) If the DFSA decides to exercise its power under this Rule, the Offeror may refer the matter to the FMT for review.

**Guidance**

See also section 3.4 which contains additional restrictions relating to dealings by Restricted Persons which may apply to executive Directors.

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## **4 MARKET DISCLOSURE**

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### **4.2 Disclosure of inside information**

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#### **Disclosure exceptions**

- 4.2.4** (1) A Reporting Entity need not, subject to (2), make disclosure of information pursuant to Rule 4.2.1, where, in the reasonable opinion of the Reporting Entity, the disclosure required by that Rule would:
- (a) be unduly detrimental to the legitimate interests of the Reporting Entity; or
  - (b) disclose commercially sensitive material.
- (2) Where a Reporting Entity intends not to make the disclosure pursuant to (1), it must immediately file with the DFSA a confidential report which:
- (a) contains all the information which it seeks not to disclose and the reasons for non-disclosure; and
  - (b) is in the English language and, where any documents accompanying the report are not in the English language, an English translation of such documents.
- (3) The DFSA may, ~~in its absolute discretion~~:
- (a) specify the period during which disclosure of the information included in the confidential report need not be disclosed to the markets; and
  - (b) extend the period referred to in (a) upon application by the Reporting Entity.
- (4) Where a confidential report is filed with the DFSA under (2), the Reporting Entity need not comply with the requirements in Rule 4.2.1 during the period permitted by the DFSA pursuant to (3), unless or until one of the following occurs:
- (a) the DFSA directs the Reporting Entity to comply with Rule 4.2.1;
  - (b) the Reporting Entity becomes aware that there is a material change of circumstances that renders the reason for non-disclosure of the information no longer valid; or
  - (d) the Reporting Entity becomes aware or has reasonable grounds to suspect that the relevant Inside Information has or may have come to

the knowledge of any Person or Persons other than by way of selective disclosure in accordance with Rule 4.2.3.

- (5) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA under (3) or (4)(a).
- (6) If the DFSA decides to exercise its power under (3) or (4)(a), the Reporting Entity may refer the matter to the FMT for review.

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## **6 LISTED FUNDS**

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### **6.3 Prospectus requirements relating to a listed fund**

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#### **Approval of a prospectus**

- 6.3.2** (1) The DFSA will approve a Fund Prospectus which has been filed with the DFSA in accordance with Rule 6.3.1 as soon as reasonably practicable where it is reasonably satisfied that the Prospectus complies with all the requirements applicable to that Prospectus.
- (2) A Fund Prospectus is not an Approved Prospectus for the purposes of Article 14(2) of the Law unless the DFSA has issued to the applicant a notice stating its approval:
- (a) of the Prospectus or Supplementary Prospectus, as the case may be; and
  - (b) in the case of a, Prospectus in (a) comprising multiple documents, of all the multiple documents.
- ~~(3) Where the DFSA does not approve a Fund Prospectus as specified in (2), it must notify the applicant as soon as reasonably practicable that the Prospectus has not been approved by the DFSA and the reasons for not doing so.~~
- ~~(4) The Regulatory Appeals Committee has the jurisdiction to hear and determine any appeal in relation to a decision by the DFSA not to approve a Prospectus.~~
- (3) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA under this Rule not to approve a Fund Prospectus.

- (4) If the DFSA decides to exercise its power not to approve a Fund Prospectus under this Rule, the applicant may refer the matter to the FMT for review.

**Guidance**

1. A Person intending to apply to the DFSA for approval of a Fund Prospectus pursuant to Rule 6.3.1 should consider submitting a draft Prospectus for preliminary review by the DFSA prior to formally submitting the Prospectus for DFSA approval. See the RPP Sourcebook for procedures for applying for DFSA approval.
2. The approval of a Fund Prospectus by the DFSA will not prevent the use by the DFSA of its powers, such as the stop order power in Article 25 of the Law, in circumstances where the need for such action is subsequently identified. For example, if the DFSA becomes aware, after the approval of the Fund Prospectus, that it contains any misleading or deceptive information, or it breaches the Prospectus provisions in other respects, the DFSA may use its stop order power or take any other action as appropriate in the circumstances.

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- 6.3.3** (1) For the purposes of Rule 6.3.1(b)(ii), the offer document relating to the Foreign Fund must comply with the requirements:
- (a) relating to a Designated Fund in a Recognised Jurisdiction; or
  - (b) in a jurisdiction which provides a level of regulation relating to the offer which is acceptable to the DFSA.
- (2) The DFSA may accept an offer document referred to in (1)(b) subject to such conditions or restrictions imposed by the DFSA as it sees fit.
- (3) Where the offer document referred to in (1) is not in the English language, it must be accompanied by an English translation acceptable to the DFSA.
- (4) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA under this Rule to impose conditions or restrictions.
- (5) If the DFSA decides to exercise its power under this Rule to impose conditions or restrictions, the applicant may refer the matter to the FMT for review.

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## 6.5 Market disclosure relating to a listed fund

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### Disclosure exceptions

- 6.5.4** (1) A Reporting Entity of a Listed Fund need not, subject to (2), make disclosure of information pursuant to Rule 6.5.1, where, in the reasonable opinion of the Reporting Entity, the disclosure required by that Rule would:
- (a) be unduly detrimental to the legitimate interests of the Reporting Entity or the Listed Fund as is applicable; or
  - (b) disclose commercially sensitive material.
- (2) Where a Reporting Entity of a Listed Fund intends not to make the disclosure pursuant to (1), it must immediately file with the DFSA a confidential report which:
- (a) contains all the information which it seeks not to disclose and the reasons for non-disclosure; and
  - (b) is in the English language and, where any documents accompanying the report are not in the English language, an English translation of such documents.
- (3) The DFSA may, ~~in its absolute discretion:~~
- (a) specify the period during which disclosure of the information included in the confidential report need not be disclosed to the markets; and
  - (b) extend the period referred to in (a) upon application by the Reporting Entity.
- (4) Where a confidential report is filed with the DFSA under (2), the Reporting Entity need not comply with the requirements in Rule 6.5.1 during the period permitted by the DFSA pursuant to (3), unless or until one of the following occurs:
- (a) the DFSA directs the Reporting Entity to comply with Rule 6.5.1;
  - (b) the Reporting Entity becomes aware that there is a material change of circumstances that renders the reason for non-disclosure of the information no longer valid; or
  - (c) the Reporting Entity becomes aware or has reasonable grounds to suspect that the relevant Inside Information has or may have come to the knowledge of any Person or Persons other than by way of selective disclosure made pursuant to Rule 6.5.3(4).
- (5) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA under (3) or (4)(a).



- (6) If the DFSA decides to exercise its power under (3) or (4)(a), the Reporting Entity may refer the matter to the FMT for review.

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## 7 SPONSORS AND COMPLIANCE ADVISERS

### 7.1 Sponsors

- 7.1.5** (1) Where, in the opinion of the DFSA, a sponsor appointed by a Person is not suitable, or where a sponsor has not been appointed or has resigned, the DFSA may direct the Person to replace or appoint a sponsor.
- (2) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA under this Rule. The DFSA will give both the Person and, if in the DFSA's opinion a sponsor is not suitable, the sponsor an opportunity to make representations under the procedures in that Schedule.
- (3) If the DFSA decides to exercise its power under this Rule, the Person may refer the matter to the FMT for review.

#### Guidance

~~The Regulatory Appeals Committee has the jurisdiction to hear and determine any appeal in relation to a direction given by the DFSA relating to sponsors (see Article 49(4) of the Law).~~

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- 7.2.4** (1) The DFSA may, by written notice, require a Reporting Entity to appoint a compliance adviser for a specified period to assist the Reporting Entity in meeting its continuing obligations under the Law and the Rules.
- (2) A Reporting Entity that is required to appoint a compliance adviser in accordance with the requirements in this section must ensure that a compliance adviser continues to fulfil the role of compliance adviser until such time as the DFSA advises the Reporting Entity in writing that a compliance adviser is no longer required.

#### Guidance

~~The Regulatory Appeals Committee has the jurisdiction to hear and determine any appeal in relation to a direction given by the DFSA relating to the appointment of a compliance adviser (see Article 49(4) of the Law).~~<sup>1</sup>

<sup>1</sup> Note: Article 49(1) of the Law already sets out due process requirements and the right of review for exercise of this power by the DFSA.

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## **9 THE LISTING RULES**

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### **9.5 Determination of applications and references appeals**

#### **Guidance**

##### **Determination of applications**

1. Under Article 33(1) of the Law, an Authorised Market Institution or the DFSA may only grant admission of Securities to an Official List of Securities maintained by it, in accordance with the requirements in the Law and the Rules made for the purposes of the Law.
2. Under Article 34(1)(b) and 34(2)(b) of the Law, an Authorised Market Institution or the DFSA may impose conditions or restrictions in respect of the admission of Securities to the Official List of Securities maintained by it, or vary or withdraw such conditions or restrictions.
3. Under Article 33(2) of the Law, ~~where an Authorised Market Institution or the DFSA grants admission of Securities to an Official List of Securities~~ it will notify the applicant in writing of its decision in relation to the application for admission of Securities to the Official List of Securities.
4. ~~Under Article 34(1)(a) of the Law, if the DFSA refuses an admission of Securities to the Official List of Securities, the DFSA shall without undue delay, inform the applicant in writing of such refusal and the reasons for such refusal.~~
45. Where the DFSA grants admission of Securities to an Official List of Securities, it will include such Person in its Official List of Securities published on the DFSA website.

##### **References Appeals**

56. Under Article 36(e) of the Law, an Applicant may commence a reference appeal to the FMT DFSA's Regulatory Appeals Committee against in relation to any decision determination by the DFSA in relation to object or refuse an application for admission of Securities to the Official List of Securities, or impose conditions or restriction in respect of the admission of Securities to the Official List of Securities, or vary or withdraw such conditions or restrictions.
7. ~~Under Article 36(d) of the Law, an Applicant may appeal to the DFSA's Regulatory Appeals Committee against any decision by the DFSA to impose conditions or restrictions in respect of the admission of Securities to the Official List of Securities, or vary or withdraw such conditions or restrictions.~~
68. Under Article 28 of the Regulatory Law 2004, a Person that commences a reference wishing to appeal to the FMT Regulatory Appeals Committee a decision of the DFSA must submit a written notice of appeal must do so within 30 days of the ~~notification of the~~ relevant decision.
79. The form of submission that a reference an appeal must take is specified in the rules of procedure of the FMT Regulatory Appeals Committee.

## 9.6 Suspending, delisting and restoring a Listing

### Guidance

1. Under Article 35(1) of the Law, the DFSA may, suspend or delist Securities from an Official List of Securities with immediate effect or from such date and time as may be specified where it is satisfied that there are circumstances that warrant such action or it is in the interests of the DIFC.

### References Appeals

2. Under Article 36(e) of the Law, a Person may commence a reference appeal to the ~~FMT DFSA's Regulatory Appeals Committee~~ in relation to any decision by the DFSA to suspend or delist such Person's Securities from the Official List of Securities.
3. Under Article 28 of the Regulatory Law 2004, a Person that commences a reference ~~wishing to appeal to the FMT Regulatory Appeals Committee a decision of the DFSA~~ must submit a written notice of appeal ~~must do so~~ within 30 days of the ~~notification of the~~ relevant decision.
4. The form of submission that an appeal must take is specified in the rules of procedures of the ~~FMT Regulatory Appeals Committee~~.

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## 9.7 Continuing obligations

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- 9.7.4**
- (1) A Listed Entity must not purchase its own Shares without the prior written approval of the DFSA.
  - (2) The DFSA may make its approval of a proposal by a Listed Entity to purchase its own Shares subject to conditions or restrictions.
  - (3) A Listed Entity which proposes to purchase more than 15% of any class of its Shares must do so only by way of a tender offer to all shareholders of that class.
  - (4) The procedures in Schedule 3 to the Regulatory Law 2004 apply to a decision of the DFSA under (1) not to approve a purchase of Shares and under (2) to approve a proposal subject to conditions or restrictions.
  - (5) If the DFSA decides to exercise its power under (1) not to approve a purchase of Shares or under (2) to make its approval subject to conditions or restrictions, the Listed Entity may refer the matter to the FMT for review.