

Markets Brief

Disclosure considerations relating to ESG and climate change related matters

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Introduction

In this Markets Brief, we set out information for Issuers and Reporting Entities on prospectus disclosure requirements and continuing disclosure obligations that are relevant when considering environmental, social and governance (ESG) and climate change related matters.

Guidance

The contents of this Markets Brief 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.

Terminology

Technical explanations in this Brief are for illustrative purposes only. Legal advice should be obtained if you are unsure about how any aspect of the DFSA Markets regime may apply to you.

Under the DFSA listing regime, a “Reporting Entity” includes a company that has Securities admitted to the

Official List of Securities or a person who has made an Offer of Securities to the Public. Further, an “Issuer” includes a person by whom a Security has been or is to be issued. For convenience, in this Markets Brief we refer to each of the above persons simply as an issuer.

Defined terms are identified in this Markets Brief by the capitalisation of the initial letter of a word or each word in a phrase. Terms not expressly defined in this Markets Brief are defined in the Glossary Module of the DFSA Rulebook (GLO).

Background

The growing demand for ESG investments has led to increased concerns about the risks of *greenwashing*. This is further exacerbated by disparity in how different market practices are evolving and how the various ESG considerations are interpreted, described, valued, and categorised under varying methodologies and requirements.

The International Organization of Securities Commissions (IOSCO) describes *greenwashing* as the practice of misrepresenting sustainability related practices or the sustainability

related features of investment products. *Greenwashing* varies in scope and severity from an inappropriate use of sustainability related terms to deceptive marketing practices.¹

Securities regulators, including the DFSA, are utilising disclosure requirements so that investors receive all the information they need to make an informed investment decision, and importantly, that ESG claims are accurate and not misleading.

Therefore, when considering ESG and climate change matters, issuers should assess ESG and climate change related risks and opportunities carefully for the purposes of their disclosure obligations.

Below are some examples of relevant provisions set out in the Markets Law 2012 (MKT Law) and Markets Rules (MKT Rules).

Prospectus disclosure

MKT Law Article 15(1) states that a Prospectus shall 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 (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer and any guarantor, and (b) the nature of the Securities and the rights and liabilities attaching to those Securities.

Many issuers' countries of origin have committed to transitioning their economies to a net zero carbon environment. This includes, for example, the UAE Net Zero 2050 strategic initiative. As a result, many

issuers will likely need to consider how these strategies will affect their businesses and what changes to their businesses will be required as a result in the years to come.

A wide range of factors may influence an investor's assessment of an issuer's prospects. ESG and climate change related risks and opportunities may have a material impact on an issuer's financial position and so may need to be disclosed. Accordingly, issuers should consider ESG matters carefully when determining what should be disclosed under the MKT Law.

MKT Law Article 20(1) prohibits misleading and deceptive statements and material omissions in a Prospectus and other related documents. Similarly, it requires the issue of a supplementary prospectus if there is a significant new matter or significant change in circumstances.

Under MKT Rule 2.10.1(1), an Issuer, and others specified in that Rule, are liable for a Prospectus and its content. It is important to note that the liability arising under these provisions for making ESG related disclosures, like for any other statement in the Prospectus, cannot be limited, restricted, or excluded either expressly or implicitly, unless it is specifically permissible to do so under other Rules or requirements of the DFSA.

Risk factors and other disclosures

MKT Rule A1.1.1 requires a Prospectus to prominently disclose risk factors that are specific to the issuer and, if relevant, its industry in a section

¹<https://www.iosco.org/library/pubdocs/pdf/IOSCOPD711.pdf>

headed “Risk Factors”. This section must set out information including:

- the material risks associated with investing in the issuer and, where applicable, any risks associated with the assets to be acquired using the proceeds of the offer;
- the effect that the material risks may have on the issuer together with a discussion of how the risks could affect the business, operating results, and financial condition of the issuer;
- any steps proposed by the issuer to mitigate or manage the risks; and
- general and specific risks relating to the industry and the jurisdiction in which the issuer operates.

MKT Rule A1.1.1 also requires disclosure of information about the issuer’s assets. This includes a requirement applicable to Shares, Warrants over Shares, Certificates over Shares and Structured Products to disclose a description of any environmental issues that may affect the issuer’s utilisation of its existing material fixed assets or material fixed assets it plans to acquire.

Under the heading “Significant factors affecting income/operations”, MKT Rule A1.1.1 requires disclosure of information regarding significant factors, including unusual or infrequent events or new developments, which are materially affecting or may be likely to so affect the issuer’s income from operations. Also, information must be disclosed about any governmental, economic, fiscal, monetary, or political

policies or factors that have materially affected, or could materially affect, directly or indirectly, the issuer’s operations. Therefore, if this includes environmental matters that are material, they may need to be disclosed.²

Adequacy of systems and controls

MKT Rule 8.1.2 requires a Reporting Entity to establish and maintain on an ongoing basis appropriate systems and controls to demonstrate compliance with the relevant requirements in the MKT Law and the MKT Rules.

Listing principle 2 under MKT Rule 9.2.2 requires that a Listed Entity take reasonable steps to establish and maintain adequate policies, procedures, systems and controls to enable it to comply with its obligations under the Listing Rules.

In considering whether policies, procedures, systems and controls are adequate to enable it to comply with its obligations under the MKT Law and the MKT Rules, an issuer should consider whether there is a need to access and draw on additional data sources, or reports and opinions, when disclosing ESG and climate related risks and opportunities. Issuers should also consider whether there is a need to develop specific systems, analytical instruments, or organisational arrangements to collate and assess the information required to enable it to comply with its obligations.

For example, sustainability-linked bonds may require specific methods and verification processes to measure

² This applies to Shares, Warrants over Shares, Certificates over Shares and Structured Products.

progress in line with the stated key performance indicators.

Continuing disclosure obligations

Section 4.2 of the MKT Rules requires that a Reporting Entity make timely disclosures of Inside Information in accordance with the requirements in that section. Under MKT Rule 4.2.1, a Reporting Entity must ensure that the disclosure it makes is not misleading, false, or deceptive and does not omit anything likely to affect the import of the information.

ESG Securities issued by Exempt Offerors

An Exempt Offeror is a recognised government or other person included in the list of Exempt Offerors in MKT Rule A5.1 or such other person as is approved by the DFSA under the MKT Rules. Exempt Offerors are not required to issue an Approved Prospectus and are not regarded as a Reporting Entity under the MKT Law.

However, in line with the restrictions set out in Article 29(6) of the MKT Law, Exempt Offerors need to seek admission to the Official List of Securities when seeking admission to trading on an Authorised Market Institution. Therefore, the DFSA may modify one or more of the requirements for Exempt Offerors who wish to comply voluntarily with the Listing Rules to include their ESG Securities in the Official List of Securities as further described in MKT Rule 9.1.1 Guidance No.4.

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 MKT Law and MKT Rules; and
- the [Code of Market Conduct](#) (in the Sourcebook Modules part of the DFSA website).

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