



Markets Brief

Ongoing Market Disclosure

Periodic distributions

Connected Person disclosure

Issue No. 6 – January 2014

Introduction

In this edition, we discuss the DFSA's policy on (1) ongoing market disclosure requirements in relation to dividends and other distributions by Reporting Entities; and (2) connected persons' disclosures.

Guidance

Please note that the contents of this communication are not intended to be Guidance as contemplated by the Regulatory Law 2004 and the contents should neither be interpreted, nor relied upon, as Guidance. You should refer to the DFSA Rules for Guidance or contact the DFSA if you require individual guidance.

Technical explanations given in this brief are for illustrative purposes and should not be considered or relied upon as a legal advice. We recommend that independent legal advice is obtained if you are unsure about any aspect of the DFSA markets regime which may apply to you.

Defined terms are identified in this brief by the capitalisation of the initial letter of a word or each

word in a phrase and are defined in the Glossary Module of the DFSA Rulebook.

Ongoing Market Disclosure by Reporting Entities

Every Reporting Entity is required to disclose to the market certain types of information either relating to the Securities of the Reporting Entity or to the Reporting Entity itself. These disclosures are designed to ensure that the markets are continually updated with information that is likely to have an impact on the price of the Securities so that investors can make an informed judgement about those Securities.

Chapter 4 of the DFSA [Markets Rules](#) sets out the obligations in relation to market disclosure which are applicable to Reporting Entities.

Reporting Entities are required to familiarise themselves with the contents of Chapter 4 as well as with Appendix 2 (App2) which sets out specific matters that trigger market disclosure.

Market disclosures applicable to Listed Funds are set out in Chapter 6 of the Markets Rules.

Chapter 4 of the Markets Rules requires disclosure of Inside Information, with carve-outs for non-disclosure of commercially sensitive information for a limited period, as well as disclosures of interests held by Persons in positions of control or influence relating to a Reporting Entity (such as controllers and their associates, called “Connected Persons”), and the disclosure of Directors’ material interests in the Reporting Entity. The method by which the information should be disclosed to the markets are also specified in this chapter.

Reporting Entities are also required to nominate two individuals to be its main points of contact with the DFSA in relation to continuing market disclosure and other obligations under Chapter 4. It is the responsibility of the Reporting Entity to ensure that such contacts are up-to-date and that the DFSA is informed of any change.

Periodic distributions - Debentures

The DFSA wishes to draw the reader’s attention, in particular, to Rule 4.1 in App2 which sets out disclosure obligations relating to the Securities of the Issuer.

Rule 4.1 in App2 sets out the trigger events in relation to dividends or distributions on Securities, the type of disclosure required of the Reporting Entity and the timing of the disclosure. Rule 4.1 sets out that market disclosure is required of Reporting Entities for any decision:

“to declare, recommend or pay any dividend or to make any other distribution on the Securities”; or

“not to declare, recommend or pay any dividend which would otherwise have been expected to have been declared, recommended or paid in the normal course of events.”

The market disclosure must set out:

“the decision, including the rate and amount of and record date for the dividend or other

distribution or the grounds for the decision in relation to non-payment”.

This Rule applies where a decision is made and applies to Shares, Warrants/Options over Shares, Debentures, Warrants /Options over Debentures, Certificates over Shares, Certificates over Debentures, and Structured Products.

For Shares, the Rule is straightforward and is engaged whenever a decision is made regarding a dividend. However, for Debentures the application of the Rule may vary according to several factors, in particular, whether the distribution on the Debenture (typically called the “coupon”) is based on a fixed or variable element.

The DFSA considers that although periodic distribution payments, dates, and rate calculation may have been adequately published in the initial offer documents, Prospectus or term sheet published by the Reporting Entity for a Debenture, if any of these factors has a degree of discretion or if the rate calculation is based on a variable or floating rate, then additional market disclosure via a Regulatory Announcement Service will be required at the relevant time. This is best explained by way of an example:

- **Example 1** - A company issues a 5 year bond by way of a DFSA-approved Prospectus, which is admitted to the Official List of Securities. The Prospectus states that the coupon payable will be fixed at 5% and will be payable annually on 1 January. Assuming that there is no change in the coupon payment as disclosed in the Prospectus, no further disclosure would be required in respect of the coupon under Rule 4.1 of App2 during the 5 years that the Security pays the coupon.
- **Example 2** - Identical to Example 1 above, but where the bond pays a floating rate which is based on Libor plus 1%. In this example, a disclosure would be required under Rule 4.1 of App2 at least 5 days before the record date of the coupon rate fix applied (what Libor rate was used) and of the actual payment amount.

Please note: Where any new decision is made which would change the original decision regarding a dividend, coupon or other distribution, the new decision engages the obligation to make a disclosure under Rule 4.1 of App2.

Failure or delay to make such a market disclosure via the described mechanism and in compliance with the details set out in Rule 4.1 of App2 may constitute a breach of the DFSA Markets Rules.

Connected Person disclosures

Recently, a number of issues have arisen regarding the DFSA's Connected Persons Rules which have caused the DFSA to have concerns about compliance with these Rules by Reporting Entities and their shareholders. To help address these concerns, the DFSA has taken the opportunity to raise awareness through this Markets Brief of the key obligations which apply to Connected Persons and the Reporting Entities of the relevant Securities.

The DFSA Markets Rules (Rule 4.3.2) defines a Connected Person of a Reporting Entity as:

1. a Director or an individual involved in the senior management of the Reporting Entity or a controller of a Reporting Entity; or
2. a Person who owns legally or beneficially, or controls directly or indirectly, voting Securities carrying more than 5% of the voting rights of the Reporting Entity or a controller of the Reporting Entity.

Rule 4.3.2 also prescribes in further detail the factors which make a Person a Connected Person and provides certain exclusions in respect of a Person's ownership or control of Securities and when a Person is not a Connected Person.

Obligations on Connected Persons

A Connected Person needs to be familiar with the "events that trigger a report" as set out under Rule 4.3.3. Any of the below events trigger a report by

the Connected Person to the DFSA and to the Reporting Entity.

Events that trigger a report are:

1. becoming or ceasing to be Director of a Reporting Entity;
2. becoming or ceasing to be a Director of a controller of a Reporting Entity;
3. acquiring or ceasing to hold voting Securities carrying more than 5% of the voting rights of a Reporting Entity;
4. acquiring or ceasing to hold voting Securities carrying more than 5% of a controller of the Reporting Entity;
5. an increase or decrease of at least 1% of the level of interest previously reported pursuant to 3 or 4 above.

How to make a report

In case of the occurrence of any of the events listed in 1 to 5 above, a Connected Person is required to file two reports. One report is to the DFSA, the other is to the Reporting Entity of the relevant Securities.

Reports to the DFSA should be emailed to markets@dfsa.ae. Alternatively, the Connected Person can file a report with the Reporting Entity and mandate the Reporting to forward the report to the DFSA on his/her behalf.

Time period to make a report

The report to the DFSA and to the Reporting Entity must be filed within five business days of the occurrence of the events prescribed above.

Contents of the report

Markets Rule 4.3.4 clearly sets out the information that a Connected Person is required to include in the report. This information includes the following:

1. the name and address of the Connected Person;
2. the date on which the event which gave rise to the obligation to file a report occurred (please refer to “Events that trigger a report”);
3. the date on which the report is filed with the DFSA and the Reporting Entity;
4. the price, amount and class of Investments the report relates to; and
5. the previous and new level of interest held in the Investment.

Obligations on Reporting Entities in relation to Connected Persons reports

Once a Connected Person has filed a report with the Reporting Entity, the Reporting Entity must, as soon as possible, make a disclosure to the market by way of an announcement. This announcement must be:

1. made to the exchange (Authorised Market Institution) on which the Securities are admitted to trading;
2. published to the market via any approved Regulatory Announcement Service;
3. posted on the website of the Reporting Entity; and
4. sent to the DFSA at the same time to markets@dfsa.ae.

A list of approved Regulatory Announcement Services including relevant contact details can be found on the DFSA website under the following link:

<http://www.dfsa.ae/Pages/DFSAListingauthority/RegulatoryAnnouncementServices.aspx>

As of the date of this Markets Brief, the DFSA has approved two Regulatory Announcement Services

which are the NASDAQ Dubai CAP/CANDI System and Thompson Reuters.

Reporting Entities need to ensure that they have signed up to use a Regulatory Announcement Service and that the individuals registered as users of the Regulatory Announcement Service are well-versed with the ongoing disclosure obligations of the Reporting Entity under the Markets Rules.

Examples of Connected Persons disclosures:

Example 1: Notification by a Connected Person of a Transaction to a Reporting Entity

To: ABC Limited

From: Limited (“the Company”) received notification that XYZ Asset Management Ltd

Address: Level 50, XYZ Tower, The Corniche, Abu Dhabi, UAE

We hereby notify you, in accordance with DFSA Markets Rule 4.3.3 that on 26 March 2013, XYZ Asset Management Ltd of the above address acquired 1,000,000 ordinary shares in ABC Limited at a price of \$0.50 per share.

Prior to the above transaction, XYZ Asset Management Ltd held 4,100,000 shares or 4.1% of the issued share capital of ABC Limited.

Following the above transaction, XYZ Ltd holds 5,100,000 ordinary shares representing 5.1% of the issued share capital.

Example 2: Notification by a Reporting Entity of a Transaction by a Connected Person

On 27 March 2013, ABC Limited (“the Company”) received notification that XYZ Asset Management Ltd of Abu Dhabi, UAE, acquired 1,000,000 ordinary shares in the Company on 26 March 2013 at a price of \$0.50 per share.

Prior to the above transaction, XYZ Asset Management Ltd held 4,100,000 shares or 4.1% of the issued share capital of ABC Limited.

Following the above transaction, XYZ Ltd holds 5,100,000 ordinary shares representing 5.1% of the issued share capital.

Example 3: Notification by a Reporting Entity of dealing in Securities by a Director

Pursuant to DFSA Markets Rule 4.3.5 we hereby give notice that the below-mentioned Director of ABC Limited (‘the Company’) has purchased shares in the Company.

Details of the transactions are set out below:

Name	Mr [Name of Director]
Nature of transaction	On market acquisition of ABC Limited shares
Transaction Date	7 January 2014
Notification Date	8 January 2014
Number of Shares	1,000,000
Class of Security	Ordinary shares
Price per Share	1.50 USD
Total Value	USD 1,500,000
Number of shares prior to transaction	2,000,000 shares or 2%
Number of shares following transaction	3,000,000 shares or 3%

Arabic edition

Every Markets Brief is produced in both English and Arabic and is available on the DFSA website.

Contact us

Visit the DFSA website www.dfsa.ae for:

- previous editions of the Markets Brief;
- access to DFSA-administered legislation and the DFSA Rulebook; and
- the full text of the Markets Law 2012 and Markets Rules.

For enquiries:

- Telephone +971 4 362 1500
- Email markets@dfs.ae

Feedback

- We appreciate your feedback and welcome any suggestions that you may have. Please email us at markets@dfs.ae