

# Nasdaq Dubai Proposed New Listing Regime

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As most of us remember, NASDAQ Dubai is a stock exchange registered and operating in the Dubai International Financial Centre ("DIFC") that was formerly known as "Dubai International Financial Exchange".

Since 2005, it has been operating an exchange and a clearing house as an "Authorised Market Institution", regulated by the Dubai Financial Services Authority ("DFSA").

Based in the DIFC and supervised by the DFSA, NASDAQ Dubai has been governed under a separate set of rules and regulations, based on common law principles and best international practice as far as global capital markets are concerned.

Finally, effective from 11 July 2010, NASDAQ Dubai has outsourced its key market operations functions for equities to Dubai Financial Market, a UAE "on-shore" securities exchange ("DFM") and merged its trading platform with the DFM which has brought DFM's individual investors and NASDAQ Dubai's institutional investors together.

The legal framework for listings on NASDAQ Dubai used to be governed by NASDAQ Dubai Listing Rules ("Listing Rules") and DFSA Offered Securities Rules Rulebook Module ("OSR"). The Official List of Securities ("List") comes to mind as maintained by NASDAQ Dubai.

The Listing Rules have been subject of discussion and public consultations, its various drafts have been exchanged between the Exchange, the DFSA, professionals in the fields of banking, finance and law for about two years, aimed at aligning them with international standards but at the same time ensuring listing and on-going reporting requirements would not be unduly burdensome towards issuers.

Lately, we have witnessed a significant progress in implementation of the new listing regime.

A brief outline of the most essential developments in this regard has been set out below.

## **LIST WITH THE DFSA**

From 1 October 2011, the responsibility for maintaining the List has been transferred from NASDAQ Dubai to the regulator of the financial market, namely the DFSA.

The transfer of the List has been implemented in order to streamline the regulatory process for approving prospectuses and listing (now centralised with the DFSA), for the benefit of issuers and investors and in compliance with international best practice.

## **NASDAQ DUBAI ISSUER AND SECURITIES RULES**

Although the DFSA had initially adopted the Listing Rules, further to the transfer of the List from NASDAQ Dubai to the DFSA some legislative changes to the Listing Rules were necessary.

In light of the above, NASDAQ Dubai Issuer and Securities Rules of 1 October 2011 ("Interim Listing Rules") were enacted and replaced the Listing Rules.

The Interim Listing Rules are less comprehensive than the Listing Rules, as the entire regime related to

admission of securities to listing has been left out. The Interim Listing Rules set out the legal framework for the admittance of securities to trading on NASDAQ Dubai and the continuing obligations imposed on issuers of securities which are admitted.

The Interim Listing Rules have been introduced on an interim basis and will be superseded and replaced by updated NASDAQ Dubai Issuers and Securities Rules ("Final Listing Rules") when the new DFSA legal framework comes into place.

## **NEW OSR**

As the Interim Listing Rules provide for trading, only, the OSR have been amended (version 16/08-11) and most listing provisions have been set out under Chapter 6 ("New OSR").

## **CONSULTATION PAPER NO 78**

### **1. FRAMEWORK**

In consistency with the steps referred to above, and following the DFSA Consultation Paper No 75 of earlier this year, the DFSA announced Consultation Paper No 78 of 6 October 2011 ("Paper").

The changes introduced under the Paper are aimed at achieving centralisation of the prospectus and listing approval process with the DFSA so that issuers better understand the role that the DFSA and NASDAQ Dubai play in the listing and trading admission process.

The DFSA is now going to be in charge of the listing process, whereas the main function of NASDAQ Dubai has become supervision of the admittance to trading of securities on its market and monitoring of orderly trading.

The DFSA has opened a public consultation period in respect of the provisions proposed under the Paper and will be accepting comments from the public till 15 November this year.

### **2. MARKETS RULES**

Draft Markets Rules that are to form part of the DFSA Rulebook, with a new Chapter 9 ("Markets Rules") consist of the core of all the changes to the listing regime that have been introduced under the Paper.

Numerous solutions proposed under the Markets Rules have been modeled on those currently in place in the United Kingdom, Hong Kong or Singapore. The DFSA were of the view that many expat professionals practising in the DIFC have experience in advising on transactions in those jurisdictions; therefore, it decided to respond to their expertise by referring to the principles and practices these professionals are already familiar with.

The most essential changes to the listing regime that have been proposed under the Market Rules are:

#### **2.1. Listing Principles**

Whereas listing principles had no participation under the provisions regime, the Markets Rules, under Chapter 9, set out five listing principles, i.e.:

1. Staff Compliance - a listed entity must take reasonable steps to ensure that its senior management and any other relevant employees understand and comply with their responsibilities and obligations under the Interim/Final Listing Rules.
2. Establishing and Maintaining Policies and Internal Controls - a listed entity must take reasonable steps to establish and maintain adequate policies, procedures, systems and controls to enable it to comply with its obligations under the Interim/Final Listing Rules.
3. Integrity - a listed entity must act with integrity towards holders and potential holders of its securities.

4. Clear and Non-misleading Communication – a listed entity must communicate information to holders and potential holders of its securities in such a way as to avoid the creation or continuation of a false market in such securities.
5. Cooperation – a listed entity must deal with the DFSA in an open and co-operative manner.

## 2.2. Shares in Public Hands

In line with the legal approach adopted under EU legislation, under the Markets Rules the DFSA has proposed that at least 25 per cent of the securities that are to be admitted to listing on NASDAQ are in public hands, which shares do not include those held, directly or indirectly, by:

1. a director of the listing applicant or of any of its subsidiaries;
2. a person connected with a director of the listing applicant or any of its subsidiaries;
3. the trustees of an employee share scheme or pension fund established for the benefit of any directors or employees of the listing applicant and its subsidiary;
4. any person who under any agreement has a right to nominate a person to the board of directors of the listing applicant; or
5. any person or persons in the same group or persons acting in concert who have an interest in 5% or more of the securities of the relevant class.

The listed entity is required to adhere to that requirement at all times, i.e. also after listing.

Note: The DFSA may, however, in exceptional circumstances, accept a percentage lower than the 25 per cent if it considers that the market will operate properly, with a lower percentage in view of additional factors, e.g. a large market capitalisation of the issuer with a large number of securities of the same class listed and where such securities would nonetheless expect to have a wide distribution to the public and be liquid.

## 2.3. Working Capital Adequacy

Under the Market Rules, the issuer is obliged to comfort the DFSA that it and any of its subsidiaries have sufficient working capital available for its present requirements or, if not, how it proposes to provide the additional working capital needed. The issuer must also confirm in the prospectus that it is going to meet the capital adequacy requirement for the period of at least 12 months after prospectus admission. An issuer that is not comfortable representing the same will not be eligible for listing on NASDAQ Dubai.

## 2.4. Controlling Shareholders and Conflicts of Interest

An applicant for listing which has one or more controlling shareholders must be able to demonstrate to the DFSA that it can operate its business independently of such controlling shareholder and any associate thereof, unless holders of the issuer's shares would have no appreciable risk of prejudice by the involvement in the relevant business of a controlling shareholder.

A new definition of a "controlling shareholder", based on a Hong Kong model, has been introduced under the Market Rules, whereby a controlling shareholder has been defined as:

"any Person, or Persons acting jointly by agreement, whether formal or otherwise, who is: (a) entitled to exercise, or control the exercise of, 30% or more of the voting rights at a general meeting of the Applicant; or (b) able to control the appointment of one or more Directors who are able to exercise a majority of the votes at board meetings of the Applicant".

An applicant must ensure prior to listing that it has adequate systems and controls to eliminate or manage material conflicts of interest (e.g. related party transactions, situations in which interested persons lend to or borrow from the issuer or its group, lease property to or from the issuer or its group; or have an interest in businesses that are competitors, suppliers or customers of the issuer or its group) in its business prior to listing.

## 2.5. Other Changes

Some other changes the DFSA introduced under the Market Rules that are worth mentioning concern:

1. Market capitalization requirement (i.e. expected aggregate market value at the time of listing) that has been reduced to USD 10 million (and USD 2 million for debentures);
2. Share repurchase requirements, whereby a listed entity must not purchase its own shares without the prior written approval of the DFSA; a listed entity which proposes to purchase more than 15% of any class of its shares must do so only by way of a tender offer to all shareholders of that class; and
3. Continuing obligations, e.g. to be admitted to the List, securities will need to be admitted to trading on NASDAQ Dubai; reporting entities will need to be fully aware of their ongoing reporting obligations and unlike it has been to date, will not receive any reminders from the DFSA or NASDAQ Dubai about due periodical disclosures.

### 3. LISTING AND ADMISSION TO TRADING PROCESS

Finally, as a consequence to the changes to NASDAQ Dubai listing regime, the listing process will now be as follows:



#### **FINAL THOUGHTS**

In summary, as of today, the legal framework for listing and trading in securities on NASDAQ Dubai is governed by the Interim Listing Rules and the New OSR.

As soon as the DFSA finalise looking into the comments to the Paper made by the public, the new listing regime, consisting of: (i) the Final Listing Rules; (ii) the Markets Rules; (iii) new DIFC Markets Law; as well as (iv) amended: Glossary Module, DFSA Rulebook and Fees Module, DFSA Rulebook; will be enacted.

The changes proposed under the Paper seem to deal with the matters of listing and ongoing disclosure obligations in an advanced and internationally recognised manner. The DFSA and NASDAQ Dubai have utilised these economically challenging times in a very efficient way and managed to make a significant progress improving the legal framework for listing and trading in securities on NASDAQ Dubai.

At present, Middle Eastern equity markets are relatively subdued/subdue. However, NASDAQ Dubai is clearly positioning itself as the Middle Eastern first option closest to international practices. Listing on NASDAQ Dubai also gives primary access to the DFM/ NASDAQ Dubai common trading platform, without hurdle to submit to the more proscriptive UAE on-shore listing regime.