



CONSULTATION PAPER NO. 88

14 APRIL 2013

PROPOSED MISCELLANEOUS AMENDMENTS

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PROPOSED CHANGES AND MISCELLANEOUS AMENDMENTS

Why are we issuing this paper?

1. This Consultation Paper seeks public comment on the DFSA's proposals to make a variety of amendments to the DFSA's policy framework, as expressed through its rules and through legislation. The DFSA has gathered together a number of miscellaneous amendments to the modules of the DFSA Rulebook and to the Markets Law 2012.
2. Although each item in this paper is a discrete amendment, we have grouped the proposed amendments into four broad groups. Part 1 relates to markets regime amendments, part 2 to Execution-Only Transactions and best execution, part 3 to compliance with international standards on transparency and exchange of information and part 4 to administrative fees for late submission of returns.

Who should read this paper?

3. The proposals in this Paper would generally be of particular interest to Authorised Persons.
 4. The proposals in part 1 of this paper would be of particular interest to the following:
 - (a) a Reporting Entity;
 - (b) a Listed Entity;
 - (c) any Person who makes an Offer of Securities to the Public or intends to make an Offer of Securities to the Public;
 - (d) any Person who has Securities admitted to trading on an Authorised Market Institution or intends to have Securities admitted to trading on an Authorised Market Institution;
 - (e) Persons investing or intending to invest in Securities offered in or from the DIFC;
 - (f) an Authorised Market Institution; and
 - (g) the advisor of any Person listed in (a) to (f).
 5. The proposals in part 2 of this paper would be of particular interest to Authorised Firms conducting Investment Business.
 6. The proposals in part 3 of the paper would be of interest to all Authorised Persons.
 7. The proposals in part 4 of this paper would be of interest to all Authorised Persons, but of particular interest to those firms that submit regulatory returns electronically through EPRS.
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How to provide comments?

8. 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 number 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.

What happens next?

9. The deadline for providing comments on the proposals is **15th May 2013**. 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 and to recommend the proposed changes to the Markets Law 2012 to the President of the DIFC for enactment by the Ruler. You should not act on these proposals until the relevant changes to the Markets Law 2012 and DFSA Rulebook are made. We shall issue a notice on our website telling you when this happens.

Comments to be addressed or emailed to:

**Consultation Paper No. 88
Policy and Legal Services
DFSA
PO Box 75850
Dubai, UAE**

Email: consultation@dfsa.ae

Tel: +971(0)4 3621500

Terminology in this paper

10. 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.

PART 1 – PROPOSED AMENDMENTS TO THE MARKETS REGIME

Item 1 Exempt Offer and the Definition of a Reporting Entity

11. Article 38 of the Markets Law 2012 (the “Markets Law”) sets out the circumstances in which a Person becomes a Reporting Entity. We propose to recommend to His Highness the President of the DIFC that the Markets Law be amended to reflect the position that a Person making an Exempt Offer is not a Reporting Entity (Article 38 changes).
12. A Person becomes a Reporting Entity, by virtue of Article 38(1)(b) of the Markets Law, if that Person makes an Offer of Securities to the Public. Such an offer includes an Exempt Offer. The circumstances in which an offer is an Exempt Offer are set out in MKT section 2.3.
13. Since the enactment of the Markets Law, the DFSA has been approached by a number of stakeholders to clarify whether a Person making an Exempt Offer is a Reporting Entity. The DFSA has used its power under Article 38 of the Markets Law to declare such Persons not to be Reporting Entities. However, going forward the Executive would prefer that the law provides an express exclusion for such persons.
14. The proposed amendments we are seeking to the Markets Law are set out in Appendix 1.

Item 2 Suspension or delisting at the Listed Entity’s request

15. Under MKT Rule 9.6.3, if a Listed Entity wishes to have its Listed Securities suspended or delisted from an Official List of Securities, it may do so provided reasons and the details of the suspension or the delisting are given to the DFSA in advance. However, MKT Rule 9.6.3 is silent on whether the DFSA may impose any terms and conditions deemed necessary on voluntary suspension or delisting.
16. The DFSA, when reviewing a Listed Entity’s request for voluntary suspension or delisting, may consider it necessary to impose terms and conditions. Accordingly, we propose to insert an express rule into the MKT module enabling the DFSA to impose terms and conditions it considers appropriate. Guidance will also be inserted which sets out the types of terms and conditions the DFSA believes it might need to impose.
17. The proposed amendments to the MKT Rules are set out in Appendix 2.

Item 3 Prospectus liability and Responsibility Statement

18. Since the introduction of the revised Markets Rules the DFSA has had reason to reconsider the list of Persons liable for a Prospectus and its contents set out in MKT Rule 2.10.1. As a result of this reconsideration we propose to make two amendments, which will be most applicable for Persons making a Prospectus Offer in relation to the issue of Debentures.
19. Firstly, in circumstances where a Debenture Offer is being made by a Body Corporate, we propose to exempt from automatic liability all Directors of that Body Corporate unless a director expressly accepts liability. We are doing this to align our regime closer to the European Union (EU) practices in respect of

debentures. This approach reflects the somewhat different investor risks associated with debenture securities when compared to equity securities. Shares generally rank much lower in terms of priority on bankruptcy and in the case of debt, the key risk is ultimately credit risk.

20. Secondly, in circumstances where there is a guarantor or obligor in relation to the issue of Securities, we propose to make the guarantor or obligor liable for the information in the Prospectus that relates to them.
21. In considering these amendments we have reviewed the liability provisions set out in the EU Prospectus Directive 2003/71/EC and the rules of the UK FSA. We are proposing to align our Rules more closely with the Prospectus liability provisions set out in the UK which are aligned with EU Directives.
22. It has also been necessary to update the disclosure in the Registration Statement (see APP 1.1 of the MKT module) relating to the Responsibility Statement, to reflect the above proposals.
23. The proposed amendments to the MKT Rules are set out in Appendix 2.

Item 4 Documents on Display

24. In order to align the disclosure requirements of Persons producing a Prospectus with those of the EU Prospectus Directive 2003/71/EC, we propose to insert a new disclosure requirement in the MKT module for certain documents to be put on display.
25. The proposed amendments to the MKT Rules are set out in Appendix 2.

Item 5 Minor amendments

Exempt Communications

26. Article 12 of the Markets Law 2012 excludes certain types of communications from the definition of an Offer of Securities to the Public. In particular, Article 12(2) excludes any communication made to comply with the on-going reporting requirements of an AMI.
27. The DFSA, in its role in maintaining an Official List of Securities, also imposes certain on-going reporting requirements. We propose to recommend to His Highness the President of the DIFC that the exclusion from the definition of an Offer of Securities to the Public should be broadened to include on-going reporting requirements of the DFSA.
28. The proposed amendments we are seeking to the Markets Law are set out in Appendix 1.

Definition of a Connected Person

29. Since the introduction of the revised Markets Rules, the DFSA has been approached by a number of stakeholders to clarify whether they fall within the definition of a Connected Person set out at MKT Rule 4.3.2(5).
30. To assist interpretation of this definition, we propose to clarify certain aspects of the definition by making minor amendments.

31. The proposed amendments to the MKT Rules are set out in Appendix 2.

Time-limited securities & securities no longer in existence

32. The DFSA, in its role in maintaining an Official List of Securities, may delist Securities, *inter alia*, in accordance with its Listing Rules. The Listing Rules are set out in Chapter 9 of MKT. We propose to amend MKT Rule 9.6.6 to expand the DFSA's ability to delist Securities which have been redeemed or cease to exist for any other reason.

33. MKT Rule 9.6.6 sets out the circumstances in which the DFSA may delist Securities. It does not make specific reference to time-limited Securities and, as such, the DFSA may only delist such Securities upon voluntary request of the Listed Entity (MKT 9.6.3) or where the DFSA is satisfied that there are circumstances that warrant such action provided that a prior right of representation has been given to the Listed Entity (Article 35 of the Markets Law). This proposed amendment would be more administratively efficient than the current arrangements.

34. The proposed amendments to the MKT Rules are set out in Appendix 2.

Item 6 Other amendments

35. We are proposing to make various amendments to MKT Rules in order to correct anomalies and also to improve readability, ease of reference and layout.

36. For example, we are proposing to:

- (a) move all requirements on Islamic Securities, currently contained in the MKT module, into the IFR module;
- (b) prescribe in a more granular manner in APP 1 the specific information to be included in the prospectus for each particular type of security;
- (c) capitalise the term "Issuer" to ensure it is given the meaning prescribed in GLO;
- (d) replace any references to the term "Public Offer" (a term used as part of the old Markets regime) with the term "Prospectus Offer";
- (e) replace the term "Board of Directors" with the term "Board", which is defined in GLO as the Board of Directors; and
- (f) align the requirements in MKT Rule 5.1.7 with the requirements set out in App2, to ensure that a Reporting Entity in respect of Warrants over Shares prepares and files a semi-annual financial report.

37. We are also proposing to re-insert the definition of a Bidder into GLO. The definition of Bidder was added to GLO in 2005 and it has been inadvertently removed. The definition proposed is the same definition previously contained in GLO.

38. The proposed amendments to the MKT module, GLO module and IFR module are set out in Appendix 2, Appendix 3 and Appendix 4 respectively.

PART 2 – EXECUTION-ONLY TRANSACTIONS AND BEST EXECUTION

39. The DFSA proposes to add a Rule to COB section 6.4 regarding best execution in order to clarify that an Authorised Firm is only exempt from applying best execution for that part of the Transaction to which the specific instructions of the Client relate. This is in line with the Markets in Financial Instruments Directive 2004/39/EC ("MiFID").
40. The definition of an Execution-Only Transaction in GLO is broad. A Transaction meets the definition provided it is based on the specific instructions of a Client and the Authorised Firm does not give any advice. In practice an Execution-Only Transaction may leave a large amount of discretion to an Authorised Firm in respect of a number of elements to a Transaction, including price, timing and size.
41. It is the DFSA's intention that this exclusion from best execution should only be available to an Authorised Firm for that part of the Transaction to which the specific instructions of the Client relate.
42. The proposed amendments to the COB Rules are set out in Appendix 5.

PART 3 – TRANSPARENCY AND EXCHANGE OF INFORMATION

43. The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (the "Global Forum") has recently carried out a peer review of the UAE. The Global Forum is an OECD body that works to improve standards in the area of transparency and information exchange for tax purposes.
44. The Global Forum published a Phase 1 Report in 2012, which set out a number of changes needed so that the UAE can be fully compliant with international standards. As part of this process, the DFSA issued Consultation Paper No. 85. Since publication of the Phase 1 Report, the Global Forum has identified a further issue related to record keeping by Authorised Persons, which requires action by the DFSA.
45. The DFSA is proposing to define the term "accounting records" throughout the Rulebook where it appears in Rules requiring such records to be retained. The DFSA is proposing to use, in a slightly modified form, the definition of "accounting records" set out in the International Standards on Auditing.
46. The proposed amendments to the Rulebook are set out in the Appendices, with the definition in GLO.

PART 4 – ADMINISTRATIVE FEES FOR LATE SUBMISSION OF PRUDENTIAL RETURNS

47. An increasing number of Authorised Firms are not submitting their prudential returns on time. The DFSA is no longer willing to tolerate such practice. It is proposing to introduce a late submission fee of \$1,000 to be paid in circumstances where prudential returns are not submitted through the EPRS system in accordance with the relevant timeframe set out in PIN or PIB, as applicable. This fee will not apply to other returns at this time.
48. We feel that an administrative fee (as used in, for example, the UK) is more appropriate to the situation of late prudential returns than a fine (as used in, for example, Singapore). The late submission of prudential returns is somewhat similar to the late payment by firms of DFSA annual fees, where we already charge a similar administrative fee. Following the introduction of that administrative fee, late payment of annual fees reduced considerably. The level of the proposed fee is reflective of the administrative cost incurred by the DFSA in chasing firms to submit the required prudential returns.
49. The proposed Guidance also makes it clear that, in the event of late submissions, the DFSA may take appropriate action under the Regulatory Law 2004.