Discussion Paper 2

A Private Equity Opportunity – The Trading Facility

10th March 2009

=======================================

This paper is the second in a series of discussion papers on policy issues confronting the global financial services industry. The series is designed to provoke discussion on topical issues confronting regulators and the activities and markets that they regulate.

This discussion paper is taken from a speech presented at the PEI Middle East Forum – Dubai – 10th March 2009.

Introduction:

The purpose of this paper is to foster and promote discussion on whether there is an opportunity for the establishment of a 'Trading Facility'. Further, how best to explore how the DIFC could facilitate non-listed entities raising capital.

Most conferences one attends these days are filled with doom and gloom and try to analyse (ad nausea) the causes of the financial market turmoil and point fingers at the culprits.

I would like to take a different approach. I start from the premise: "never let a crisis go to waste".

There are opportunities out there even if you have to wade through thick layers of dire predictions and horrible actual data.

Taking the right steps now could sow the seed of renewed energy and a profitable future.

While regulators are not universally known as the most upbeat – let's not forget the regulator has to see and spot risks where others do not – which, by the way, was not our strong point over the last years - I would like to share with you today one area related to private equity where I see opportunities and a profitable future.

At the same time, I will also try to outline how I see ways to match our regulatory responsibilities with this opportunity.

The opportunity is to create a so-called "Trading Facility" by which Private Equity funds can partially sell an investment **(A HOLDING)** (in their portfolio) to investors, providing the Private Equity fund manager with fresh (new capital) – without using a bank - and providing the investor a way to join an investment run by a professional fund manager.

Before I go in a little more detail it is good to realise that the DIFC holds a number of licensed firms whose business model includes the provision of sources of private capital to develop and expand businesses. The operation of those Authorised Firms involves not only the provision of a small number of investors and a large amount of capital but also business, strategic and related advice to assist businesses to grow (encompassing generational change and going public).

The DFSA believes that an opportunity for further discussion arises around the establishment of what, for the purposes of today, I will call simply a "Trading Facility", by which holders of PE can sell down, and/or transfer, their investments.

Some relevant observations in the context of my speech may explain why I see opportunities:

- Exit transactions were soaring putting more strain on funds (+120% in 2008) – cash wise;
- Holding periods are set to lengthen meaning a slowdown of exits in 09/10 and a sort of "freeze" of funds and investment activity;
- United Arab Emirates has been the focus of interest for PE investment. 26% of number of PE transactions in MENA;
- Minority stakes are favoured type of transaction; and

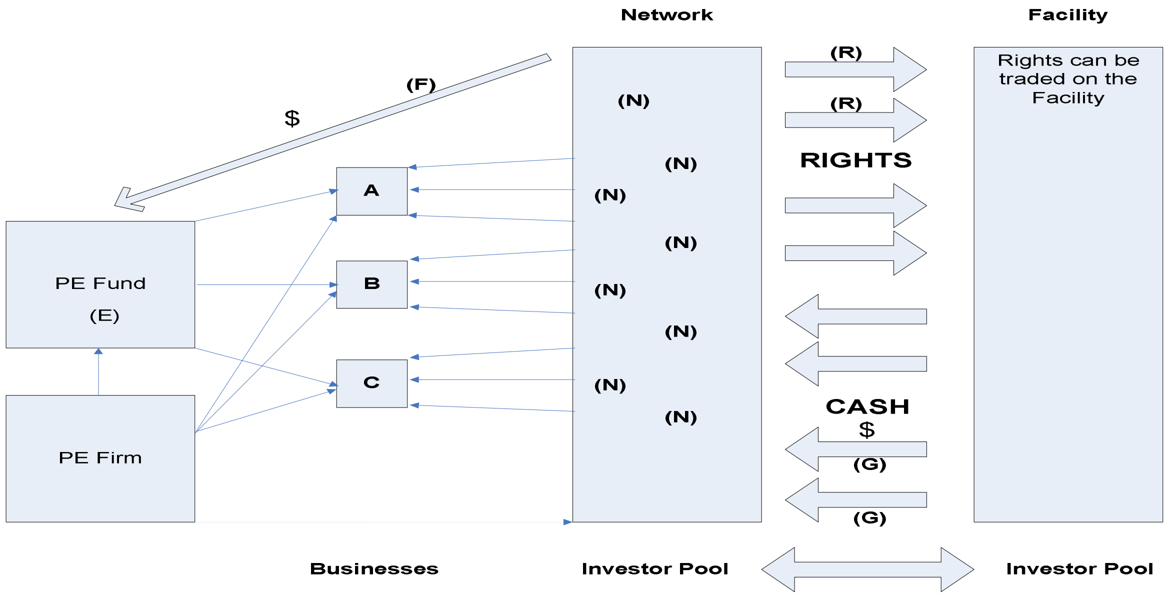
- For the bulk of exit transactions IPO's were the most common strategy, which, in the current market environment, is less attractive.

The objective of this idea or proposal is to explore how the DIFC could facilitate non-listed entities raising capital in a manner where those parties who subscribe into such a capital raising are then subsequently able to reduce and/or exit their investment by way of such a Trading Facility.

The DFSA has considered a number of options in relation to how the Trading Facility may work, with the favoured idea having a relatively simple utility, such that:

- Investors will be able to obtain access, and encouraged to buy directly into, Holdings;
- Investors could then on-trade their ownership in the Holdings;
- These Holdings are not just confined to small concerns; and
- The Trading Facility would operate subject to some limited regulatory oversight.

Conceptually, I envisage the Trading Facility to work as follows and is split into three segments:



On the far left side of the Table we have funds with a portfolio of companies who have agreed to participate in the Trading Facility and will put up Holdings out of their portfolio in part for sale. These assets are separately identified as ‘A’, ‘B’ and ‘C’ in the Table.

The centre of the Table constitutes the Network, which is in essence the Investor Pool. Individual accredited investors can directly buy into the Holdings put up for sale. The investors will obtain, what I will call ‘Rights’ over those assets. The cash funds used to purchase those Rights are directly given to the sellers of the Holdings ie the Private Equity funds.

These Rights can then be traded within the Investor Pool for cash settlement. There will be no listing of the Rights and the Trading Facility can be used to match the trades. This is reflected on the right side of the Table.

All offer and disclosure documents would only be disseminated within the Investor Pool, and would not, in any circumstances, be available for wider dissemination.

So, what are some of the things required for the Trading Facility? It would firstly need entities that, as mentioned before, are ready to make themselves 'investor-equity ready'. This would possibly mean, but is certainly not limited to, the following:

- A willingness to accept an outside equity partner;
- There is either a good business plan or Information Memorandum for the investor to read;
- Financial statements and accounts are in order;
- A minimum degree of transparency in disclosure; and
- A potential for clear exit and / or a reduction strategy (within a clearly defined Investor Pool).

The DFSA does not see itself involved in developing the business case for the Trading Facility, but instead sees itself as playing a lead role in addressing the regulatory issues. We have turned our attention to examining the regulatory issues. It is clear though, that there is a limit to what the DFSA can consider at this point as the finer details and framework for the Trading Facility have not yet been established.

I can advise you, however, that the DFSA does not at this stage, see any apparent 'showstoppers' in relation to the creation of the Trading Facility. Yes, there are issues that will have to be further examined and dealt with, but the DFSA has not identified issues of a nature that have required us to immediately cease consideration of the Trading Facility.

As such, the DFSA has explored the merits of whether further work on the development of the Trading Facility should be undertaken. This consultation was undertaken with some regional key players and DIFC-based Authorised Firms. This has been quite fruitful, in that we have found that there is a "Community of Interest" in the creation of a Trading Facility.

The next steps are crucial ones.

Firms, advisors and companies need to come together, at this initial discussion stage, to get the Trading Facility off the ground. It also requires their goodwill and full support on an ongoing basis.

I believe that the Trading Facility does constitute another way forward. The Trading Facility can be of benefit for the medium to long-term development of the regional PE industry, and should not be seen to be a knee-jerk reaction to facilitate exits for investors needing cash in the current financial crisis. Indeed, the Trading Facility offers both a short-term and long-term opportunity, in that:

- A facility of this type has not been tried in the region before;
- It will assist the funding process for regional entities and may improve underlying liquidity (potentially and hopefully through Nasdaq Dubai);
- It will further assist investors and PE Houses to bring in gradual exits or 'monetisation' of their Holdings;
- Though the Investor Pool would need to be 'accredited', it may facilitate a much larger pool of investors than currently exist; and
- It will leverage off the expertise of the PE Houses, funds and individual investors.

In addition, it also offers a gradual – phased – Exit Strategy, which seems to me, in today's tight capital markets - a major advantage.

I urge you present today to consider whether you would be interested in the establishment of the Trading Facility. Furthermore, we welcome your ideas and thoughts, as it is ultimately you (being the industry itself) who will define what the Trading Facility will do and how it will work.

As a regulator, the DFSA believes that the Trading Facility may provide a good route for the DIFC, the UAE and the GCC to take. To move the Trading Facility forward, however, it will require the input and goodwill of many key stakeholders, notably the DIFC Authority, Nasdaq Dubai, Authorised Firms and the potential issuers.

The DFSA places a high value on our engagement with market stakeholders and remains committed in seeking opportunities for the development of the capital markets of the region.

Paul Koster

Chief Executive

Dubai Financial Services Authority

The Dubai Financial Services Authority (DFSA) is the independent regulator of financial and ancillary services conducted through the Dubai International Financial Centre (DIFC), a purpose-built financial free-zone in Dubai. The DFSA's regulatory mandate covers asset management, banking and credit services, securities, collective investment funds, custody and trust services, commodities futures trading, Islamic finance, insurance, an international equities exchange and an international commodities derivatives exchange.