



Markets Brief

Supplementary Prospectus

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Introduction

In this edition of the Markets Brief, we provide legal advisers, Sponsors and issuers of Securities with information about the DFSA's policy and procedures regarding Supplementary Prospectuses.

For the purposes of this Markets Brief, a reference to a "Supplementary Prospectus ("SP") means a supplement to an existing DFSA Approved Prospectus produced in accordance with Article 18 of the Markets Law 2012 ("MKT Law"), and a reference to a "Prospectus" includes a document containing the information specified in Article 15 of the MKT Law and in the Markets Rules of the DFSA Rulebook ("MKT Rules").

Guidance

Please note that the contents of this communication are not intended to be Guidance as contemplated by the Regulatory Law 2004 and 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.

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 publication 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.

1. When a Supplementary Prospectus should be produced?

Under Article 14 of the MKT Law, a Prospectus is created for the purposes of an Offer of Securities to the Public or an admission of Securities to trading on an Authorised Market Institution ("AMI") (or in the case of a Base Prospectus, more than one such offer or admission).

Article 18 of the MKT Law imposes an obligation on every Prospectus issuer to issue an SP if, at any time after the issue of a Prospectus, there is a significant change in, or a material mistake or inaccuracy affecting any matter contained in the Prospectus or a significant new matter arises. Article 18 also requires the issuer to ensure that an SP complies with the requirements of Article 15(1), which are that Prospectuses should contain "all the information which an investor would reasonably require and expect to find in a Prospectus for the purpose of making an informed assessment of", inter alia, the Securities.

This obligation is complemented by MKT Rule 2.9.1, which specifies the circumstances when the

publication of an SP must be made. It also makes it clear that an SP is required during the period in which a Prospectus is considered to be “current”. Under MKT Rule 2.6.4(2), a Prospectus is considered to be current for a period of 12 months beginning from the date on which the Prospectus was approved by the DFSA. However, readers should note the DFSA policy expressed in section 2 below.

2. DFSA policy on production of an SP

Although a Prospectus is considered to be current for a period of 12 months from the date of approval, in respect of a standalone or “single-use” Prospectus, as a matter of policy the DFSA would not expect to receive an SP from an issuer after:

- a) the closure of the offer to the public to which the Prospectus relates; or
- b) the time when trading in those Securities on an AMI begins (whichever is later).

This is provided that the matter which would require the issue of an SP can be adequately disclosed to the market by way of a market disclosure. This is the same for debt or equity.

For a multiple-use Prospectus, such as a Base Prospectus for a debt issuance programme, which is used by an issuer to undertake multiple issuances of Securities over the life of the programme, an SP may be required at any time during the life of the programme prior to an issuer making a new offer/issuance under the programme. Note, however, that a new Base Prospectus (updating the original Base Prospectus) is required after expiry of the 12 month period of the original debt issuance programme.

3. Significant changes or new matters

The test for what new matter, change, mistake or inaccuracy would require the publication of an SP in respect of an existing Prospectus is the same as the test to assess whether disclosure is

required in a Prospectus – i.e. whether or not the information disclosed enables investors to make an informed decision with respect to the Securities to which the disclosure relates (see Article 15(1) of the MKT Law).

Accordingly, the terms “significant” and “material” should be assessed according to the same qualitative or quantitative criteria used when drafting a Prospectus. For example, we will not approve an SP drafted purely to clarify or revise drafting in the original Prospectus if neither materiality nor relevance to an investor can be established with regards to those changes. However, clarification in an SP to remove an actual potentially ambiguous or confusing statement in the Prospectus would be acceptable.

4. Changing the terms and conditions of the original Prospectus

In certain circumstances, an SP may be used to change the terms and conditions of the original Prospectus. For example, if the changes to be introduced are purely technical in nature such as (i) the number of Securities offered, (ii) the proposed date of allotment, (iii) the offer period, (iv) the addition of a new venue for trading, or (v) the procedure for the exercise of pre-emption rights, the DFSA would consider that such changes should be included in and implemented through an SP. In this respect, it is equally important that the changes relate to the same Securities as described in the original Prospectus and that the Prospectus remains valid.

Similarly, in the case of a debt issuance programme, a Base Prospectus allows numerous offers and admissions to be made over a period of 12 months from the date of its approval, but only if each offer or admission is made under the terms and conditions already specified in the Base Prospectus. The DFSA will allow limited changes to be made to a Base Prospectus using an SP only where we are satisfied that it is relevant for a Security holder and clearly relates to a matter described in the Base Prospectus that the DFSA had previously approved.

However, an SP may not be used:

- (a) to launch an offer of entirely new Securities or an admission of such Securities to an AMI which are not related to those already specified in the original Prospectus;
- (b) to change the existing terms and conditions of the Securities if the resultant change means that the Securities are manifestly no longer the same type of Securities as envisaged in the original Prospectus; and
- (c) to launch a new offer or create a new admission event unrelated to the one anticipated in the original Prospectus.

The rationale for the above is that the original Prospectus will have been drafted for a specific offer or admission event and, therefore, it should contain all relevant information in relation to such activities. An SP should be used to update the market, during the life of the Prospectus, about material changes to the Securities and/or the issuer or to correct any mistake or inaccuracy in the Prospectus.

Therefore, changes introduced in an SP should not be such that their effects, when taken together, change the nature of the Securities such that new Securities are created. When a fundamentally new Security is created, a new Prospectus will have to be produced. In assessing the changes proposed in an SP and its impact on the nature of the Securities, the DFSA would take into account factors such as whether the change is a response to external events, the nature of the Security, economic impact of the proposed changes, and whether the proposed changes are purely technical.

5. Best practice during offer period

Under MKT Rule 2.9.3, when an SP has been filed during an Offer Period, subscribers or persons who have offered to purchase Securities have the right to confirm or withdraw any subscription or offer made on the basis of the original Prospectus. They may do so within 7 days

from the date of the receipt of the SP in which to confirm or withdraw its subscription or offer.

However, to ensure investors are not unconditionally allotted Securities, we consider it to be best practice to suspend the offer between the trigger event and the actual publication of an SP in certain circumstances. For example, where an offer is actively marketed or where the Securities are allotted immediately, such that the investors who completed their purchase before an SP was published would not benefit from the withdrawal rights, suspension of the offer is encouraged.

For the record, in relation to a Base Prospectus, we do not consider that the requirements of MKT Rule 2.9.3 would be applicable in respect of:

- (a) existing Security holders who have purchased Securities prior to the new offer/issuance, and
- (b) an SP where there are no offerees i.e. where the SP updates a Base Prospectus but where no offer has been made at the date of approval of the SP.

6. Failure to issue an SP

Article 20(1) of the MKT Law prohibits a person from making a Prospectus Offer if, *inter alia*, there is a misleading or deceptive statement or any material omission from the Prospectus, or a significant new matter or a significant change in circumstances that requires a Supplementary to be issued. Failure to issue an SP may expose an issuer (and any other person held liable for a Prospectus) to a stop order, enforcement action by the DFSA and to compensate Security holders for loss or damage suffered as a result of the failure to issue an SP. If a person is unsure whether they may need to issue an SP they should seek legal advice or contact the DFSA to request individual guidance.

7. Timing for the production of an SP

In the absence of a fast-track timetable for the submission of an SP for approval, we would recommend that an SP is given to the DFSA for review and approval as soon as practicable after the new significant matter has occurred or a significant change in or material mistake or inaccuracy concerning the information in the Prospectus is discovered.

The documents to be submitted to the DFSA in relation to an SP are as follows:

- (a) AFN MKT 1 Form – application for Prospectus approval;
- (b) a completed SP;
- (c) relevant checklists (Registration Statement, Securities Note, Islamic Finance Rules, etc.), where applicable;
- (d) copies of any documents incorporated by way of reference, where applicable; and
- (e) filing fees in accordance with the Fees Module.

The above documents (excluding those specified in (b) and (d)) are available here <http://www.dfsa.ae/Pages/DFSAlistingauthority/DFSAlistingauthority.aspx>

As a guide, we would aim to review and return comments on the draft SP within 3 business days and approve it within the same day from the date of receipt of the above complete, final and signed documents. However, as we recognise the importance of having to publish SPs on a timely basis, we would, therefore, endeavour to fast

track the review and approval process to facilitate early publication where necessary. For example, the DFSA will approve an SP on the day it is received if the SP is required for purposes of incorporating by reference the financial statements in the Base Prospectus of a debt issuance programme.

8. Fees

Filing of an SP with the DFSA must be accompanied by a fee. You are advised to consult the DFSA upfront on the amount payable to the DFSA in relation to an SP filing.

Arabic edition

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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
- 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