

Markets Brief

DFSA Listing Regime for SMEs

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Introduction

On 1 April 2020, the DFSA introduced a listing regime for Small or Medium Sized Enterprises (SMEs). The listing regime enables SMEs to raise funds through the capital markets by issuing Shares, listing on the DFSA Official List of Securities and admitting them to trading on an Authorised Market Institution in the DIFC.

In this edition of Markets Brief, the DFSA sets out guidance for potential SME Applicants and their advisers on this listing regime for SMEs.

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 the Glossary Module (GLO) of the DFSA Rulebook.

Background

SMEs contribute significantly towards the UAE's economic growth. According to the UAE Ministry of Economy, SMEs are the key engines of the national economy and are identified as one of the most important strategic drivers to support productive sectors.

The vast majority of companies operating in the UAE are SMEs and the SME sector provides jobs for a substantial part of the private sector's workforce. At the same time, SMEs have difficulty accessing funding, giving rise to a commercial funding gap. With the listing regime for SMEs, the DFSA encourages market participants to develop financing solutions to bridge this gap.

In summary, the intended benefits of the SME regime are that it potentially allows SME companies:

- to obtain equity financing through the capital markets;
- in comparison to the non-SME equity listing regime, to:
 - list with less than three years' track record;
 - benefit from lower fees when filing a Prospectus for approval; and
 - appoint a compliance adviser, rather than a sponsor, to assist it in complying with DFSA requirements at application and on an ongoing basis.

Communicating risks to investors

Investing in SMEs carries its own specific risks to investors, following from, for example, small size, limited operating history and limited management experience. Specifically, such risks include investors having insufficient information on how management have previously managed business operations, corporate governance failures that may result in general mismanagement or financial crime, the risk that key individuals exit the company soon after listing, the inability to comply with secondary market-disclosure obligations and a lack of liquidity in the after-market. The DFSA listing regime for SMEs has been developed mindful of these risks. The requirement for SMEs to have an ongoing compliance adviser is intended to reduce the risks of non-compliance. However, SMEs must ensure that in their Prospectus the general and specific risks of investing in SMEs and in the Issuer are properly disclosed. Investors should be given sufficient information to make their own assessment as to whether investing in SMEs fits their risk profile and, if necessary, seek independent professional investment advice.

That said, it is our hope that the opportunities created for SMEs by the regime will be beneficial to the growth of the DIFC, Dubai and the UAE.

Introduction

The Rules aim to create a complete regime, while at the same time keeping the number of changes to the existing framework to a minimum. Therefore, unless there is a specific provision made for SMEs, or a Rule is specifically declared as non-applicable, the regular obligations for Applicants and Listed Entities under MKT apply without change to listed SMEs.

Key to the SME listing regime is our definition of a SME, with (continued) eligibility for the SME listing regime dependent on whether an Applicant or Listed Entity meets, or continues to meet, the elements of this definition.

Definition of SME

The aggregate market value of a company's listed Shares determines whether or not a company qualifies or continues to qualify for the SME listing regime. The definition of a SME is set out in MKT 1.3.3 and applied in the following manner:

- An Applicant for listing is a SME for the purposes of the SME listing regime if the aggregate market value of all of its listed Shares on admission is reasonably expected to be less than USD 250 million.
- A Listed Entity is a SME for purposes of the SME listing regime if the aggregate market value of all of its listed Shares on admission indeed was less than USD 250 million.
- A Listed Entity ceases to be a SME for the purposes of the SME listing regime if the average aggregate market value of its listed Shares has exceeded USD 500 million for 90 consecutive days.

When a Listed Entity ceases to be a SME, the main difference in terms of the DFSA Rules applicable to it will be that the requirement for SME-tailored website disclosures falls away and the manner in which its annual fee is calculated will change. We would generally expect that by this time the company will have sufficient resources in place to comply with its obligations under the Law and the Rules without the assistance of a compliance adviser, in which case the ongoing requirement to appoint a compliance adviser can be withdrawn, upon request.

A Listed Entity that ceases to be a SME must disclose that fact to the market.

Flexibility – waivers and modifications

The DFSA may modify the application of the SME definition in relation to a particular Applicant or Listed Entity, where it is satisfied that it is appropriate in the circumstances to do so.

For example, if an Applicant is likely to exceed the USD 250 million maximum aggregate market value of all of its listed Shares on admission, but can demonstrate that it is appropriate to treat it as a SME because of its limited operating history and early stage of its development.

Similarly, Applicants with an expected market capitalisation of less than USD 250 million at listing, are not necessarily forced into the SME regime. Such an Applicant may request that the application of the definition of a SME be waived or modified to it, if it is able to demonstrate to the DFSA that it should not be treated as a SME. This may be appropriate where for example, it has an established track record and business. Where the Applicant is granted the waiver not to be treated as SME, it would need to meet the eligibility requirements for non-SMEs and the DFSA would generally require the Applicant to appoint a sponsor.

The elements of our SME listing regime

In addition to the definition of a SME, the other elements that make up the regime are:

1. audited accounts covering a minimum period of 1 year instead of 3 years (if an Applicant has audited accounts covering a longer operating history, these must also be disclosed, up to a maximum of 3 years);
2. a 12-month lock-in period on pre- listing shareholders of the SME;
3. a prohibition on share repurchases for a period of 24 months;
4. a requirement for certain website disclosures with information relevant to investors;
5. a requirement for a compliance adviser; and
6. changes to application, filing and ongoing fees.

We will look into each of these elements in this Markets Brief.

One-year operating history and financial statements

The regular requirement for eligibility for listing is that the Applicant must have three years of audited consolidated financial information prepared in accordance with International Financial Reporting Standards (IFRS). In effect, this is a requirement that the Applicant must have an operating history of at least three years.

For the purposes of our SME listing framework we have reduced this to a minimum requirement of the Applicant to have published or filed audited accounts covering a prior period of one year. This is to provide investors with some comfort as to existing management's experience and governance. Where an Applicant SME has a track record of longer than one year, it must include the additional audited accounts for the period it has been in operation, up to a maximum of three years.

We note that the default requirement under our Rules is that the financial statements of an Applicant must be drawn up in accordance with IFRS and the auditing standards of the IAASB. However, our Rules provide the DFSA with the discretion to permit other standards acceptable to us. To facilitate SMEs, we will generally consider it appropriate to permit SMEs to list using their existing audited historical financial statements, prepared in accordance with their national audit and accounting standards, provided that those standards are acceptable to the DFSA. Once listed, the SME will be required to produce audited accounts prepared in accordance with IFRS (or other standards acceptable to us) and auditing standards of the IAASB (or other standards acceptable to us) for the next and subsequent financial years.

12-month lock-in period

To align the interests of pre- and post-listing shareholders in a SME, pre-listing shareholders will remain locked-in for a 12-month period from listing of its Shares. During this period pre-listing shareholders cannot dispose of any interest in its Securities. There may be circumstances where the DFSA considers a longer lock-in period for pre-listing shareholders of a SME would be appropriate in the context of a particular listing. In those circumstances, the DFSA may consider exercising its power under Article 34(2)(b) of the Markets Law 2012, to impose a longer lock-in period as a condition or restriction in respect of that listing.

24-month prohibition on share repurchases

In our view the general purpose of an IPO and in particular the IPO of a SME is to raise capital to support the growth of the company. Therefore, we impose a prohibition on share repurchases by listed SMEs for 24 months from admission of its Shares to the Official List.

We permit one exception from this prohibition, where the shareholders of the SME have passed a Special Resolution allowing the Share repurchase. Even in that case though, the Share repurchase, like any other, would be subject to the DFSA's prior written approval and the DFSA could impose conditions and restrictions pursuant to MKT 9.7.4.

The prohibition also falls away in case the Listed Entity ceases to be a SME during the 24 months from admission of its Shares to the Official List.

Additional SME market disclosures

We consider it important that investors can easily locate key information about the listed SME and its business in one place: on the SME's website. We therefore require listed SMEs to maintain on their website certain key

information relevant to investors, free of charge and accessible to the general public. This is to reduce the risk of investors having inadequate or delayed information. This information includes amongst other things, the current articles of association, names of the directors with biographies, the annual financial reports for the last three years (or since admission, if the company's Shares have not been admitted to the List for more than three years) and details of the company's corporate governance code.¹

The website disclosure requirements are in addition to the other ongoing disclosure requirements that apply to a Listed Entity, including obligations to disclose Inside Information.

Listing Process

The process by which an Applicant SME makes an application for the DFSA to review and approve its Prospectus and admit its Shares to the Official List is in large part the same as for a non-SME.

Therefore, we refer to our Markets Brief no. 1 on Listing in the DIFC and Markets Brief no. 9 on Eligibility for Listing. When reading these Markets Briefs, please keep in mind that (i) references to sponsors do not apply as the SME is required to appoint a compliance adviser instead, as explained in this Markets Brief and (ii) the eligibility requirement for three years of audited financial statements is reduced to at least one year for SMEs.

Compliance adviser requirement

Instead of requiring a sponsor, the DFSA will, pursuant to MKT 7.2.3A, usually require a SME to appoint a compliance adviser as a condition of admission to the Official List and its ongoing listing.

The DFSA will expect the compliance adviser to have sufficient senior, competent staff and a

¹ Our requirement is similar to the requirement for ongoing company information disclosure on the company website imposed by the LSE AIM ("Article 26 disclosures").

proven track record of relevant corporate finance transaction experience to enable it to advise the SME properly about the listing process, its ongoing obligations as a Reporting Entity and assess the suitability for listing.

MKT 7.2.3(2) provides the DFSA with a basis to request such information as it may require regarding a proposed compliance adviser at the pre-appointment stage, including information regarding the knowledge, experience, qualifications and resources of the compliance adviser. The information requested by the DFSA at this stage will typically include details of the contractual arrangements between the proposed compliance adviser and the SME Issuer.

To ensure that the appointment of the compliance adviser proposed by the SME is appropriate and that the proposed compliance adviser has the requisite expertise and resources to perform its role in accordance with its obligations under MKT and is in good standing, the DFSA anticipates that before directing a SME to appoint a compliance adviser, it will discuss the proposed appointment with the SME and meet with the proposed compliance adviser.

Once the DFSA has informed the potential Applicant and proposed compliance adviser that it does not object to the proposed compliance adviser, the potential Applicant is required to provide the DFSA with written confirmation of the appointment of the compliance adviser.

As mentioned above, the subsequent steps in the process towards prospectus approval and listing are the same for SME Applicants as for non-SME Applicants. We refer to our Markets Brief no. 1 on Listing in the DIFC and Markets Brief no. 9 on Eligibility for Listing.

Compliance adviser role – pre-listing

In the pre-listing stage, the role of the compliance adviser will be to assist the SME with its application for admission of its Shares to the List. In particular, to assist the SME in ensuring that a Prospectus contains all the

information which an investor would reasonably require and expect to find for the purposes of making an investment decision. We would expect the compliance adviser to advise the SME on the adequacy of the due diligence and verification processes followed in the production of a Prospectus and on whether the statements made by the issuer stand up to effective challenge.

We expect a SME Applicant to have given its compliance adviser any necessary consent to have direct contact with the DFSA during the prospectus review process and to discuss any issues on eligibility of the Applicant.

The DFSA will expect the compliance adviser to assist the Applicant SME with all aspects of the application process and prospectus preparation, including the coordination of work streams with other parties to the transaction, such as drafting lawyers and external auditors and, for example, property valuers.

Compliance adviser role – ongoing

The requirement for the appointment of a compliance adviser as an ongoing adviser is designed to ensure that the listed SME is aware of and complies with its continuing obligations under the Law and the Market Rules. By way of example, we would expect the assistance provided by a compliance adviser to a SME to include advice on compliance with the following ongoing obligations of a Reporting Entity under MKT:

- proper and timely notification to the DFSA and disclosure of related party transactions;
- the ongoing obligation to disclose Inside Information to the market;
- the periodic obligation to prepare and publish audited financial statements;
- the obligation to file with the DFSA, and make public, Connected Person reports;
- the obligation to disclose material interests of directors of the Reporting Entity to the market;
- convening of shareholder meetings and ensuring the SME obtains prior shareholder approvals where required

under MKT, such as for amendments to the articles of association, significant related party transactions or the appointment or removal of the auditor;

- coordination of prospectus drafting in case of non-exempt follow-on securities offerings;
- maintaining the mandatory company information website for investors (MKT 4.8.1); and
- assisting with a corporate governance framework being maintained that is effective in promoting compliance with the mandatory Corporate Governance Principles in MKT, as well as the disclosure obligations on corporate governance being made.

A compliance adviser should therefore be a person familiar with the requirements of the relevant markets regulation and should have the necessary knowledge, experience, qualifications and resources to assist the SME to comply with its regulatory obligations.

However, ultimately it is the Reporting Entity that remains responsible for its compliance with its regulatory obligations under the Markets Law and Markets Rules.

Obligations of the SME to the DFSA

In case the compliance adviser is failing or has failed to comply with its obligations under the Law and the Rules, the SME must take reasonable steps to rectify the failure as soon as practicable.

If the SME is unable to rectify the failure of the compliance adviser it must as soon as practicable notify the DFSA of that fact.

The SME must notify the DFSA if it becomes aware, or has reason to believe, that the compliance adviser or its employees have a conflict of interest which has not been appropriately managed.

The SME must take reasonable steps to ensure its compliance adviser cooperates with the DFSA, including answering promptly and openly any questions of the DFSA addressed

to the compliance adviser. The SME must provide to the DFSA any information in such form and within such time as the DFSA may reasonably require regarding its compliance adviser.

Obligations of the SME to its compliance adviser

The SME must take reasonable steps to ensure that it and its employees:

1. provide such assistance as the compliance adviser reasonably requires to discharge its duties;
2. give the compliance adviser right of access at all reasonable times to relevant records and information;
3. do not hinder or interfere with the compliance adviser's ability to discharge its duties;
4. do not withhold information that would assist the compliance adviser advising the SME of its duties;
5. do not provide misleading or deceptive information to the compliance adviser; and
6. report to the compliance adviser any matter which may significantly affect the financial position of the SME or the price or value of the Securities.

Dismissal or resignation of the compliance adviser

Where the SME intends to dismiss its compliance adviser it must contact the DFSA as early as possible. The SME should also inform us upon becoming aware that the compliance adviser intends to resign. Having a compliance adviser is a continuing obligation for listing for a listed SME (unless the requirement for a compliance adviser has been lifted by the DFSA; see below). Similarly, we would expect as a matter of courtesy that a compliance adviser intending to resign would also notify the DFSA well in advance of doing so because, for the listed SME, it is a continuing obligation for listing to have a compliance adviser.

The DFSA may, pursuant to MKT 9.6, consider it warranted for a SME's Shares to be suspended from the Official List until the SME has appointed a new compliance adviser.

Lifting of the requirement for a compliance adviser

Where a SME is required to appoint a compliance adviser on an ongoing basis, it must ensure that the compliance adviser continues to perform that role unless the SME receives written notice from the DFSA that the requirement is withdrawn.

The DFSA will generally not withdraw this requirement while a Reporting Entity remains a SME, unless the SME can demonstrate to the DFSA's satisfaction that:

1. the SME's Shares have been admitted to trading on an Authorised Market Institution for at least three years;
2. the ongoing obligations for trading on that Authorised Market Institution have been complied with during that period; and
3. the SME has sufficient resources in place to comply with its obligations under the Law and the Rules without the assistance of a compliance adviser.

We note that in its commercial dealings, the compliance adviser to the SME is not required to hold itself out as 'compliance adviser' but could, for example, brand itself as ongoing listing adviser or listed company adviser. Similarly, we do not require that an AMI or ATS for SMEs is specifically called a SME market. We would expect compliance advisers to SMEs, in principle, to be domiciled, or have a presence, in the DIFC.

Differences from sponsor

The role of a sponsor ends at listing while the compliance adviser to a SME is ongoing, not only during the application stages but also going forward once the SME is listed.

Unlike a sponsor for regular listings, we do not require a compliance adviser to a SME to provide the DFSA with a sponsor declaration on compliance by the Applicant with all our regulatory requirements at time of listing. This should help to keep down advisory costs for SME Applicants. Of course, the flipside is elevated risk for investors (which should be adequately disclosed), but this is inherent to investing in SMEs.

Some key elements remain unchanged

The following aspects of the existing DFSA listing regime are incorporated into the SME regime without change:

- Primary Disclosure – Prospectus
The existing prospectus content Rules provide sufficient flexibility to extend to SMEs. Where a specific disclosure requirement is not applicable, the SME Applicant can indicate this in the prospectus content checklists that are part of its document submission.
- Secondary Disclosures – periodic financial reporting and audit standards
The regular requirements for audited financial statements will apply to a listed SME. (In addition, a listed SME will need to keep certain company information available on its website, as discussed in the section Additional SME market disclosures above).
- Financial reporting and audit standards
The regular requirements for audited financial statements will apply to a listed SME. (In addition, a listed SME will need to keep certain company information available on its website, as discussed in the section Additional SME market disclosures above).
- Secondary Disclosures – ongoing: Inside Information
It is important for the protection of investors and maintaining an orderly market that the market is properly informed. Therefore, listed SMEs have to comply with the requirements under the Markets Law and Markets Rules in respect of, for example,

disclosure of Inside Information, including disclosure of interests by Connected Persons and of Directors' material interests. Other continuing disclosure requirements to the market are on the occurrence of events listed in MKT App2 and MKT App6.

- Corporate Governance

A listed SME should have a corporate governance framework in place at the time of listing. Our 'comply-or-explain' corporate governance regime is designed to provide a degree of flexibility that will permit a SME to achieve the outcomes intended whilst considering the nature, scale and complexity of its business.

- Shares in public hands

All Shares of the SME must be listed with at least 25 percent held in public hands. Shares are not held in public hands if, for example, they are (i) held by a shareholder who directly or indirectly has an interest in five percent or more of the Shares or (ii) held by Connected Persons. We consider this free float requirement necessary to support liquidity and thereby proper price formation and also for the prevention of market manipulation.

Fees for SMEs

The fee structure for SMEs includes filing fees and an annual fee.

The filing fee for a prospectus review and filing is USD 10,000 for SME applicants, a substantial reduction from the USD 35,000 fee applicable to a non-SME Applicant. The fee for admission to the DFSA Official List is USD 2,500.

For SME Applicants that submit supplementary prospectuses, or any other document requiring approval of the DFSA, the fee structure remains unchanged.

The ongoing annual flat fee for the equity listing of a SME is USD 10,000.

Where a Listed Entity ceases to be a SME, its

next annual fee will be calculated in accordance with the provisions applicable to Listed Entities other than SMEs.

Calculating the average aggregate market value

To qualify for listing as a SME, the aggregate market value, commonly referred to as "market capitalisation" or "market cap" of the Applicant must be less than USD 250 million at listing. Whether or not a listed SME continues to be eligible for the SME listing regime depends on its rolling average market capitalisation over a period of 90 consecutive days. When this rolling 90-day average exceeds USD 500 million, the Listed Entity ceases to be a SME and becomes a regular Reporting Entity.

In this section we provide guidance on the method the SME should use to calculate this (average) aggregate market value of its Shares, either as an Applicant or as a Listed Entity.

- Aggregate market value or market capitalisation:

This is the total market value of a company's listed Shares. The market capitalisation is calculated by multiplying the total number of a company's listed Shares by the current market price of one share.

For purposes of its IPO, the market capitalisation is the number of listed Shares including Shares issued at IPO multiplied by its Share price at close of trading on first trading day (or as an indication, the final IPO price).

- Daily market capitalisation calculation

Because the qualification as listed SME depends on a 90-day average, the market cap will need to be calculated on a daily basis.

Daily market capitalisation should be calculated using the most recent official closing price of the Shares as published by the exchange on which the SME has listed its Shares (e.g. Nasdaq Dubai).

If the closing price is not available, the most recent share price for that trading day should be considered as the latest share price. In case a Share has not traded because e.g. of a public holiday or weekend day, the last available share price of the previous trading day should be considered the close price.

- Market capitalisation calculation example
A company with 20 million listed Shares and a market closing price of USD 2.50 would have a market cap of USD 50 million for a given day.
- Average aggregated market capitalisation
This is the average daily market capitalisation of a company calculated over an aggregated number of trading days.
- Continuous calculation market capitalisation and ninety days moving average market capitalization
A listed SME should calculate the daily market capitalisation and the ninety days moving average market capitalisation on a continuous basis. We would not expect a SME to calculate its market cap on a daily basis if its markets cap is still substantially below the USD 500 million threshold, but to do so on a regular basis to keep track. However, it should start calculating its market capitalisation on a daily basis once it approaches the USD 500 million threshold. Once the ninety days moving average market capitalisation has reached a value equal to or larger than USD 500 million, the threshold has been reached.

We would expect a listed SME whose ninety days moving average market capitalisation is approaching USD 500 million to come to the DFSA in good time and inform us of the consequences for its listing, both as a result of DFSA regulatory requirements and in relation to the exchange on which it is listed, and how it plans to address those consequences. We would expect the company to have ample time to prepare for its transition

from listed SME to listed non-SME, being able to monitor its increasing average market cap over time. The Listed Entity is not required to draw up a new Prospectus, apply again for admission to the Official List or pay a fee in relation to it becoming a Listed Entity that is not a SME. We note that if it wants to apply for a waiver or modification to continue its status as a SME even though it has reached the threshold it should approach us well in advance. Such waivers or modifications are contemplated in the Guidance to MKT 1.3.3 and may only be granted in circumstances where the SME can demonstrate they are appropriate in the circumstances.

Annex 1 to this Markets Brief sets out an example of calculations of the market capitalisation for purposes of qualifying for the SME listing regime.

Annex 2 to this Markets brief is a Q&A section. It is based on specific queries of (potential) compliance advisers and other relevant parties. We expect additional questions will come up as the regime is put into practice. We may, if warranted, update the Q&A Annex to inform the market of the position we take on issues raised.

Further information

The DFSA has published Markets Briefs on a whole range of topics that will be relevant to the SME as Applicant or as Listed Entity, as well as to compliance advisers.

Markets Briefs can be found on the Listing Authority part of the DFSA website in the Knowledge Base section.

<http://www.dfsa.ae/en/DFSA-Listing-Authority/Knowledge-Base>

Contact us

Visit the DFSA website www.dfsa.ae for:

- other editions of the Markets Brief; and
- access to DFSA-administered legislation and the DFSA Rulebook, including a 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@dfsa.ae

Annex 1 – Sample calculation

90 days moving average market capitalisation calculation (resulting in market capitalisation above \$500 mln)						
Date			Number of shares outstanding	Closing price of company share	Calculations	
From	Up to and including	Number of calendar days ("n")			Daily market cap for each calendar day	Total market cap for "n" days
15-Jan	15-Feb	31	200,000,000	\$2.65	\$ 530,000,000	\$ 16,430,000,000
16-Feb	03-Mar	16	200,000,000	\$2.58	\$ 516,000,000	\$ 8,256,000,000
04-Mar	09-Apr	36	200,000,000	\$2.61	\$ 522,000,000	\$ 18,792,000,000
10-Apr	17-Apr	7	200,000,000	\$2.52	\$ 504,000,000	\$ 3,528,000,000
total		90				\$ 47,006,000,000
90 days moving average market cap					\$ 522,288,889	

Annex 2 – Questions & Answers

This Q&A is based on specific queries of (potential) compliance advisers and other relevant market parties. We expect that additional questions will come up as the regime is put into practice. We may, if warranted, update the Q&A from time to time to inform the market of the position we take on issues raised.

1. Does the DFSA expect the compliance adviser that has worked on the IPO process to remain as the ongoing compliance adviser or can this change at the point of listing and a new compliance adviser be appointed once the company is listed?

The DFSA expects the compliance adviser that assisted the company pre-listing to also stay on as the ongoing compliance adviser once the SME is listed. However, termination of the compliance adviser, either by being dismissed by the listed SME or through its own withdrawal, remains a possibility. For more information on these scenarios, please see section “Dismissal or resignation of the compliance adviser” of the Markets Brief.

2. If the compliance advisor is an audit firm can they also act as the auditor for the issuer?

No, we would expect that a firm that acts as the Auditor to a Public Listed Company cannot at the same time act as its compliance advisor without creating a risk of a fundamental conflict of interest or lack of independence that would potentially prevent the Auditor from carrying out its Audit Services properly. This follows from the DIFC Regulatory Law of 2004, as amended, and the Rules and Guidance in the AUD Module of the DFSA Rulebook.

3. Do you expect the compliance advisor to be regulated by the DFSA for the provision of Financial Services?

No. However, the compliance adviser must have sufficient knowledge and experience with DFSA regulations.

4. Do you expect the compliance adviser to be located in the DIFC?

As stated in the Markets Brief, under the section “Lifting of the requirement for a compliance adviser”, we would expect compliance advisers to SMEs, in principle, to be domiciled, or have a presence, in the DIFC.

5. How do you see the capital raising process to take place?

The capital raising process must be run by a firm authorised to perform these activities (i.e. generally, an investment bank) in the DIFC or another jurisdiction acceptable to the DFSA. For example, an Applicant's compliance adviser is based in the DIFC and its investment bank may be based in the UAE.

6. Can the DFSA be flexible with the 25 percent free float requirement?

The requirement in Rule MKT 9.3.10(2) for a 25 percent free float (Shares in public hands), and the Guidance to that Rule, applies to SMEs and non-SMEs equally.

7. Is a minimum number of shareholders required?

The Rules do not specify a minimum required number of shareholders, but do require that, no later than the time of listing, at least 25 percent of the Shares in the class to be listed are held in public hands. MKT 9.3.10(3) specifies that Shares are not held in public hands when they are held (directly or indirectly) by certain Persons, including a Director of the SME Applicant and any Person who has an interest in 5 percent or more of the Shares of the relevant class. A SME Applicant or its compliance adviser should also contact Nasdaq Dubai on this issue, as it has its own approach and requirements for admission to trading.

8. What responsibilities do the Directors of a listed SME have in respect of confirming its working capital adequacy, the effectiveness of its corporate governance framework and its financial prospects?

The same as for Directors of listed entities that are not SMEs.

9. What responsibility does the compliance adviser have with respect to the accuracy of the disclosures made by the Issuer?

The listing regime for SMEs did not introduce any new provisions regarding responsibility for the accuracy and completeness of disclosures made in a Prospectus or to the market once listed. Therefore, the regular obligations in the Markets Law and MKT Rules relating to Prospectus liability and responsibility for market disclosure apply to SMEs without change. Among other things, this means that a SME's Prospectus must contain a responsibility statement which includes a declaration from each Person responsible for the Prospectus, or for certain parts of it, pursuant to MKT 2.10, that the information contained in the Prospectus is, to the best of their knowledge, correct and complete. A compliance adviser to a SME Issuer is not deemed to be a Person responsible for all or part of its Prospectus and there is no requirement for a compliance adviser to assume such responsibility.

However, the DFSA expects the compliance adviser to provide advice to a SME Issuer on the adequacy of the due diligence and verification processes followed in the production of its Prospectus and whether the statements made in its Prospectus and other disclosures withstand effective challenge. If a compliance adviser fails to provide adequate advice to a SME in this regard, the DFSA may consider that as indicating that the compliance adviser does not have the required knowledge, experience, qualifications and resources to act in that capacity on future occasions. The DFSA may also require the SME to replace its compliance adviser pursuant to MKT 7.2.2(b).

10. Is there a DFSA Rule on the cost of the compliance adviser?

No. The relationship between the compliance adviser and the SME is a contractual one (see Guidance Note 2 to MKT 7.2.1).

The DFSA does not get involved in the costs that may be charged by the compliance adviser for its services.

11. If there are no requirements for the compliance adviser to be regulated by the DFSA, what type of experience does the compliance adviser need to have?

MKT 7.2.3 (1) requires the Person appointing a compliance adviser to take reasonable steps to ensure that the compliance adviser has the required knowledge, experience, qualifications and resources to carry out its obligations under the Rules. Guidance note 3 to MKT 7.2.1 makes clear that the DFSA will expect the compliance adviser to have sufficient senior, competent staff and a proven track record of relevant corporate finance transaction experience to enable it to advise the SME properly about the listing process and its ongoing obligations as a Reporting Entity. Corporate finance transaction experience will often be found with investment banks. However, it is not our intention to limit the compliance advisory role to SMEs to investment banks only and the DFSA recognises that other professional advisors are capable of having sufficient relevant knowledge, track-record experience, qualifications and resources as well.

12. In case a compliance adviser finds that it is unable to fulfil its ongoing obligations due to circumstances outside its control, such as the listed SME's inability or unwillingness to provide necessary information, can we understand any guidance for remediation or, if remediation is not possible, resignation of the adviser?

The listed SME must take reasonable steps to ensure that it co-operates with its compliance adviser and that its compliance adviser can discharge its duties.² A strong incentive for the listed SME to enable its compliance adviser to execute its role properly and prevent escalation of any issues to the level of resignation, is the fact that the DFSA will consider whether it is appropriate to halt trading of the shares of the listed SME where it ceases to meet a continuing obligation to appoint a compliance adviser, until such time as a new compliance adviser has been appointed.³

13. Does a company have to offer new shares when listing as a SME?

The DFSA SME listing regime is intended for companies that undertake a proper capital raise. It is not meant for mere listings of existing shares (technical listings).

14. Is a compliance adviser required in case the SME is already listed on another exchange outside the DIFC?

The DFSA will usually require a SME, also if it is already listed elsewhere, to appoint a compliance adviser as a condition of admission to the Official List and its ongoing listing. The requirement is to ensure that the listed SME is aware of and complies with its continuing obligations under the Markets Law and the Market Rules.

15. How does the pricing of the Applicant for listing take place? Also, from a fund-raising perspective, is there an underwriting requirement for SMEs?

While there is no underwriter requirement in the DFSA Markets Rules, it is standard practice for an issuer to engage an investment bank that will organize a road show and conduct a book building process. The book building will drive the pricing.

16. Is it possible for a foreign law firm to be appointed as compliance adviser?

² See MKT 7.2.8

³ The DFSA would halt trading by suspending the Shares from the DFSA Official List of Securities in accordance with

A law firm with sufficient senior, competent staff and a proven track record of relevant (corporate finance) transaction experience to enable it to advise the SME properly can act as compliance adviser. In principle, the DFSA would expect a compliance adviser to be domiciled, or have a presence, in the DIFC. However, the DFSA would consider compliance advisers established onshore in the UAE on a case by case basis.

17. How does an overseas company proceed with an IPO on Nasdaq Dubai?

Generally, the DFSA will consider the suitability for listing of all applicants on a case by case basis. This means that an overseas company can make an application for listing of its securities on an exchange in the DIFC like any other company. However, the location where the applicant has its main operations may be one of our considerations as specific challenges may arise for overseas issuers in meeting our eligibility criteria.

18. What are the process and requirements for transferring from an SME market to a main market?

The company should contact Nasdaq Dubai on this issue and its related requirements. From a DFSA perspective: the securities remain on the Official List and there is no new Prospectus requirement arising from such a transfer.

19. Does the DFSA impose any restrictions on who can invest in listed SMEs?

No. Both professional investors and retail investors can invest in shares of SMEs listed under the DFSA listing regime.

MKT9.6 and simultaneously instructing the AMI to suspend trading the Shares pursuant to article 26(2)(b) or (c) of the Markets Law 2012.