

Markets Brief

Listing of Foreign Funds on an AMI

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Introduction

In this edition of Markets Brief, the DFSA sets out some practical guidance for applicants and their advisors for the listing of Foreign Funds on an Authorised Market Institution (AMI) in the DIFC (typically Nasdaq Dubai). Under the DFSA Markets Rules (MKT) there are three ways in which a Foreign Fund that is already listed on an Exchange outside the DIFC (the Applicant) can be admitted as a Foreign Fund to the DFSA Official List of Securities and to listing and trading on an AMI, provided certain criteria are met.

The requirements and processes to be followed by an Applicant are similar in certain respects. However, differences exist which we point out below. We may require appointment of a listing advisor instead of a Sponsor firm to manage the listing process. This brief includes information on listing advisors.

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 Rulebook 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 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 GLO.

Relevant MKT Rules

The main DFSA Rules can be found in MKT6 of the DFSA Markets Rulebook on Listed Funds. Amongst others:

MKT 6.2.1 (b)

A Person may have the Units of a Fund admitted to an Official List of Securities only if:

[...]

(b) in the case of a Foreign Fund:

(i) it is a Designated Fund from a Recognised Jurisdiction; or

(ii) it is a Fund approved by the DFSA as a Fund subject to equivalent regulation as that applying to a Public Fund;

MKT 6.3.5

The prohibition in Article 14(1)(b) of the Law¹ does not apply, subject to the requirement in Rules 6.3.6, to the admission to trading on an Authorised Market Institution of:

[...]

(d) Units already admitted to trading on another Authorised Market Institution or Regulated Exchange (the "other market"), where:

(i) the Units of the same class have been admitted to trading and continuously traded on the other

¹ Article 14(1) of the DIFC Markets Law 2012 prohibits the making of an Offer of Securities to

the Public or having securities admitted to listing and trading on an AMI without a DFSA approved prospectus

market for more than 18 months;
(ii) the ongoing obligations for trading on that other market have been complied with; and
(iii) there is a summary document in the English language approved by the DFSA and published:
(A) containing the Key Information required under Rule 2.5.2(1)(b);
(B) stating where the most recent and current Prospectus, if any, can be obtained; and
(C) specifying where the financial information published by the Issuer pursuant to its ongoing disclosure obligations of the other market is available.

Eligible Foreign Funds and routes towards listing

Three categories of Foreign Funds and scenarios towards listing can be identified under MKT6.

1. A Foreign Fund that is a Designated Fund from a Recognised Jurisdiction²;

Examples of Funds in this category are, amongst others, Undertakings for Collective Investment in Transferable Securities (UCITS) funds from member states of the European Union. In this scenario the Applicant must submit the most recent foreign offering documents, together with the information required for the purposes of the listing on the AMI (commonly referred to as a “wrapper”) to the DFSA for approval as a Fund Prospectus pursuant to MKT6.3.2(1).

2. A Foreign Fund that is not a Designated Fund and not from a Recognised Jurisdiction;

In this scenario the potential Applicant must perform an equivalency assessment between the collective investments funds regime of the foreign jurisdiction and the DFSA Collective Investment Rules (CIR) Rulebook applicable to Public Funds prior to any application. The DFSA has developed processes and procedures for conducting such an assessment, for which you can contact us.

Assuming the DFSA concludes that the collective investments funds regime of the foreign jurisdiction is equivalent, the Applicant must prepare a prospectus in compliance with MKT and CIR and

² For a list of the Designated Funds and Recognised Jurisdictions see [Recognised Jurisdiction Notice \(No 3\)](#) on the DFSA website

³ GLO defines a Regulated Exchange as “An

submit it to the DFSA for approval as a Fund Prospectus under MKT6.3.2(1).

3. A Foreign Fund that has been listed for more than 18 months on a Regulated Exchange in a foreign jurisdiction.

For this scenario, it is a pre-condition before any application for listing can be made that the DFSA determines the stock exchange where the Foreign Fund has its primary listing a “Regulated Exchange”³.

An AMI must, pursuant to Rule 5.8.1 of the DFSA AMI Rulebook, ensure that it only admits securities to trading if they are either admitted to the Official List of Securities or *admitted to trading on a Regulated Exchange in a jurisdiction acceptable to the DFSA*.

The DFSA already considers certain exchanges as Regulated Exchanges. For exchanges that are not yet considered as Regulated Exchanges, an equivalency assessment of regulation in that jurisdiction should be performed. Please contact Nasdaq Dubai or the DFSA for more information on this point.

A Foreign Fund from a Regulated Exchange is exempt from the obligation to draw up a DFSA approved prospectus to have its securities admitted to trading on an AMI (MKT6.3.5(d)).

Instead, it must draw up a summary document for approval by the DFSA:

- containing the Key Information required under MKT2.5.2(1)(b); and
- the information required to be included pursuant to MKT6.3.5(d)(iii).

The other requirements are that the Securities have traded continuously on the other market for more than 18 months and that the ongoing obligations for trading on the other market have been complied with.

exchange regulated by a Financial Services Regulator (FSR)”. An FSR is defined as “A regulator of financial service activities established in a jurisdiction other than the DIFC”.

Listing advisor, procedures and requirements

The DFSA may require a Sponsor to be appointed for the purposes of a listing transaction pursuant to MKT Rule 7. See our Markets Brief No. 4 on the DFSA Sponsor Regime. As an alternative, the DFSA may, depending on for example the complexity of the transaction, require a listing advisor to be appointed instead. For the listing of a Foreign Fund the DFSA is likely to require a listing advisor.

Thus, at the outset of the transaction, an Applicant is required to appoint an appropriate person to act as listing advisor to manage the listing process. The role of a listing advisor is to guide the Applicant on the application of the Markets Law and MKT. In particular, to ensure that a Prospectus contains all the information which an investor would reasonably require and expect to find for the purposes of making an informed investment decision. The listing advisor will oversee the due diligence and verification processes in the production of a Prospectus and is expected to provide an effective challenge to statements made by the Issuer. The listing advisor should be a firm with sufficient knowledge and experience of the DFSA listing regime and acceptable to the DFSA. The listing advisor will be our sole point of contact throughout the transaction. The listing advisor and its employees should be independent of the Applicant and have appropriately managed any conflicts of interest that may arise.

The Applicant should contact the DFSA Markets Division to arrange a meeting, with the listing advisor in attendance, to discuss the Applicant, the fund manager and the contemplated transaction (intended timetable, advisors etc.).

All Applicants must meet the eligibility requirements, to the extent applicable, as stipulated in MKT9 of the DFSA Markets Rulebook. During the meeting, we would expect the Applicant to explain how it meets the relevant eligibility requirements.

The Applicant must also pay the required fees.

The DFSA has developed Procedure Notes further detailing the document submission requirements and the approval processes for each of the three types of Foreign Funds and routes towards listing discussed in this Markets Brief. We can provide you with the relevant Procedure Note upon request when an actual listing is contemplated.

Ongoing disclosure obligations

Please note that once the Foreign Fund is listed on the AMI, the Reporting Entity of the Foreign Fund, and the Foreign Fund Manager, will need to comply with the DFSA ongoing disclosure obligations for Listed Funds. All disclosures will need to be in English.

Further information

The DFSA Markets team can be reached on markets@dfsa.ae or 04 362 1559. The DFSA will not advise a particular course of action or provide (legal) advice, but it is prudent to keep the DFSA informed of ongoing developments in relation to the Reporting Entity.

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:

- other editions of the Markets Brief;
- access to DFSA-administered legislation and the DFSA Rulebook, including a full text of the Markets Law 2012 and Markets Rules; and
- the Code of Market Conduct (in the Sourcebook Modules part of the DFSA website).

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Feedback

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