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**CONSULTATION PAPER NO. 62**

**05 JULY 2009**

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**PROPOSED CHANGES TO THE MARKETS LAW IN RELATION TO  
POWERS OF THE DFSA TO MAINTAIN AN OFFICIAL LIST OF  
SECURITIES**

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## **CONSULTATION PAPER NO 62**

### **PROPOSED CHANGES TO THE MARKETS LAW IN RELATION TO THE POWERS OF THE DFSA TO MAINTAIN AN OFFICIAL LIST OF SECURITIES**

#### **Why are we issuing this paper?**

1. The DFSA proposes changes to the Markets Law 2004 to confer on the DFSA a power to maintain an Official List of Securities, in circumstances where an AMI is unable or unwilling to do so.
2. To support those changes, appropriate regulatory requirements including transitional arrangements will be included in the Offered Securities Rules. These consequential Rule changes will be consulted upon at a later date.

#### **Who should read this paper?**

3. The proposals in this paper would be of interest to:
  - a. Authorised Market Institutions;
  - b. Persons who have issued, are issuing, or are proposing to issue, Securities; or
  - c. Persons seeking to include Securities in an Official List of Securities.

#### **How is this paper structured?**

4. In this paper, we set out:
  - a. the background to the proposals and overview (paragraphs 8 to 10);
  - b. summary of the proposed changes to the Markets Law (paragraphs 11 to 16); and
  - c. transitional arrangements (paragraph 18).

### **How to provide comments?**

5. All comments should be forwarded to the person specified below. 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.

### **What happens next?**

6. The deadline for providing comments on the proposals is **2<sup>nd</sup> September 2009**. Once we receive your comments, we will consider if any further refinements are required to these proposals. We will then proceed to recommend the proposed changes to the Markets Law 2004 to the President for enactment by the Ruler. We will issue a notice on our website telling you when this happens.

**Comments to be addressed to:**  
**Roberta Calarese**  
**Director Policy and Legal Services**  
**DFSA**  
**PO Box 75850**  
**Dubai, UAE**

**or e-mailed to: [rcalarese@dfsa.ae](mailto:rcalarese@dfsa.ae)**

### **Terminology in this paper**

7. 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 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**

8. When the Markets Law 2004 was enacted in September 2004, it was anticipated that the DFSA would be the Listing Authority in the DIFC. Subsequently in 2005, pursuant to a formal request by Nasdaq Dubai (previously known as DIFX) to maintain its own Official List of Securities, the Markets Law was amended to permit the DFSA to grant an endorsement, with conditions or restrictions, on the Licence of an Authorised Market Institution (AMI) to allow it to maintain an Official List of Securities. The DFSA can refuse to grant, or may suspend or withdraw an endorsement.
9. What is not provided in the Law is a power for the DFSA to maintain an Official List of Securities in circumstances where:
  - a. the AMI does not wish to maintain an Official List of Securities itself;
  - b. the DFSA refuses to grant an endorsement to an AMI; or
  - c. the DFSA suspends or withdraws an endorsement.
10. As a result, the DFSA would not be able to step in and exercise the power of maintaining an Official List of Securities on behalf of an Authorised Market Institution in the circumstances described above.

### **Legislative proposals**

11. Thus the proposed amendments are to enable the DFSA to maintain an Official List of Securities in such circumstances for an indefinite period of time. The DFSA's power to maintain an Official List of Securities will sit alongside the ability of an AMI to maintain such a list, where it is authorised by the DFSA. The DFSA may exercise this power where the AMI is unable or unwilling to do so, as described in paragraph 9 above and incorporated in proposed Article 17(2).
12. The DFSA's decisions in relation to the maintenance of the Official List of Securities would be appellable to the Regulatory Appeals Committee.
13. As the objective of the proposed legislative amendments is to confer on the DFSA the power to maintain an Official List of Securities, only minimal changes to the Markets Law 2004 are proposed at this stage.
14. It is important to note that when the DFSA maintains an Official list it does so pursuant to statutory rules and powers, whilst an Authorised Market Institution maintains an Official List pursuant to its listing rules which are of a contractual nature.

15. Further amendments to the DFSA Rulebook's modules such as OSR, AMI and FER will be required to permit the DFSA to maintain an Official List of Securities and these will be published for consultation in due course.
16. The key changes now proposed in the Markets Law are:
  - a. Insertion of a power enabling the DFSA to make rules in relation to the maintenance of an Official List of Securities [Article 8(2)(b)];
  - b. Insertion of a power for DFSA to maintain an Official List of Securities [Article 17(1)];
  - c. Insertion of obligations placed on the DFSA for the maintenance of the Official List of Securities [Article 21];
  - d. Insertion of obligations on the DFSA to maintain Official Lists of Securities in accordance with the Offered Securities Rules [Article 21]; and
  - e. Amendments of appeals provisions for the DFSA's decisions in relation to the listings [Article 24].
17. The amendments in Article 17(5) relating to the substitution of "Securities" with "Investments" have already been consulted upon in Consultation Paper No 57 and are included in the drafting for convenience.

#### **Transitional arrangements**

18. At a later date, the DFSA expects to introduce transitional provisions by way of Rules that will facilitate the transfer of an Official List of Securities from an AMI to the DFSA or from the DFSA to an AMI with minimal disruption to trading of Securities included in that list.