

NASDAQ Dubai

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After an extended consultation period, in January 2011 NASDAQ Dubai (“the Exchange”) released draft revised Listing Rules (“Draft Rules”) for public consultation. The Draft Rules are the first major revision of the Listing Rules to be completed by the Exchange. The overriding concerns for the Exchange are the twin imperatives of enhancing market liquidity and promoting access to listing to a wider group of issuers. The Draft Rules are designed to address these issues and they also take a major step towards ensuring listing criteria and processes are both comprehensive and transparent.

The revision process was first initiated over two years ago. The Draft Rules are the result of a prior round of amendments and consultation, and working group meetings with stakeholders and professionals in the fields of law, finance and accounting. All have been regularly involved in the listing process on the Exchange onshore in the UAE and globally, and there has been a coordinated exchange of ideas and comments with the Dubai Financial Services Authority (“DFSA”).

As required under regulation, the Draft Rules are available for public consultation to enable stakeholders such as current issuers, potential issuers, underwriters and their various advisors to give genuine feedback about the proposed revisions to objectives, organization and scope, regulatory approach, and guidance, among other proposed changes. The stated intention of the Exchange in undertaking this exercise is to improve liquidity, promote access to listing to a wider range of issuers, and introduce a legal framework that will suit the issuers and promote capital raising in the region as well as offer sufficient safeguards to protect investors.

Although certain rules that were initially adopted under the Listing Rules have remained intact (e.g. 25% free float requirement, book-building process, sell down, etc.), there are numerous material changes that have been made under the Draft Rules.

The public consultation process will end by 17 . Subsequently, the Exchange will take comments and recommendations received under consideration, make any further amendments as they find fit, and submit the final Draft Rules to the DFSA. Upon approval by the DFSA, the Draft Rules will become a binding piece of legislation.

Below, you will find a brief summary of some of the key amendments under the proposed Draft Rules.

FORMAT

The format and layout of the Draft Rules differ substantially from the existing Listing Rules. Also, a number of guidance notes have been provided in reference to specific rules which provide clarifications in relation to some specific provisions of the Draft Rules.

SIGNIFICANT AMENDMENTS

New eligibility criteria

Under the Draft Rules, the issuer is not only required to fulfill the existing admission criteria

provided under the original Listing Rules, but certain further requirements have been added in addition to security-specific criteria.

For example, the eligibility criteria for equity securities now include the following new requirements:

- No more than 50% of the free float required may be in a form of preferred share;
 - “Genuine investor interest”, which an issuer can demonstrate by either having not less than 400 bona fide shareholders or providing for a retail set aside of at least 10% of the aggregate number of securities.
 - As an addition to the existing minimum USD 50 million market capitalization test, one of the following tests can be satisfied by the issuer instead: – “profits test” – requires an issuer to have generated profits for the three most recent fiscal years (while conducting the same business activity);
- “assets test” – requires an issuer to meet certain tangible assets and working capital thresholds, but does not require three continuous years of operation. A mandatory lock-in for promoter shareholders is also required for 12 months and cash flow reporting may be imposed; and
- “market capitalization test” – requires a minimum USD 20 million market capitalization together with a mandatory lock-in of 12 months for promoters.

Listing application review process

Under the Listing Rules, projecting a timeline for regulatory review by both the Exchange and the DFSA was often problematic. Importantly, the two organisations noted they would work together to streamline the process for reviewing of the prospectus and listing application. The Draft Rules propose that any prospectus will be reviewed by the DFSA for compliance with the Offered Securities Rules (OSR) of the DFSA as a first step, and subsequently the Exchange will review the prospectus and listing application for compliance with the final listing rules. It is expected this review process will assist issuers in addressing fundamental issues with the prospectus and compliance early in the listing process rather than at the very end, as was past practice.

No exempt offers of equity securities

Previously, the Listing Rules allowed for primary offers of equity securities through a prospectus or an exempt offer. Notably, the Draft Rules (Rule 3.1.3) remove the option of an exempt offer and stipulate every offer of equity securities must be made through a prospectus.

No requirement to appoint a sponsor

Under the Listing Rules, issuers were required to appoint a listing sponsor and an on-going sponsor. Pursuant to the Draft Rules, the “sponsor” has been replaced with a “lead manager” whose advisory role seems to be similar to that of a sponsor but is not mandatory. Notably, the lead manager is not responsible for disclosures made in a prospectus; such liability lies with the issuer only.

Various accounting standards allowed

The Draft Rules now allow for issuer accounts to be produced in accordance with the International Financial Reporting Standards (“IFRS”) or an alternative accounting standard, such as US GAAP, Canadian GAAP, Japanese GAAP or South Korean GAAP, without requiring reconciliation with IFRS.

Mandatory lock-in

The Draft Rules have introduced a mandatory lock-in (for promoters and connected/related persons) in relation to equity securities that apply when the issuer relies on either the “assets test” or the “market capitalization test” for admission to listing. The Exchange has confirmed it will not waive the lock-in requirement under any circumstances.

Uninformed exchange

The Listing Rules do not explicitly authorize the Exchange to ensure issuers disclose information when exemptions apply in certain situations. However, the Draft Rules clarify that the Exchange can ask the issuer to disclose information if it considers there is (or is likely to be) an uninformed market, but the information concerned is exempted from disclosure obligations. Further, the Exchange may disclose correspondence between itself and an issuer it considers it necessary for an informed market.

Proportion of assets in cash

In order to prevent the admission to listing of pure “cash box” entities, the Exchange will now be authorized to suspend the issuer’s securities if half or more of the issuer’s total assets are held in cash or as assets readily convertible to cash, until such time when the issuer invests those assets or employs them for its business.

Mining, Oil and Natural Gas Issuer

The existing Listing Rules do not prescribe a separate disclosure regime designated for mining or oil and natural gas issuers, but the Draft Rules (Rules 5.17 and 5.18) list numerous sector specific disclosure requirements.

Share buy-backs – tender offers

The existing Listing Rules do not prescribe requirements for share buy-backs in the context of tender offers. However, the Draft Rules establish a comprehensive legal framework for share buy-backs through tender offers.

Conclusion

The Listing Rules are the tool by which NASDAQ Dubai manages access to the market by issuers and supervises the market. The Draft Rules provide certainty, clarity and transparency for issuers while retaining flexibility in certain areas in order to promote liquidity and access to listing by a wider range of potential issuers. While the final version remains to be seen, the amendments set out in the Draft Rules reflect a concerted and coherent effort by the Exchange to refine and develop its listing rules and process in order to attract capital and boost liquidity on the Exchange.

We encourage your active participation in this endeavor and recommend you provide your comments directly to NASDAQ Dubai during the consultation period. The Draft Rules can be found at: http://www.nasdaqdubai.com/regulation/listing_rules.html