



JONES DAY
COMMENTARY

DUBAI SET TO ALTER IPO RULES TO ATTRACT LISTINGS

NASDAQ Dubai recently announced a proposal (“Proposal”) to implement wide-ranging changes to the Dubai International Financial Exchange Listing Rules, 2005 (“Listing Rules”).¹ The Proposal includes steps to increase participation by retail investors in initial public offerings (“IPOs”) made on NASDAQ Dubai and is aimed at increasing trading volumes. According to NASDAQ Dubai, the Proposal is designed to promote transparency and investor protection and will include a requirement for equity issuers to publish financial results quarterly, instead of semi-annually as currently required. The Proposal would also streamline the listing approval process in order for NASDAQ Dubai to determine eligibility within one week of receiving all application documents.

THE PROPOSAL SUMMARY

The Listing Rules govern the eligibility of issuers, listing of securities, compliance by issuers with ongoing

obligations, trading halts and suspensions of securities, removal of securities from listing, appeals, and other procedural matters. They also govern market disclosure and certain corporate governance issues. The Proposal clarifies and reorganizes several provisions of the existing Listing Rules. In summary, the Proposal covers the following:

- Chapter 1 sets out a new set of objectives that provides the foundation upon which the Proposal is based. These objectives are based on accessibility, certainty, flexibility, transparency, and liquidity.
- Chapter 2 includes general rules for all issuers for the listing of securities and requirements for audited accounts, corporate governance, and a lead manager regime.
- Chapter 3 contains the prospectus requirements for securities offerings and the filing of prospectuses with the Dubai Financial Services Authority (“DFSA”).² In addition, it also sets out the eligibility requirements for specific types of

¹ This will be the first revision of the Listing Rules since the Dubai International Financial Exchange opened in 2005. In 2008, the Dubai International Financial Exchange’s name, DIFX, was rebranded to NASDAQ Dubai (following NASDAQ OMX’s acquisition of a one-third stake).

² The DFSA is the sole independent regulator of all financial and ancillary services conducted through the Dubai International Financial Centre. 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 and international equities exchange, and an international commodities derivatives exchange. The DFSA is the regulator of NASDAQ Dubai.

securities: equity, debt, asset backed, collective investment funds, such as exchange traded funds (“ETFs”) and real estate investment trusts (“REITs”), structured products, and *Shari’ah* compliant securities³ such as *sukuks*.⁴

- Chapters 4 and 5 include general ongoing obligations post-listing and security-specific obligations. The Proposal includes new exceptions for disclosure of price-sensitive information. These exceptions focus on the confidentiality of the information, the nature of the information, and whether a reasonable person would expect the information to be disclosed. These chapters also address the requirements for listing of specific industry sector issuers with, for example, detailed obligations for mining and oil and gas issuers.
- Chapter 6 establishes requirements for certain transactions such as share repurchase programs and tender offers. This chapter also addresses specific requirements relating to the listing of preference securities.
- Chapter 7 includes the regulatory powers of NASDAQ Dubai, including trading halts, suspensions, removals, sanctions, appeals, and the role of compliance advisor. The Proposal introduces the concept of a trading halt, whereby NASDAQ Dubai may, at the issuer’s request, grant a trading halt for up to a maximum of two business days. The Proposal also enables NASDAQ Dubai to suspend an issuer’s securities in a number of circumstances, including if it is necessary to prevent a disorderly and uninformed market.
- The remaining Chapters include interpretations and definitions, appendices, forms, and timetables, and a new concept of Guidance Notes has been proposed.

THE SIGNIFICANT PROPOSED CHANGES

Eligibility Requirements. The Proposal requires that issuers must satisfy one of three key eligibility tests:

- The Market Capitalization Test;
- The Profit Test; or
- The Assets Test.

Significant changes are proposed to the Market Capitalization Test, which generally requires a market capitalization of US\$50 million. If an issuer has a market capitalization of less than US\$50 million, it can still be accepted for listing as long as it has a market capitalization of at least US\$20 million, and the pre-IPO shareholders are subject to a so-called “lock-in” that would preclude those shareholders from selling their shares for 12 months after admission to NASDAQ Dubai.

All issuers admitted for listing on NASDAQ Dubai must show that they will have a minimum of 400 shareholders each holding at least US\$2,000 in value of shares, or they must make a bona fide offer of at least 10 percent of the shares being offered to retail investors with a clawback in the event of retail under-subscription. Also, all issuers must ensure that at least 25 percent of the issuers’ securities are so-called “free float.”⁵

Lead Manager. NASDAQ Dubai has proposed a move to a lead manager regime from the current sponsor regime. This requires financial institutions to seek approval from NASDAQ Dubai to obtain lead manager status. A lead manager’s role will include advising and assisting an issuer during the application process, and ensuring that the directors of the issuer understand the nature and scope of their responsibilities in connection with any offering and the ongoing obligations of an issuer. The Proposal clarifies that the appointment of the lead manager by the issuers is optional, not mandatory.

Prospectus. A key part of the Proposal is the introduction of rules that require a primary listing equity issuer to issue and file a prospectus with the DFSA. The current position of allowing an issuer to carry out primary offerings on NASDAQ Dubai by way of an exempt offer (under which certain qualifying issuers are not required to comply with all of the prospectus contents requirements as per the DFSA rules) is no longer considered appropriate. This is an important change, in terms of promoting greater liquidity and providing for

3 *Shari’ah* compliant securities consist of securities that comply with Islamic law.

4 *Sukuks* are *Shari’ah* compliant participation securities, coupons, and investment certificates.

5 “Free float” includes all outstanding securities except for securities held by directors of the issuer, subsidiaries, affiliates, holding companies, or sister entities of the issuer. Securities held by substantial shareholders may be considered as free float. In the event of uncertainty, the decision of whether or not the securities are part of the free float will be at the discretion of NASDAQ Dubai.

greater investor protection, as well as conforming to both international and regional standards.

Secondary Listings. Issuers wishing to undertake a secondary offering will be required to have not less than 100 shareholders, each holding a minimum of US\$2,000 in value of the shares that are listed on NASDAQ Dubai. This requirement is designed to promote liquidity and investor interest. NASDAQ Dubai will generally not admit securities on a secondary offering basis where the issuer or its primary listed securities have been suspended or sanctioned as a result of a breach of any applicable listing rule, or where the issuer or its securities have been delisted.

Trading Halts. The Proposal sets out provisions to allow an issuer to request a trading halt for a maximum of two business days. Issuers may still request a suspension of trading, but trading halts are designed to be less onerous and easily implemented so as to assist market efficiency.

Credit Rating. The Proposal requires issuers of debt securities to have an investment grade credit rating from an internationally recognized credit rating agency. This replaces the US\$10 million net asset requirement contained in the existing Listing Rules. Noninvestment grade issuers will be able to issue debt as long as they have US\$10 million of net tangible assets and the debt securities are guaranteed.⁶

ETFs/REITS and Shari'ah Securities. The Proposal also provides general requirements and criteria for listing ETFs and REITs on NASDAQ Dubai. The Listing Rules in relation to exchange-traded commodities and *Shari'ah* securities have also been revised under the Proposal. The requirement under the Listing Rules for an annual confirmation of

compliance to *Shari'ah* standards by the "*Shari'ah* Supervisory Board"⁷ has been removed in the Proposal.

Mining Issuers. There are also new specific provisions in the Proposal for mining and oil and gas issuers. Also, under the Proposal, mining issuers will be permitted to apply for listing for primary offerings. The Listing Rules currently do not allow listings of mining issuers on a primary basis.

CONCLUSION

The Proposal is publicly available on the NASDAQ Dubai web site. The public comment period for the Proposal ends March 17, 2011, and final implementation will be subject to DFSA approval following the public consultation period.

LAWYER CONTACTS

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.

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⁶ NASDAQ Dubai will generally accept an entity as a guarantor if such entity is a governmental or supranational entity, a parent, or a holding company of the issuer.

⁷ *Shari'ah* Supervisory Board is an issuer's appointed body or board comprising at least three qualified *Shari'ah* scholars, consultants, or Islamic legal advisors that has advised the issuer in relation to the *Shari'ah* compliance of the securities.