



# Markets Brief

## Prospectus disclosure – Financial information

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### Introduction

In this edition of Markets Brief, we provide issuers and market practitioners with information about the DFSA's approach to the treatment and presentation of financial information in Prospectuses.

This Markets Brief covers the following types of financial information:

- historic financial information and complex financial histories;
- *pro forma* financial information; and
- profit forecasts and estimates.

We have produced this Markets Brief as a guide for issuers and market practitioners and to promote more efficiency in the Prospectus approval process. In this Markets Brief we set out the relevant Rules and explain below what the DFSA approach is to assessing compliance under the Prospectus approval framework.

It is important for issuers to be conscious, as early as possible in the transaction timeline, of the need to consider whether they have, or are likely to have, a complex financial history, a significant event which may require *pro forma* financial information, or propose to make a profit forecast or estimate. It will also be important for the issuer to take appropriate advice and consult with its Sponsor or other

advisors in order to ascertain the impact on the proposed transaction timeline.

For the purposes of this Markets Brief, "Applicant" means a Person who applies for admission of its Securities to the Official List of Securities and includes the issuer. A reference to a "market practitioner" is to a Sponsor, legal advisor, financial advisor, auditor, compliance advisor or other similar person connected to an issuer and its application for approval of a Prospectus under the Markets Law 2012.

### Guidance

Please note that the contents of this communication are not intended to constitute 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 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 Markets 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.

## Historical financial information requirements – relevant regulation

### The Listing Rules

MKT Rule 9.3.2 states that:

*“An Applicant must have published or filed audited accounts which:*

- a) cover a prior period of three years or any other shorter period acceptable to the DFSA;*
- b) are consolidated for the Applicant and any of its subsidiary undertakings;*
- c) have been prepared in accordance with IFRS or other standards acceptable to the DFSA; and*
- d) have been audited and reported on by auditors in accordance with auditing standards of the International Auditing and Assurance Standards Board (IAASB) or other standards acceptable to the DFSA.”*

### Historical financial information about the issuer

MKT Rule APP 1(7.1) states that the contents of a Prospectus should include:

*“(a) Historical financial information covering the latest 3 financial years (or such shorter period that the issuer has been in operation) where such information in respect of each year is:*

- (i) prepared in accordance with the IFRS or any other standards acceptable to the DFSA;*
- (ii) audited in accordance with the standards of the IAASB or other standards acceptable to the DFSA; and*
- (iii) independently audited or reported on as to whether or not, for the purposes of the prospectus, it gives a true and fair view, in accordance with the applicable auditing standards referred to in (ii) above.”*

The last two years' audited financial information must be prepared and presented in a form consistent with that which will be adopted in the issuer's next published annual financial statements.

*“(i) If the Prospectus is dated more than nine months after the end of the last audited financial year, interim financial information:*

- (i) covering at least the first six months of the financial year;*
- (ii) including comparative statements for the same period in the prior financial year (except that the requirement for comparative balance sheet information may be satisfied by presenting the years end balance sheet); and*
- (iii) if unaudited, a statement to that effect.”*

Other Rules in APP 1 include:

- the maximum age of the audited financial information to be included in a Prospectus is 18 months (if the Prospectus includes audited interim financial statements), or 15 months (if the Prospectus includes unaudited interim financial statements);
- a statement that the historical financial information has been audited;
- the Prospectus should contain full information on audit reports on any historical financial information which has been refused by the auditors or if they contain qualifications or disclaimers;
- the Prospectus should contain statements as to the source of financial data which has not been extracted from the issuer's audited financial statements; and
- a description of any significant change in the financial or trading position of the issuer which has occurred since the end of the last financial period for which either audited financial information or interim financial information have been published, or an appropriate negative statement.

### The DFSA approach

The general requirement is that a Prospectus must include historical audited financial

information for each of the last three completed financial years. This requirement can be met by including in the Prospectus:

- a) statutory accounts for each of the last three years together with the audit reports; or
- b) special purpose financial statements containing the same information as would be set out in the statutory accounts accompanied by the auditor's report; or
- c) a combination of both of the above ensuring that all three years are presented.

The DFSA would expect a Prospectus to include audited historic financial information (as set out above) which:

- a) covers a period of three years (36 months);
- b) is consolidated, for the purposes of the Applicant and its subsidiaries;
- c) is prepared in accordance with IFRS;
- d) is audited and reported on in accordance with IAASB; and
- e) is presented for the last two financial years on the basis of the accounting policies of the Applicant to be applied to the Applicant's next published annual financial statements.

We may modify or waive MKT Rule 9.3.2 in exceptional circumstances including where we are satisfied that it is desirable in the interests of investors and that investors have the necessary information to arrive at an informed judgement about the issuer and its shares.

### **Complex financial histories**

Issuers and market practitioners should consider the implications and difficulties of preparing and presenting financial information on a business with a complex financial history. An issuer may possess a complex financial history where its existing statutory accounts do not provide a comprehensive picture to investors of the financial history of its operations for the previous three years.

In such circumstances, the DFSA considers that investors would reasonably want or expect to see the financial history of the

underlying business in order to make an informed assessment of the assets, liabilities, financial position, profits and losses, and prospects of the issuer. The DFSA would not generally modify or waive the requirement for the Prospectus to include three years' audited financial information if such statements are capable of being prepared.

The specific nature of the circumstances of an individual case means that it is not possible to prescribe specific guidance. However, in order to assist readers we have identified a number of common situations below which may lead to an issuer having a "complex financial history":

- significant acquisitions or disposals made in the relevant period;
- acquisition to be made by a newly incorporated holding company;
- a de-merger or division from an existing group; and
- a private equity-backed acquisition in the relevant period.

This list is not exhaustive.

Where a Prospectus includes an independent report on historic financial information on an issuer which has been prepared at the request of the issuer for the purpose of the Prospectus (for example, special purpose financial statements), it must include a statement by the relevant Expert (an auditor or reporting accountant) consenting to the inclusion of its independent report in the form and context in which it is to be included. The Expert, together with the Sponsor, should consider whether the disclosures in the Prospectus, such as those in the risk factors section, are consistent with the assumptions and other disclosures made in connection with the independent report.

## ***Pro forma* financial information – relevant regulation**

*Pro forma* financial information is generally required to be included in a Prospectus where there has been a significant change in the issuer's business as a result of a transaction. A significant change is generally described as

a material transaction involving a variation of more than 25% in one or more indicators of size of an issuer's business (for example, total assets, revenue, profits or losses).

*Pro forma* financial information may be defined to include financial information such as net assets, profit or cash flow statements which demonstrate the impact of a transaction on previously published financial information together with explanatory notes.

### **The DFSA approach**

There is no DFSA requirement mandating an issuer to include *pro forma* financial information in a Prospectus. However, it is the DFSA's view that - in circumstances where there has been a significant change in the issuer's business (for example, a significant acquisition or disposal) - investors would reasonably expect to see *pro forma* financial information demonstrating the impact of such a change on the issuer's previous published financial information in order to make an informed assessment of the assets, liabilities, financial position, profits and losses, and prospects of the issuer.

However, where the issuer chooses to include *pro forma* financial information in a Prospectus, the information must be reported upon by an independent accountant or auditor in accordance with a reporting framework acceptable to the DFSA.

Equally, where a Prospectus includes an independent report on *pro forma* financial information on an issuer which has been prepared at the request of the issuer for the purpose of the Prospectus, it must include a statement by the relevant Expert (an auditor or reporting accountant) consenting to the inclusion of its independent report in the form and context in which it is to be included. The Expert, together with the Sponsor, should consider whether the disclosures in the Prospectus, such as those in the risk factors section, are consistent with the assumptions and other disclosures made in connection with the independent report.

## **Profit forecasts and estimates – relevant regulation**

MKT Rule APP 1(7.2) states that:

*"If an Applicant chooses to include a profit forecast or a profit estimate in the Prospectus:*

- (a) information about the principal assumptions upon which the issuer has based its forecast or estimate:*
  - (i) in a manner readily understandable by investors and prepared on a basis comparable with the historical financial information; and*
  - (ii) showing a clear distinction between assumptions about factors which the Board or senior management of the issuer can influence and assumptions about factors which are exclusively outside the influence of such Persons;*
- (b) a report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors, the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer; and*
- (c) If a profit forecast in a Prospectus has been previously published, a statement setting out whether or not that forecast is still correct as at the time of the Prospectus or if the forecast is no longer valid, an explanation of why that is the case."*

### **The DFSA approach**

A profit forecast is any form of words which expressly, or by implication, states or indicates a figure or a maximum or minimum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even if

no particular figure is mentioned and the word “profit” is not used. Where a profit forecast relates to an extended period and/or is subject to significant uncertainty it is sometimes referred to as a projection.

A profit estimate in the context of a Prospectus would also include an estimate in relation to historical financial information for a period which has expired, but for which the financial results have not yet been published.

The inclusion of a profit forecast or estimate in a Prospectus is the responsibility of the issuer and other persons responsible for the Prospectus. Due care and diligence must be taken to ensure that the profit forecast or estimate is not misleading to investors.

A profit forecast or estimate must be reported upon by an independent accountant in accordance with a reporting framework acceptable to the DFSA.

If the issuer has made a statement outside of a Prospectus that would constitute a profit forecast or estimate and that statement is still outstanding at the time of publication of the Prospectus, the issuer should consider whether the forecast or estimate is still valid and choose whether or not to include or update it appropriately in the Prospectus.

Where a Prospectus includes an independent report on a profit forecast or estimate which has been prepared at the request of the issuer for the purpose of the Prospectus, it must include a statement by the relevant Expert (an auditor or reporting accountant) consenting to the inclusion of its independent report in the form and context in which it is to be included. The Expert, together with the Sponsor, should consider whether the disclosures in the Prospectus, such as those in the risk factors section, are consistent with the assumptions and other disclosures made in connection with the independent report.

## Arabic edition

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

## Recommended reading

- European Securities and Markets Authority recommendations for the consistent implementation of the European Commission’s Regulation on Prospectuses No. 809/2004

## Contact us

Visit the DFSA website [www.dfsa.ae](http://www.dfsa.ae) for:

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

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## Feedback

We appreciate your feedback and welcome any suggestions that you may have. Please email us at [markets@dfs.ae](mailto:markets@dfs.ae)