

Client Alert

Latham & Watkins
Corporate Department

Arrival of NASDAQ Dubai's New Admission and Disclosure Standards

Following the release of the first draft for consultation on 6 February 2012 (see our *Client Alert No. 1288* dated 14 February 2012), the new Admission and Disclosure Standards (the ADSs) applicable to the NASDAQ Dubai securities exchange, which is based in the Dubai International Financial Centre (the DIFC), came into force on 14 August 2012.

Reform of the DIFC's Listing Regime

The new ADSs form part of a significant overhaul of the regulatory architecture governing NASDAQ Dubai. On 1 October 2011, responsibility for maintaining an Official List and listing authority functions within the DIFC was transferred from NASDAQ Dubai to the DIFC's financial services regulator, the Dubai Financial Services Authority (the DFSA). Responsibility for admission of securities to trading on NASDAQ Dubai remains with the exchange. This approach mirrors the position in the UK, where there is a similar split in functions between the Financial Services Authority (in its capacity as the UK Listing Authority) and the London Stock Exchange, which regulates admission to trading on its markets for listed securities.

The ADSs and the DFSA's Markets Rules

The new ADSs form part of NASDAQ Dubai's Business Rules and replace the previous Issuers and Securities Rules of NASDAQ Dubai in their entirety. Separately, on 5 July 2012, a number of changes to the DFSA's Markets Law Regime came into effect, including (i) a new Markets Law (DIFC Law No. 1 of 2012); and (ii) an all-new Markets Rules (MKT) module of the DFSA Rulebook, replacing in its entirety the previous Offered Securities Rules (OSRs) module of the DFSA Rulebook (see our *Client Alert No. 1358* dated 5 July 2012).

NASDAQ Dubai's Objectives

The ADSs begin with an introduction setting out the stated objectives of the rules, which include (i) ensuring an internationally competitive and accessible market; (ii) maintaining fairness, transparency and an orderly market; (iii) ensuring liquidity; and (iv) following international standards for trading securities. NASDAQ Dubai reiterates the importance of its relationships with issuers.

"The new ADSs form part of a significant overhaul of the regulatory architecture governing NASDAQ Dubai."

Ensuring Liquidity on NASDAQ Dubai

A key issue for consideration when the draft ADSs were first issued for consultation in February 2012 was how to ensure adequate liquidity on the NASDAQ Dubai exchange. The trading liquidity of securities has historically been a significant challenge for exchanges in the GCC region compared to major exchanges in established financial centres such as London, New York and Hong Kong. However, the lack of foreign ownership restrictions, a sophisticated trading platform, a robust regulatory framework and the international brand offered by NASDAQ Dubai ought to position the DIFC's principal securities exchange to enjoy increased liquidity as the DIFC becomes a more established financial centre.

ADS Rule 2.1 has been specifically designed to address liquidity concerns. It gives NASDAQ Dubai a general discretion as to whether to admit equity securities to trading, and, specifically, NASDAQ Dubai must be of the opinion that "*conditions for sufficient supply and demand of such equity securities to facilitate a reliable price formation process*" exist. ADS Rule 2.1.2 goes on to set out the conditions as to which an issuer needs to satisfy NASDAQ Dubai in this regard, namely (i) that it will have a "sufficient minimum number" of bona fide shareholders, each holding equity securities of the issuer with a value of at least US\$2,000, or (ii) sufficient price formation is maintained through the appointment of one or more market makers. In the case of (i), NASDAQ Dubai provides guidance that 250 shareholders will generally be a sufficient minimum number, although the exchange reserves discretion to permit a lower number in "exceptional circumstances". No guidance is offered as to what such "exceptional circumstances" might be. In the case of (ii), the appointment of a market maker would need to be made pursuant to an agreement between the market maker, the issuer and NASDAQ Dubai.

This provision is likely to prove controversial with market participants, who will be concerned at the practicality of such prescriptive measures. For example, US\$2,000 may be seen as too high an amount to allow local retail investors, who should be encouraged to participate in local IPOs, to count towards the eligibility threshold for listing. Similarly, the threshold of 250 shareholders may be seen as an unrealistically high number, particularly taking into account the regulatory hurdles associated with pursuing a local retail offering in the wider UAE beyond the boundaries of the DIFC. Although the concept of a retail offering of securities solely within the DIFC is theoretically possible (at least as a matter of law), it would be virtually impossible in practice to find 250 retail (or non-institutional) shareholders within the 110 acres that make up the DIFC free zone. Other considerations include the relatively small possibility of institutional investor-only offers (the encouragement of institutional investors in the GCC should be a wider objective) and the potentially higher costs of wider marketing efforts to attract a high enough number of investors.

Other Provisions

The new ADSs contain a number of provisions regarding the procedural steps needed for admission to trading. They do not generally touch on matters of eligibility for listing, as there has been an effort on the part of NASDAQ Dubai to avoid overlap with the DFSA's Markets Rules. The eligibility requirements for listing in the DIFC are set out in Chapter 9 (the Listing Rules) of the DFSA's new Markets Rules. The ADSs contain a number of features that are specifically tailored for the GCC region, including requirements for *Shari'ah*-compliant securities and pronouncements of *Shari'ah* compliance. It should also be noted that, in alignment with the DFSA's strategy of bringing the DIFC closer into line with EU and UK listing and disclosure requirements, the structure of the new ADSs will be familiar to those market participants who are used to the securities offering regimes of the UK and other EU member states following the EU Prospectus Directive standards.

Prospectus Review Process

One question that market participants, particularly issuers and their advisers, will likely be asking is how the new ADSs affect the review process for having an offering document approved. Effectively, the new process, which again mirrors the position in the UK, is that it is the regulator (here, the DFSA) that is responsible for reviewing and commenting on an offering document and providing final approval of the document. The exchange (in the form of NASDAQ Dubai) will not review a prospectus for substantive content but will instead be focused on ensuring that the issuer meets the requirements for admission of securities to trading (including the liquidity requirements discussed above).

If you have any questions about this *Client Alert* or would like to provide us with any thoughts or feedback to include in our response to the consultation, please contact one of the authors listed below or the Latham attorney with whom you normally consult:

Andrew Tarbuck

+971.4.704.6353
andrew.tarbuck@lw.com
Dubai

Oliver Simpson

+971.4.704.6369
oliver.simpson@lw.com
Dubai

Client Alert is published by Latham & Watkins as a news reporting service to clients and other friends. The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the attorney with whom you normally consult. A complete list of our *Client Alerts* can be found on our website at www.lw.com.

If you wish to update your contact details or customise the information you receive from Latham & Watkins, visit <http://events.lw.com/reaction/subscriptionpage.html> to subscribe to our global client mailings program.

Abu Dhabi

Barcelona

Beijing

Boston

Brussels

Chicago

Doha

Dubai

Frankfurt

Hamburg

Hong Kong

Houston

London

Los Angeles

Madrid

Milan

Moscow

Munich

New Jersey

New York

Orange County

Paris

Riyadh*

Rome

San Diego

San Francisco

Shanghai

Silicon Valley

Singapore

Tokyo

Washington, D.C.

* In association with the Law Office of Mohammed A. Al-Sheikh