



CONSULTATION PAPER NO. 67

21 FEBRUARY 2010

CHANGES TO THE DFSA PRICE STABILISATION RULES

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Why are we issuing this paper?

1. This Consultation Paper seeks public comments on the DFSA's proposals to make changes to certain Rules in the Price Stabilisation Module (PRS). This paper also sets out the proposed changes to the PRS. The proposals are aimed at updating the PRS and are the result of an internal review of our Rules on Price Stabilisation.

Who should read this paper?

2. The proposals in this paper would be of interest to:
 - a. a Person who is issuing, or proposing to issue, Securities in the DIFC;
 - b. a Person seeking to include Securities in an Official List of Securities of an AMI in the DIFC;
 - c. a Person who has or proposes to provide the services of a Price Stabilisation Manager to an Issuer in the DIFC; and
 - d. advisors to Persons in a., b. and c. above.

How is this paper structured?

3. In this paper, we set out:
 - a. a summary of our proposals (paragraphs 7 to 8);
 - b. some background regarding the current Price Stabilisation regime (paragraphs 9 to 12); and
 - c. an outline of the key elements of our proposed changes (paragraphs 13 to 23).

The proposed changes to the PRS are in Appendix 1. Changes to the Glossary are in Appendix 2.

How to provide comments?

4. All comments should be in writing and sent 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?

5. The deadline for providing comments on the proposals is **22 April 2010**. Once we receive your comments, we will consider if any further refinements are required to these proposals. We will then proceed to enact the changes to the DFSA's Rulebook. You should not act on these proposals until the relevant changes to the DFSA Rulebook are made. We will issue a notice on our website telling you when this happens.

Comments to be addressed or emailed to:

**Matthew Shanahan
Policy and Legal Services
DFSA
PO Box 75850
Dubai, UAE**

e-mail: mshanahan@dfsa.ae

Terminology in this paper

6. 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.

Summary of proposed changes

7. The changes to the PRS proposed in this Consultation Paper are designed to update our Rules to reflect developments in best practice and to align the requirements of PRS with the DFSA's risk based approach to regulation.
8. The proposed changes are intended to provide the DFSA with greater disclosure in relation to Price Stabilisation activity in the DIFC. The DFSA is also making changes to the scope of the PRS, both in terms of what Securities may be subject to Stabilisation and in terms of how they may be stabilised. The opportunity is also taken to propose various miscellaneous amendments.

Background

9. The DFSA's vision is to be an internationally respected regulator and a role model for financial services regulation in the Middle East. The DFSA therefore continuously monitors regulatory developments in other advanced jurisdictions to ensure that the DIFC regulatory regime remains at the forefront of international best practice. We also monitor developments in the market, and maintain close contact with market participants. Feedback from market participants has been an essential factor in shaping these proposals.
10. Price Stabilisation is permitted in major international markets such as UK, EU, USA, Hong Kong and others. The rationale for permitting Price Stabilisation is that such activity promotes the orderly operation of a market, enhances confidence of Issuers and subscribers, and encourages companies to raise funds from the capital markets. For these reasons, Price Stabilisation is also allowed in the DIFC.
11. A Price Stabilisation regime in the DIFC was first introduced in 2005. It was modelled on the UK FSA's Price Stabilisation requirements. However, the regime was implemented with a narrower scope to reflect the nature of the DIFC capital markets and to suit the circumstances in the DIFC. The regime is one where an Issuer in the DIFC may elect to use Price Stabilisation to keep a proper and orderly market at the commencement of trading of its Securities. From a commercial perspective, it is felt that this regime promotes investor confidence in an IPO. PRS also operates as a defence from conduct which might contravene the Market Misconduct provisions of the Markets Law 2004, pursuant to Article 48(1) of that law. This defence is available to any Person who can demonstrate that their behaviour is in accordance with the PRS.
12. The Rules in PRS are drafted to prescribe the circumstances in which Price Stabilisation is permitted and the conditions which attach to such activity when carried on in the DIFC.

Outline of our proposed changes

13. The following paragraphs set out the key changes that the DFSA is proposing to make to the PRS. Appendices 1 and 2 set out in detail the proposed changes.

Securities which may be stabilised

14. As currently drafted, only Shares and Debentures may be stabilised under the PRS. The DFSA proposes to define the Securities which may be stabilised as “Eligible Securities”. We propose that “Eligible Securities” should include Shares, Debentures, Certificates over Shares or Debentures, or Warrants over Shares or Debentures. The proposed new definition will make the PRS easier to read and will provide the DFSA with the flexibility to change which Securities may be stabilised without changing the PRS.
15. Although PRS specifies Shares and Debentures as the securities in respect of which Price Stabilisation activities may be undertaken, there are currently many provisions throughout PRS that only deal with Price Stabilisation activities in respect of Shares. We propose to extend the scope of Price Stabilisation activities to Eligible Securities throughout the PRS.

Types of offer

16. At present, PRS only applies to Shares and Debentures publicly Offered by way of a Prospectus Offer. A Prospectus Offer is one made where a Prospectus has been filed with the DFSA and published. A Prospectus Offer has a wider distribution than an Exempt Offer, which, amongst other things, must only be made to no more than 50 Offerees in the DIFC. The proposed amendments to PRS Rules 1.4.1 and 6.1.1, will enable Price Stabilisation activities to be undertaken in respect of any Eligible Securities which are admitted to trading on an AMI, subject to meeting the other requirements in PRS.

Dual listing

17. PRS Chapter 6 deals with Price Stabilisation activities for dual listings. Currently, Price Stabilisation activities may only be undertaken in respect of dual listings of the same class of Securities, i.e. either Shares or Debentures and not Certificates over such Shares and Debentures. The proposed amendments to PRS Rule 6.1.1 extend the benefit of Price Stabilisation to Certificates over Shares or Debentures, thereby recognising Certificates as equivalent to the underlying Share or Debenture. This is in line with common market practice where many dual listings consist of the listing of ordinary shares in one jurisdiction and the listing of Certificates over such shares (usually in the form of global depository receipts) in another. The drafting of the Chapter 6 has also been amended to make it more user-friendly.

Admission a condition of stabilisation

18. The DFSA proposes that for an Eligible Security to be stabilised, it must be actually admitted to trading. The aim is to avoid stabilisation taking place in the grey market where neither a public market nor the resulting Market Price is available. Consequentially, the Stabilisation Window should also start from

the date of admission to trading and end no later than 30 calendar days thereafter.

Disclosure

19. With respect to disclosure, we are proposing that the DFSA must be notified of details of all Price Stabilisation transactions within 2 business days following the date of execution of those transactions. This requirement is in addition to the existing pre and post-stabilisation disclosure, and it is in line with the requirements in the Market Abuse Directive 2003/6/EC. Such notification should promote greater discipline in the conduct of Price Stabilisation activity in the DIFC and provide greater transparency for the DFSA.

Stabilisation Managers

20. The DFSA proposes that Stabilisation Managers located outside the DIFC who carry on Price Stabilisation in the DIFC will be required to submit to the jurisdiction of the DFSA and the DIFC Courts, and provide an address for service. This proposal is designed to give the DFSA some limited supervisory traction in respect of such Persons and their Price Stabilisation activities.

Other matters

21. The DFSA proposes that stabilisation of Shares, Certificates over Shares, and Warrants over Shares must not be executed above the Offer Price. This is in line with international best practice. Other Securities that relate to Shares, such as Warrants over Shares, must also be stabilised in accordance with the proposed pricing limitation.
22. We propose that any over-allotment of Eligible Securities pursuant to a “greenshoe option” should be subject to certain limits and additional disclosure requirements. It is proposed that requirements similar to those in the Market Abuse Directive 2003/6/EC (the MAD) be introduced in the DIFC.
23. Miscellaneous amendments proposed are:
- (a) The deletion of the \$10,000,000 threshold for Price Stabilisation to align with the MAD;
 - (b) The addition of a Rule to permit Price Stabilisation both on and off-order book. Off-order book Price Stabilisation is currently permitted by implication only; and
 - (c) The maintenance of a register in respect of Price Stabilisation of all type of Securities. At present, a register is only required in respect of shares.

Issues for consideration

Do you have any concerns or comments about our proposed changes to the PRS?

Do the proposed changes create any unintended consequences?