

Appendix 1

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

**PROPOSED AMENDMENTS TO
MARKETS LAW 2004**

PART 8: PREVENTION OF MARKET MISCONDUCT

CHAPTER 1 - MARKET MISCONDUCT

36. Fraud and market manipulation

A person shall not, in the DIFC or elsewhere, directly or indirectly, engage or participate in any act, practice or course of conduct relating to Investments that the person knows or reasonably ought to know:

- (a) results in or contributes to, or may result in or contribute to, a misleading appearance of trading activity in, or an artificial price for, Investments; or
- (b) perpetrates a fraud on any person.

37. Misleading or untrue statements

A person shall not, in the DIFC or elsewhere, make a statement that the person knows or reasonably ought to know, at the time and in light of the circumstances under which it is made:

- (a) is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and
- (b) significantly affects, or would reasonably be expected to have a significant effect on, the market price or value of Investments.

38. Misleading or deceptive conduct

A person shall not, in the DIFC or elsewhere, engage in conduct in relation to Investments that is misleading or deceptive or is likely to mislead or deceive.

39. Misleading or deceptive statements

- (1) A person shall not make an offer of Securities under a Prospectus or Supplementary Prospectus if there is:
 - (a) a misleading or deceptive statement in:
 - (i) the Prospectus or Supplementary Prospectus;
 - (ii) any application form that accompanies the Prospectus or Supplementary Prospectus; or
 - (iii) any other document that relates to the offer, or the application form;
 - (b) an omission from the Prospectus, Supplementary Prospectus, application form or any other document as required by this Law or the Offered Securities Rules; or

- (c) a new circumstance that under the Law or the Offered Securities Rules requires a Supplementary Prospectus to be filed.
- (2) A person shall not in or from the DIFC make a misleading or deceptive statement in any document issued by him or on his behalf in connection with an Exempt Offer, whether in the DIFC or elsewhere.

40. Statements about future matters

- (1) A person is taken to make a misleading statement about a future matter, whether by himself or his agent, if at the time of making the statement he did not have reasonable grounds for making the statement or causing it to be made.
- (2) The onus for proving that reasonable grounds existed for the purposes of Article 40(1) is on the person who made the statement.

41. Inducing persons to deal

- (1) A person shall not in the DIFC or elsewhere, induce another person to deal in Investments:
 - (a) by making or publishing a statement, promise or forecast if the person knows, or is reckless as to whether, the statement is misleading, false or deceptive;
 - (b) by a concealment of material facts; or
 - (c) by recording or storing information that the person knows to be false or misleading in a material respect or may be materially misleading.

42. Insider dealing

- (1) ~~A person who is an insider shall not, in the DIFC or elsewhere, directly or indirectly, deal, or attempt to deal, in an Investment of a Reporting Entity, or in a related investment, on the basis of inside information. A Reporting Entity or person in a special relationship with a Reporting Entity shall not, in the DIFC or elsewhere, deal in Investments of or relating to the Reporting Entity if the person possesses material information that:~~
 - ~~(a) — is not generally available in the market; and~~
 - ~~(b) — has not been disclosed to the market in accordance with this Law or the Rules.~~
- (2) In this Article: “Investment” does not include commodity derivatives.
“Investment” does not include:
 - (a) — options to acquire or dispose of;
 - (i) — commodities of any kind; or

- (ii) ~~an option to acquire or dispose of an Investment of the kind specified by Article 42(2).~~
- (b) ~~rights under a contract for the sale of a commodity under which delivery is to be made at a future date and at a price agreed on when the contract is made; or~~
- (c) ~~any right to or interest in anything which is specified by Article 42(2) (a) and (b).~~

43. Providing inside information

- (1) ~~An insider shall not, other than in the necessary course of business, disclose inside information to another person. A Reporting Entity or a person in a special relationship with a Reporting Entity shall not inform, other than in the necessary course of business, another person of material information that is not generally available in the market with respect to the Reporting Entity, before the material information has been disclosed to the market in accordance with this Law or the Rules.~~
- (2) ~~An insider shall not procure another person to deal in the Investments or related investments in which the insider has inside information. A Reporting Entity or a person in a special relationship shall not procure another person to deal in Investments if that Reporting Entity or person has knowledge of the material information that is not generally available in the market or the material information has not been disclosed to the market in accordance with this Law or the Rules.~~
- (3) In this Article:

“procure” includes:

where a person induces or encourages another person by direct or indirect means.

44. Application of provisions

Articles 36 to 43 of this Part do not apply to conduct which occurs outside the jurisdiction unless the conduct affects the DIFC markets or users of the DIFC markets.

45. Definitions of material information and special relationship for this Part

- (1) ~~In this Part:~~

“material information” means:

- (a) ~~in relation to Investments, information that significantly affects, or would reasonably be expected to have a significant effect, on the market price or value of Investments; or~~
- (b) ~~in relation to the affairs of a Reporting Entity, information relating to a change in the business, operations or capital of the Reporting Entity that would reasonably be expected to have a significant effect on the market price or value of the Investments in or related to the Reporting Entity.~~

- (2) ~~In this Part:~~

“a person in special relationship” means:

a person that is a director, officer, employee, affiliate, Associate or adviser of:

the relevant Reporting Entity;

~~a person that is proposing to make a Takeover Offer under Part 7 for the shares of the Reporting Entity; or~~

~~a person that is proposing to be involved in a takeover with the Reporting Entity;~~

~~a person that is engaging in or proposes to engage in any business or professional activity with or on behalf of the Reporting Entity or with or on behalf of a person described in Article 45(2) (a)(ii) or (iii);~~

~~a person that is a director, officer or employee of the entity described in Article 45(2)(b);~~

~~a person that learned of the material information with respect to the Reporting Entity while the person came within Article 45(2)(a), (b) or (c); or~~

~~a person that learned of material information with respect to the Reporting Entity from any other person described in Article 45(2) (a), (b),(c) or (d) and knows or ought reasonably to have known that the other person is in such a relationship.~~

(1) In this Part in relation to Investments, or related investments, “inside information” means:

(a) information of a precise nature which:

(i) is not generally available,

(ii) relates, directly or indirectly, to one or more Reporting Entities of the Investments concerned or to one or more of the Investments, and

(iii) would, if generally available, be likely to have a significant effect on the price of the Investments or on the price of related investments.

(2) In (1)(a) information is precise if it:

(a) indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur; and

(b) is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of Investments or related investments.

(3) In (1)(a)(iii) information would be likely to have a significant effect on price if and only if it is information of the kind which a reasonable investor would be likely to use as part of the basis of his investment decisions.

- (4) In (1)(a) information about a person's pending orders in relation to an Investment or related investment is also inside information.
- (5) In (1)(a)(i) information which can be obtained by research or analysis conducted by, or on behalf of, users of a market is to be regarded, for the purposes of this Part, as being generally available to them.
- (6) In this Part "insider" means a person who has inside information:
- (a) as a result of his membership of the administrative, management or supervisory bodies of a relevant Reporting Entity;
 - (b) as a result of his holding in the capital of the relevant Reporting Entity;
 - (c) as a result of having access to the information through the exercise of his employment, profession or duties;
 - (d) as a result of his criminal activities; or
 - (e) which he has obtained by other means and which he knows, or could reasonably be expected to know, is inside information.
- (7) In this Part, in relation to an Investment (the "First Investment"), a "related investment" means another Investment whose price or value depends, in whole or in part, on the price or value of the First Investment.

CHAPTER 2 - DEFENCES

46. Reasonable inquiries and reasonable belief

A person does not commit a contravention of Articles 38 or 39, if that person proves that he:

- (a) made all inquiries that were reasonable in the circumstances; and
- (b) after doing so, believed on reasonable grounds that the statement or omission was not misleading or deceptive.

47. Reasonable reliance on information given by another person

- (1) A person does not commit a contravention of Articles 38 or 39, if the person proves that he placed reasonable reliance on information given to him by:
- (a) if the person is not a natural person, someone other than a member of the governing body, employee or agent of the person; or
 - (b) if the person is a natural person, someone other than an employee or agent of the individual.

- (2) For the purposes of this Part, a person is not the agent of a person or a natural person because he performs a particular professional or advisory function for the person or natural person.

48. Defences for market manipulation, insider dealing and providing inside information

- (1) A person shall not be found to have contravened Article 36 if the person establishes that the conduct or practice the person engaged in was in the performance of, and in accordance with, the price stabilisation requirements as prescribed in the Rules.

- (2) A person shall not be found to have contravened Articles 42 ~~or 43~~ if:

~~(a) the person establishes that the information was disclosed in accordance with any requirements under law;~~

(a) (b) the person establishes that he reasonably believed that the ~~material~~-inside information had been disclosed to the market in accordance with this Law or the Rules;

~~(c) the information is given in the necessary course of business;~~

(b) (d) the sole purpose of acquiring shares was to satisfy the legitimate requirement for his being qualified as a director or intending to become a director of a Reporting Entity;

(c) (e) the dealing in Investments or related investments occurred in the legitimate performance of an underwriting agreement for the Investments in question; ~~or~~

(d) (f) the dealing in Investments or related investments occurred in the legitimate performance of its functions as a liquidator or receiver.

(e) the dealing is undertaken solely in its capacity as market maker acting in good faith in the ordinary course of market making in the relevant Investment or related investments;

(f) the person executes an unsolicited client order in Investments or related investments while in possession of inside information without contravening Article 43 or otherwise advising or encouraging the client in relation to the transaction;

(g) the dealing is undertaken in good faith and solely in relation to its direct involvement in mergers and acquisitions activity regarding the relevant Reporting Entity.

(h) the sole purpose of the Reporting Entity acquiring its own shares was to satisfy a legitimate reduction of share capital or to redeem securities in accordance with the Rules.

- (3) A person shall not be found to have contravened Article 43 if:
- (a) the person establishes that the information was disclosed by him in accordance with any requirement of the law or a court order; or
 - (b) the person establishes that he reasonably believed that the inside information had been disclosed to the market in accordance with this Law or the Rules.

49. Chinese wall arrangements

~~A person does not contravene Article 42 or 43 by dealing in Investments or related investments at any time because of material information in the possession of a director, officer or employee, if:~~

- ~~(a) the decision to enter into the transaction or agreement was taken on its behalf by a person or persons other than a director, officer or employee;~~
- ~~(a) (b) it had in operation at that time an effective information barrier arrangements that which could reasonably be expected to ensure that the inside material information was not communicated to the person or persons who made the decision to deal and that no advice with respect to the transaction or agreement was given to that person or any of those persons by an insider director, officer or employee in possession of the material information; and~~
- ~~(b) (c) the information was not communicated and no such advice was given.~~

50. Defence for Authorised Firms [Deleted]

~~An Authorised Firm or a director, officer or employee of an Authorised Firm does not contravene Articles 42 or 43 by entering into an agreement to deal in Investments in or relating to a Reporting Entity that are permitted by an Authorised Market Institution to be traded in good faith if he enters into a transaction to deal in Investments on behalf of another person under a specific instruction to deal in the Investments.~~