



Astana Financial Services Authority

Consultation Paper

AFSA-P-CE-2019-0005

Proposed Amendments to AIFC Market Rules

June 25, 2019

Introduction

1. The Astana Financial Services Authority (AFSA) has issued this Consultation Paper to invite public comments on the proposed amendments to the AIFC Market Rules with the aim at enhancing capital market in the AIFC.
2. The proposals in this Consultation Paper will be of interest to issuers, individuals, financial services companies, market institutions and investors who are interested in doing business in the AIFC.
3. All comments should be in writing and sent to the address or email specified below. If sending your comments by email, please use “Consultation Paper No 27” in the subject line. You may, if relevant, identify the organisation you represent when providing your comments. The AFSA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise. Comments supported by reasoning and evidence will be given more weight by the AFSA.
4. The deadline for providing comments on the proposals is **24 July 2019**. Once we receive your comments, we shall consider if any refinements are required to this proposal.
5. Comments to be addressed by
post: Policy and Strategy Division
Astana Financial Services Authority (AFSA)
55/17 Mangilik El avenue, block C3.2,
Nur-Sultan, Kazakhstan
or emailed to: consultation@afsa.kz
Tel: +8 7172 613781

Background

1. The proposed amendments are related to the appointment of sponsor or compliance adviser and providing working capital statement in the prospectus.
2. According to section 85(1) of the AIFC Financial Services Framework Regulations (FSFR), the AFSA may, where it considers it appropriate to do so, require that a reporting entity or a person that intends to have securities admitted to an official list of securities or admitted to trading on an Authorised Investment Exchange appoints an authorised firm or accredited firm to act as a sponsor or compliance adviser.
3. Section 85(2) of the FSFR empowers the AFSA to make rules related to the appointment of a sponsor or compliance adviser. The rules in section 4 of the AIFC Market Rules (MAR) are made pursuant to article 85.
4. The rules in MAR 4.1 (Sponsors) cover, inter alia, the following:
 - (a) the procedure relating to the appointment of a sponsor and the independence of the sponsor;
 - (b) the obligations of the sponsor (including to satisfy itself that the person seeking to have Securities admitted to trading has satisfied the conditions in MAR);
 - (c) the duty to co-operate with sponsors and the duty to notify the AFSA of the termination of the sponsor's employment or the sponsor's resignation.
5. The rules in MAR 4.2 (Compliance Advisers) cover, inter alia, the following:
 - (a) the procedure relating to the appointment of a compliance adviser and the obligation of Reporting Entities to provide information about the compliance adviser to the AFSA;
 - (b) the obligation of the Reporting Entity to co-operate with the compliance adviser and the duty to notify the AFSA of the termination of the compliance adviser's employment or their resignation.
6. MAR does not stipulate when a person or reporting entity will be required to appoint a sponsor or compliance adviser. In this regard, it causes uncertainty for issuers whether the AFSA will oblige them to appoint a sponsor/adviser and if so, on what stage.
7. Pursuant to sub-section 1.5.2 of MAR, the Securities Note must include a statement by the directors of the issuer that in their opinion the working capital is sufficient for the issuer's present requirements, or, if not how it proposes to provide the additional working capital needed (working capital statement). It should be pointed out that MAR does not set any minimum amount of working capital or minimum period for determining the sufficient amount of working capital.
8. In this regard, the AFSA intends to provide the clarity the provisions of MAR concerning appointment of sponsor or compliance adviser and obligation of an issuer to make a working capital statement in the security note.

Proposal

9. On the basis of requirements set out in the UK, Hong Kong, DIFC and AFDGM for issuers (standard listing and AIM, UK) and reporting entities, the AFSA proposes several amendments as set out below.
10. Appointment of Sponsor:
- (a) to retain in the FSFR and MAR the provision that the AFSA may, where it considers it appropriate to do so, require that a reporting entity or a person that intends to have securities admitted to an official list of securities or admitted to trading on an Authorised Investment Exchange appoints an authorised firm or accredited firm to act as a sponsor or compliance adviser; and
 - (b) to incorporate guiding provisions in MAR detailing where the AFSA may require the appointment of a sponsor as follows:

Guidance: The AFSA will not require a Person that intends to have Securities admitted to the Official list of Securities or admitted to trading on an Authorised Investment Exchange to appoint a sponsor if only the Person (a) does not have a proven track record or (b) has been in operation for less than 3 (three) years, but not including cases where such Person meets one of the following criteria:

 - (i) the Person falls within the definition of Exempt Offerors or Financial Institution; or
 - (ii) the Securities of the Person have been admitted to the Official List or admitted to trading on an Equivalent Regulated Exchange.

Question 1:

Do you have any concerns relating to the proposed amendments to AIFC Market Rules? If so, what are they, and how should they be addressed?

11. Appointment of Compliance Adviser:
- (a) to incorporate guiding provisions in MAR prescribing where the AFSA may require appointing a compliance adviser as follows:

Guidance: The AFSA may require the appointment of a compliance adviser where a Reporting Entity has been held to have breached the Acting Law of the AIFC and/or Authorised Market Institutions Rules.

Question 2:

Do you have any concerns relating to the proposed amendments to AIFC Market Rules? If so, what are they, and how should they be addressed?

12. Working Capital Statement:

- (a) to retain in the MAR the provision that the Securities Note must include a working capital statement;
- (b) to incorporate a minimum period of 12 months from date of listing that applicant has sufficient working capital;
- (c) to exempt the applicants, whose business is entirely or substantially related to the provision of Financial Services, provided that:
 - (i) the inclusion of such a statement would not provide significant information for investors; and
 - (ii) the applicant's solvency and capital adequacy are subject to prudential supervision by Financial Services Regulator.

Question 3:

Do you have any concerns relating to the proposed amendments to AIFC Market Rules? If so, what are they, and how should they be addressed?