

# Chapter 3 Security Specific Admission Rules

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*Guidance: This chapter of the Listing Rules must be read in conjunction with chapter 2.*

## Eligibility relating to Equity Securities

### 3.1 General Requirements for an Equity Listing

3.1.1 An Issuer must satisfy one of the following:

- (a) The profit test in Listing Rule 3.2;
- (b) The assets test in Listing Rule 3.3; or
- (c) The market capitalisation tests in Listing Rule 3.4.

3.1.2 An Issuer must adopt a constitution that complies with the provisions specified in Appendix 1 of chapter 9.

3.1.3 For a Primary Listing of Equity Securities on NASDAQ Dubai, an Issuer must file a Prospectus with the DFSA. The Prospectus must comply with the content requirements for a Prospectus in the OSR.

*Guidance: OSR 2.6 outlines the mechanism by which the DFSA may accept for filing a Prospectus produced pursuant to the legislation in another jurisdiction.*

3.1.4 An Issuer must demonstrate genuine investor interest in the Securities for which Listing is sought, by satisfying (a) and either (b) or (c) below. To meet this “genuine investor interest” test, an Issuer must, upon Admission:

- (a) Have a minimum free float of 25% of the Securities to be Listed. NASDAQ Dubai considers that:
  - (i) Free float consists of only Securities that are in public hands (i.e., not held by Connected Persons);
  - (ii) Both ordinary Shares and preference Shares may be included in free float; and
  - (iii) No more than 50% of the free float may be in the form of preference Shares; and

*Guidance: NASDAQ Dubai may, in exceptional circumstances, consider a waiver of the 25% free float requirement. Among the factors taken into consideration would be the number of shareholders (including mix between institutional and retail holders), the number of Securities constituting the free float, the value of the free float, and whether the Listing of Securities on NASDAQ Dubai is on a Secondary Listing basis.*

- (b) Demonstrate that it will have a minimum of 400 bona fide shareholders, each holding Equity Securities of the Issuer with a value of at least USD \$2,000; or

*Guidance: For the purposes of calculating the minimum number of shareholders, Beneficial Owners of the Securities may be counted.*

*However, a shareholder of Securities would not be considered bona fide, if for example, there are five different holders from the same address and with similar names.*

- (c) Provide for a Retail Set Aside of at least 10% of the aggregate number of Securities constituting the Offer of the Issuer, and make a bona fide attempt to place the Securities with retail investors.
- 3.1.5 To demonstrate bona fide compliance with the Retail Set Aside, an Issuer must submit evidence to NASDAQ Dubai that at least 10% of the Offer was open to retail investors on an appropriate and transparent basis, and further evidence submitted as to the names and number of retail investors who received allocations. If the Issuer or Lead Manager is entitled to 'claw back' any unsubscribed portion of the Retail Set Aside, clear disclosure in the Listing/Offer documents is required as to how this process would work.
- 3.1.6 In the case of a Secondary Listing, an Issuer may satisfy Listing Rule 3.1.4(b) with a minimum of 100 shareholders, each holding Admitted Equity Securities of the Issuer with a value of at least USD \$2,000.
- 3.1.7 An Issuer must demonstrate that it can operate its business independent of any majority or controlling shareholder.
- 3.1.8 An Issuer must disclose in the Prospectus or other listing document how, at the time of Admission, it complies with the corporate governance requirements prescribed in the OSRs. Should an Issuer fail to make such a disclosure in the Prospectus or other listing document, NASDAQ Dubai will require a separate release of this disclosure at the time of Admission.
- 3.1.9 An Issuer, in the case of Warrants, must confirm that it has Securities Listed on NASDAQ Dubai or as a Primary Listing on another exchange.
- 3.1.10 An Issuer may not have in issue Warrants, where the holders of the Warrants have the right to subscribe for more than 20% of the outstanding share capital of the Issuer.

## **3.2 The Profit Test**

- 3.2.1 To meet the profit test, an Issuer must at the time of Admission:
- (a) Qualify as a going concern, or the legal successor to a going concern;
  - (b) Demonstrate a track record of conducting the same primary business activity for a continuous period of three fiscal years immediately preceding the date of the Listing Application; and
  - (c) Report aggregated consolidated Operating Profit of at least USD \$10 million for the last three fiscal years immediately preceding the date of the Listing Application.

*Guidance: Listing Rule 3.2.1(c) does not require an Issuer to report Operating Profit for each of the preceding three fiscal years.*

- (d) Report consolidated Operating Profit of at least USD \$1 million for the 12 month period immediately preceding a date no more than two months before the date of the Listing Application.

3.2.2 On Admission, the Issuer must disclose each of the following:

- (a) Consolidated audited accounts for the three fiscal years immediately preceding the date of Listing Application, including audit reports. The audit reports must not have a modification or an emphasis of matter that goes to whether the Issuer can continue as a going concern or has satisfied the profit levels required;
- (b) If the Issuer's last fiscal year ended more than eight months before the Listing Application, audited or reviewed accounts for the half year immediately preceding the date of Listing Application (or longer period if available) from the end of the last fiscal year, together with the audit report or review;
- (c) A *pro forma* balance sheet of the Issuer, reflecting the financial position at the time of Admission. The *pro forma* balance sheet must reflect any capital raised by the Issuer in connection with the Admission; and

*Guidance: In relation to the presentation of pro forma financial information, refer to Guidance Note 5: Pro Forma Information.*

- (d) A statement from all directors of the Issuer confirming that they have made all appropriate enquiries and nothing has come to their attention to suggest the Issuer is not continuing to earn Operating Profit from continuing operations up to the date of the Listing Application.

### 3.3 The Assets Test

3.3.1 To meet the assets test, an Issuer must at the time of Admission:

- (a) Have net Tangible Assets of at least USD \$10 million after deducting the costs of Admission and costs associated with any capital raising.
- (b) Hold either:
  - (i) Less than half of its total Tangible Assets (after raising any capital) in cash or in a form readily convertible to cash; or
  - (ii) Half or more of its total Tangible Assets (after raising any capital) in cash or in a form readily convertible into cash.

*Guidance: Inventories and receivables would not normally be considered as readily convertible to cash.*

- (c) If the Issuer relies on Listing Rule 3.3.1(b)(ii), it must also:
  - (i) Provide evidence to NASDAQ Dubai that it has spending commitments consistent with its business objectives of at least half of its cash and assets in a form readily convertible to cash. The business objectives must be clearly stated and include an expenditure program; and
  - (ii) Comply with Listing Rules 5.2 (Quarterly Cash Flow Report) and 5.4.1(o) (Annual Report disclosure of business objectives).

3.3.2 An Issuer is required to have adequate Working Capital. In particular, an Issuer must:

- (a) Report a Working Capital of at least USD \$5 million, as reflected on its statement of cashflows as at the date of the Listing Application; and
- (b) Disclose in its Prospectus or Offer document that it has sufficient Working Capital to fund its business operations and planned expenditures for at least 12 months post Admission.

3.3.3 On Admission, the Issuer must disclose each of the following:

- (a) Its consolidated accounts, together with an audit report or review:
  - (i) For the last three fiscal years immediately preceding the date of Listing Application (or a shorter period if NASDAQ Dubai agrees); and
  - (ii) If the Issuer's last fiscal year ended more than eight months before the Listing Application, for the half year immediately preceding the date of the Listing Application (or a longer period, if available) from the end of the last fiscal year; and
- (b) A *pro forma* balance sheet of the Issuer, reflecting the financial position at the time of Admission. The *pro forma* balance sheet must reflect any capital raised by the Issuer in connection with the Admission.

*Guidance: In relation to the presentation of pro forma financial information, refer to Guidance Note 5: Pro Forma Information.*

3.3.4 The Issuer must satisfy the Locked-In Securities requirements under Listing Rules 3.33 to 3.35.

## 3.4 The Market Capitalisation Test

3.4.1 To meet the market capitalisation test, an Issuer must at the time of Admission.

- (a) Have a market capitalisation of at least USD \$50 million, and comply with the requirements of Listing Rule 3.4.2; or

- (b) Have a market capitalisation of at least USD \$20 million, and comply with the requirements of Listing Rules 3.4.3 and 3.4.4.

3.4.2 **Market capitalisation of USD \$50 million.** An Issuer qualifying under this test must disclose at the time of Admission:

- (a) Its consolidated audited accounts, together with an audit report or review:
  - (i) For the last three fiscal years immediately preceding the date of the Listing Application. The audit reports must not have a modification or an emphasis of matter that goes to whether the Issuer can continue as a going concern; and
  - (ii) If the last fiscal year ended more than eight months before the Listing Application, for the half year immediately preceding the date of the Listing Application (or longer period, if available) from the end of the last fiscal year; and
- (b) A *pro forma* balance sheet of the Issuer, reflecting the financial position at the time of Admission. The *pro forma* balance sheet must reflect any capital raised by the Issuer in connection with the Admission.

*Guidance: In relation to the presentation of pro forma financial information, refer to Guidance Note 5: Pro Forma Information.*

3.4.3 **Market capitalisation of USD \$20 million.** An Issuer qualifying under this test must disclose at the time of Admission:

- (a) Its consolidated audited accounts, together with an audit report or review:
  - (i) For the last three fiscal years immediately preceding the date of the Listing Application (or shorter period if NASDAQ Dubai agrees); and
  - (ii) If the last fiscal year ended more than eight months before the Listing Application, for the half year immediately preceding the date of the Listing Application (or longer period, if available) from the end of the last fiscal year;
- (b) A *pro forma* balance sheet of the Issuer, reflecting the financial position at the time of Admission. The *pro forma* balance sheet must reflect any capital raised by the Issuer in connection with the Admission; and

*Guidance: In relation to the presentation of pro forma financial information, refer to Guidance Note 5: Pro Forma Information.*

3.4.4 The Issuer must satisfy the Locked-In Securities requirement under Listing Rules 3.33 to 3.35.

## 3.5 General Requirements for Holders of an Equity Security

3.5.1 All holders of Equity Securities must have specified rights to share in the profits of the Issuer, except for holders of Depository Receipts.

- 3.5.2 All holders of Equity Securities with voting rights must be able to vote in person or by proxy at meetings of Security holders, and equal effect must be given to votes whether cast in person or by proxy.

### 3.6 Additional Requirement for a Mining Issuer

- 3.6.1 For Securities of a Mining Issuer to be Admitted, NASDAQ Dubai must be satisfied that the Issuer will comply with Listing Rule 5.19.

### 3.7 Additional Requirements for Depository Receipts

- 3.7.1 Depository Receipts may be Listed if:

- (a) The underlying Securities have or will have a Primary Listing on NASDAQ Dubai or another exchange;

*Guidance: Where the underlying Securities are sought to be simultaneously Listed on NASDAQ Dubai or another exchange, NASDAQ Dubai would regard this Listing Rule to be met if the listing takes place before the Listing of the Depository Receipts on NASDAQ Dubai.*

- (b) NASDAQ Dubai is satisfied that investors will be able to obtain sufficient information to be able to form a reasoned opinion regarding the value of the underlying Securities; and

- (c) The entity that has issued the underlying Securities must have approved of the issue of the Depository Receipts (i.e, by sponsoring the issue).

*Guidance: NASDAQ Dubai will consider this Listing Rule to be met, where the Depository Receipts entitle the holder to convert such receipts into the underlying Securities which are or will be Listed on NASDAQ Dubai or another exchange on which a Primary Listing exists on or before the date of Listing of the Depository Receipts on NASDAQ Dubai.*

- 3.7.2 The Issuer of the Depository Receipts must hold in trust (or under equivalent arrangements) for the sole benefit of the Depository Receipt holders the underlying Securities to which the Depository Receipts relate, all rights pertaining to the underlying Securities and all monies and benefits that it may receive in respect of them, subject only to payment of the remuneration and proper expenses of the Issuer of the Depository Receipts.

- 3.7.3 The Issuer of the Depository Receipts must operate in a jurisdiction where the underlying Securities would not legally form part of the Issuer's assets on bankruptcy or insolvency.

- 3.7.4 Depository Receipts must not impose any obligations on the Issuer of the Depository Receipts (as distinct from the Issuer of the underlying Securities) other than to the extent necessary for the protection of the Depository Receipts holders' rights to and the transmission of entitlements of the underlying Securities.

- 3.7.5 Neither the underlying Securities nor any such rights, monies or benefits related to the underlying Securities may be, or are liable to be treated as, assets of the Issuer of the Depository Receipts, nor may the Depository Receipts represent liabilities of the Issuer of the Depository Receipts under the law (including but not limited to insolvency law) of the place of the Depository Receipts Issuer's incorporation, the place of issue of the Depository Receipts, the place of administration of the trust, the place of incorporation of the Issuer of

the underlying Securities or other arrangement under which the underlying Securities are held.

- 3.7.6 At the time of an issue of the Depository Receipts the payments arising from the issue of underlying Securities must be sufficient to meet the payments required for the issuance of the Depository Receipts.

### 3.8 Documents Required for Listing approval of Equity Securities

- 3.8.1 Before NASDAQ Dubai will grant approval of a Listing of Equity Securities under Listing Rule 2.11, the Issuer must submit the following documents. These documents are in addition to the documents required in chapter 2.

- (a) The consolidated audited accounts of the Issuer, its holding company or its subsidiaries, as the case may be; and
- (b) If this is the Issuer's first Listing Application to NASDAQ Dubai in respect of Equity Securities, an undertaking signed by each director and the secretary and each proposed director and secretary of the Issuer (and by any other individual that NASDAQ Dubai requests to complete an undertaking), as set out in form 4 of chapter 9.

- 3.8.2 In the case of Depository Receipts, the following must be submitted to NASDAQ Dubai:

- (a) The consolidated audited accounts of the Issuer of the underlying Securities;
- (b) An undertaking signed by the directors of the Board of the Issuer of the underlying Securities, as set out in form 4 of chapter 9; and
- (c) The depository agreement, declaration of trust or other document creating and providing for the issuance of the Depository Receipts.

*Guidance: Refer to Listing Rule 2.10.2.*

### 3.9 Documents required for Admission of Equity Securities

- 3.9.1 In addition to the confirmations required by Listing Rule 2.13, where a Listing Application relates to an IPO and Primary Listing on NASDAQ Dubai, the Issuer must disclose the following prior to Admission:

- (a) The close of the Offer;
- (b) The final issue price and number of Equity Securities issued;
- (c) The names and shareholding details of each of its Connected Persons and Promoters;
- (d) A breakdown of the number of Equity Securities sold as part of the IPO, substantially set-out in Appendices 2, 3 and 4 of chapter 9; and
- (e) Confirmation that the Lock-In requirements of Listing Rule 3.34 have been met.

*Guidance: Please refer to the timing requirements set out in Listing Rule 2.13. In exceptional circumstances, NASDAQ Dubai may allow these documents to be published on the day of Admission (i.e., prior to commencement of trading on the day of Admission). NASDAQ Dubai will delay Admission until all confirmations have been received and/or published.*

### **3.10 Pre Approval of Recurring Issuances of Equity Securities**

3.10.1 Where an Issuer intends to issue Equity Securities of the same Class on a regular basis (including pursuant to an employee share option scheme, a regular savings scheme or a dividend re-investment plan, and following the exercise of Warrants or of conversion rights attaching to a Class of convertible Securities) and where prior approval of the Issuer's shareholders has been obtained for such arrangements, an Issuer may make a Listing Application for the pre-approval of the Listing of the entire Class of such Securities which may be issued in a particular case .

*Guidance: The Issuer will need to consider its obligations (if any) as a Reporting Entity to obtain the consent of the holders of the Securities under the OSRs for such arrangements.*

## Eligibility relating to Debt Securities

### 3.11 Criteria Relating to Debt Securities

3.11.1 The capital raised through the issue of Listed Debt Securities must be at least USD \$10 million in principal or its equivalent in other currencies.

### 3.12 Criteria Relating a Wholesale Issue

3.12.1 To be eligible to List Debt Securities on NASDAQ Dubai, an Issuer must:

- (a) Exclusively offer and issue the Debt Securities to Professional Clients only;
- (b) Apply a minimum denomination to the Debt Securities of USD \$100,000;
- (c) Ensure that the Debt Securities have an investment grade credit rating, awarded by an internationally recognised credit rating agency acceptable to NASDAQ Dubai;

*Guidance: For the purposes of this Listing Rule, NASDAQ Dubai will consider credit ratings from Standard & Poor's, Inc, Moody's Investor Services and Fitch, Inc.*

- (d) If it makes an Offer in or from the DIFC, do it by way of an Exempt Offer;

*Guidance: An Issuer would need to consider the applicable requirements of an Exempt Offer, including the mandatory disclosures required in the OSRs.*

- (e) If the offer is being made in a jurisdiction other than the DIFC, offer to investors who would be considered the equivalent of "Professional Clients" in that jurisdiction.

*Guidance: NASDAQ Dubai would evidence the disclosures applicable to an offer being made to the equivalent of "Professional Clients" in another jurisdiction.*

3.12.2 If an Issuer is unable to satisfy Listing Rule 3.12.1(c), it must, or where applicable the Obligor must (except for an Issuer of Asset Backed Securities or Mortgage Backed Securities), have net Tangible Assets of USD \$10 million. The Issuer's guarantor also must:

- (a) Have net Tangible Assets equal to the value of the Debt Securities issued;
- (b) Disclose consolidated audited accounts for the two fiscal years immediately prior to the date of the Listing Application. The period to which the consolidated audited accounts relate must not end more than eight months prior to the date of the Listing Application; and
- (c) Provide an undertaking to disclose its consolidated management accounts on an annual basis once the Securities are Admitted.

3.12.3 If the transaction structure does not have an Obligor or guarantor, the Issuer itself must comply with Listing Rules 3.12.2(a) through (c).

*Guidance: In terms of determining which entity is acceptable for the purpose of meeting the requirements of Listing Rule 3.12.2, NASDAQ Dubai would consider a number of factors, including but not limited to, the legal and financial relationship between the Issuer and the relevant entity (be it the Obligor or guarantor), what obligations (if any) the relevant entity may have pursuant to the Securities being Listed and what relevance (if any) the assets of such entity have for the purpose of the Securities being Listed.*

*NASDAQ Dubai will generally accept an entity to be a guarantor if such entity is a government or supra-national, a parent entity or a holding company of the Issuer. Listing Rule 3.12.1 does not apply to ABS or MBS as these Securities are backed by assets.*

3.12.4 An Issuer must ensure the following disclosures are included in the Offer or Listing documents:

- (a) “Any subsequent resale or purchase of Securities offered as a Wholesale Issue, must only be made to purchasers who are Professional Clients”;

*Guidance: The disclosure should also reference the minimum denomination requirement of Listing Rule 3.12.1(b).*

- (b) “In the event that any subsequent resale or purchase of these Securities is made outside of the DIFC, each subsequent resale or purchase transaction must only be made to or by purchasers who would qualify under the equivalent category of Professional Clients under the applicable regulations in the purchaser's jurisdiction”;

- (c) “All purchasers shall inform themselves about, and observe, any applicable restrictions in any relevant jurisdiction on the applicable requirements relating to the distribution of the Prospectus and the offering, purchase and sale of Securities pursuant to a Wholesale Issue”; and

- (d) That there is a legend substantially in the following form: “No Offer of the Securities may be made to any person in the Dubai International Financial Centre unless such Offer is made to Professional Clients as defined in GLO of the DFSA Rulebook”.

### 3.13 Criteria Relating to a Retail Offer

*Guidance: The Listing Rules applicable to a retail Offer are to be considered in addition to those applicable to a Wholesale Issue.*

3.13.1 An Issuer must file a Prospectus with the DFSA.

3.13.2 The Issuer or where applicable, the Obligor, must itself have consolidated audited accounts (reported without modification or emphasis of matter) which cover at least three fiscal years, and the period to which the accounts relate must not end more than six months prior to the date of the Listing Application.

3.13.3 Where more than six months have elapsed since the end of the financial year to which the most recent audited accounts of the Issuer or, where applicable, the Obligor relate, an

interim financial statement covering the period from the end of that financial year to the end of the quarter immediately preceding the date of the Listing Application must be submitted.

- 3.13.4 Listing Rule 3.13.2 does not apply if the Securities are Asset Backed Securities or Mortgage Backed Securities, or if the Offer is done by an Exempt Offeror as defined by A5.1.1 of the OSRs.

### **3.14 Additional Criteria Relating to Asset Backed Securities and Mortgage Backed Securities**

- 3.14.1 A trustee or other independent representative must be appointed to represent the interests of the holders of the Securities and such trustee or independent Custodian must hold the underlying assets and all money and benefits flowing from the assets to the Issuer or the holders of the Securities.
- 3.14.2 For Securities which are secured on debt obligations or other receivables from a managed pool of assets, an entity (of adequate experience and expertise) must be appointed to manage the pool of assets. The entity appointed must disclose the periodic financial reports relating to the performance and credit quality of the pool of assets, for the benefit of the trustee and the holders of the Securities.
- 3.14.3 For Securities which are secured by types of Equity Securities, the Securities must represent minority interests in, and must not control the underlying entities, and such Securities must be Listed on NASDAQ Dubai or must have a Primary Listing on another exchange.

### **3.15 Documents required for Listing approval of Debt Securities**

- 3.15.1 In addition to the confirmations or documents required in chapter 2, before NASDAQ Dubai will grant approval of a Listing of Debt Securities under Listing Rule 2.11, the Issuer, or where applicable, the Obligor, must ensure the following:

- (a) A copy of the trust deed or other documents securing or constituting the Securities is submitted to NASDAQ Dubai.
- (b) The material documents as stated in the Prospectus or the listing document are or will be available for inspection by the public at the address specified in the Prospectus or listing document.

*Guidance: For the purposes of complying with Listing Rule 3.15.1(b), a document is deemed to be available for inspection by the public when it is available, free of charge to the prospective and existing investors either in the DIFC, or in United Arab Emirates (at the registered office of the Issuer, or at the offices of the paying agent).*

*NASDAQ Dubai will also require all the material documents as part of the Listing approval. NASDAQ Dubai will not make a decision in relation to a Listing Application until it has reviewed these documents.*

- (c) Where a Listing Application has been made for Asset Backed Securities or Mortgage Backed Securities, that the Prospectus or listing document contain sufficient financial information with respect to the assets which underlie these Securities to enable an investor to make an informed investment decision, including, but not limited to, the composition and quality of such assets.

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## Eligibility relating to Units of a Collective Investment Fund

*Guidance: The Securities which fall into this category include Closed-ended Investment Funds in the form of Exchange Traded Funds (ETFs) and Real Estate Investment Trusts (REITs). The Listing Rules do not provide for the Listing of Open-ended Investment Funds, though for the purposes of these Listing Rules, ETFs are deemed acceptable.*

### 3.16 Application of the DFSA Collective Investment Rules

3.16.1 If the Collective Investment Rules ("CIR") of the DFSA are applicable, Units of a Collective Investment Fund must comply with the CIR in addition to the requirements of these Listing Rules. In the event of a conflict between the provisions of the Listing Rules and the CIR, the provisions of the CIR shall prevail.

### 3.17 Criteria Relating to an Issuer of Units of a Collective Investment Fund

3.17.1 To be eligible to List Units of a Collective Investment Fund on NASDAQ Dubai, an Issuer must:

- (a) Submit audited accounts for the last three fiscal years immediately preceding the date of the Listing Application (or such shorter period that the Issuer has been in operation);
- (b) Submit audited or reviewed accounts for the period covering the end of the fiscal year to the end of the quarter immediately preceding the date of the Listing Application. Where more than six months have elapsed since the end of the fiscal year to which the most recent audited accounts of the Issuer relate, audited or reviewed accounts for the period covering the end of that fiscal year to the end of the quarter immediately preceding the date of the Listing Application must be provided;
- (c) Have either of the following:
  - (i) Directors, an Investment Manager or a Fund Manager with a track record of at least three years or more in managing investments of the type in which the Fund currently invests in or proposes to invest and such investments must be of a similar aggregate dollar amount; or
  - (ii) The Investment Manager or Fund Manager authorised by the DFSA or by a regulator in a Recognised Jurisdiction to manage investments;

*Guidance: This rule is used by NASDAQ Dubai to determine adequate experience and expertise of the Investment Manager or the Fund Manager in the management and operation of the Fund.*

*For the purposes of these Listing Rules, NASDAQ Dubai accepts the jurisdictions recognised by the DFSA pursuant to Article 55 of the Collective Investment Law and published in the list of DFSA Recognised Jurisdictions.*

- (d) Have a Board able to act independently:

- (i) With respect to the Investment Manager or Fund Manager appointed to manage their investments; and
  - (ii) Of a company or the Master Fund, and any Investment Manager of such a Master Fund, where pursuant to its investment policy an Issuer invests its funds either in that company or in a portfolio of investments of a Master Fund;
- (e) Have a published investment policy which:
- (i) Includes details about the policies to be adopted in relation to the allocation of assets, risk diversification, gearing and maximum exposures;
  - (ii) Is accurate and clear so as to enable an investor to understand the investment opportunities, identify how to manage risk and evaluate the significance of any proposed changes to the investment policy; and
  - (iii) Is disclosed in the Prospectus or listing document at the time of Listing;
- (f) Invest and manage its assets in a way which is consistent with the objectives of its investment policy, specifically in relation to risk and investment management;
- (g) In the case of Feeder Funds where an Issuer principally invests its funds either in another company or in a portfolio of investments of a Master Fund, ensure that:
- (i) The investment policy of the Master Fund is consistent with the Issuer's published investment policy; and
  - (ii) The Master Fund invests and manages its investments in a way that is consistent with the Issuer's published investment policy;
- (h) Appoint a Custodian acceptable to NASDAQ Dubai to safeguard its assets. The Custodian must be a separate legal entity from the Issuer, its directors, the Investment Manager, Advisor and the Fund Administrator, but may be an associate of any of them;
- (i) Fully disclose the method of independent valuation of the Fund assets in the offering documents, which should be in accordance with the applicable accounting standards of the Fund.

3.17.2 An Issuer must, at the time of Admission, ensure that:

- (a) There is no more than 15% of the total assets of the Issuer invested in other listed Closed-ended Investment Funds;
  - (b) The net asset value of the Units of the Collective Investment Fund are at least USD \$20 million; and
- Guidance: This may be difficult for an ETF to meet at Admission, and therefore an ETF Issuer will need to provide further information as to when and how this Listing Rule can be met.*
- (c) Demonstrate genuine investor interest in the Securities for which Listing is sought.

*Guidance: NASDAQ Dubai expects the Issuer to maintain on an ongoing basis genuine investor interest in the Securities and will generally require the Issuer to make a submission at the time of the Listing Application as to how it will obtain and maintain genuine investor interest. NASDAQ Dubai may reject or impose conditions on a Listing Application if an Issuer fails to satisfy this rule.*

### **3.18 General Requirements for Holders of Units of a Collective Investment Fund**

- 3.18.1 All holders of Units of a Collective Investment Fund must have specified rights to share in the profits of the Collective Investment Fund.
- 3.18.2 All holders of Units of a Collective Investment Fund with voting rights must be able to vote in person or by proxy at meetings of Security holders, and equal effect must be given to votes whether cast in person or by proxy.

### **3.19 Additional Criteria Relating to Exchange Traded Funds (ETFs)**

- 3.19.1 To be eligible to List an ETF on NASDAQ Dubai, in addition to satisfying Listing Rules 3.17 and 3.18, an Issuer of an ETF must, at the time of Admission, include among other information, the following in the Offer document or Prospectus:
- (a) Details of the index which the ETF tracks including the constituent elements of the index; and
  - (b) The manner in which the index is calculated and the frequency of reviewing and redrawing the composition of the index.

### **3.20 Additional Criteria Relating to Real Estate Investment Trusts (REITs)**

- 3.20.1 To be eligible to List a REIT on NASDAQ Dubai, in addition to satisfying Listing Rules 3.17 and 3.18, an Issuer of a REIT must:
- (a) Ensure that the REIT's assets consist of 50% or more in investments in Real Property, with the remainder consisting of investments in one or more of the following:
    - (i) Real Property;
    - (ii) Units in another property Fund; or
    - (iii) Cash, government or listed Securities;

*Guidance: The requirement in 3.20.1 above may be waived for the initial six month period from the date of a REIT's Admission on NASDAQ Dubai, provided that the Prospectus or other listing documents clearly disclosed or contemplated this circumstance. As a condition for this waiver, the Issuer is to ensure compliance with the requirements under Listing Rule 3.20.2 below. In addition, NASDAQ Dubai also requires ongoing disclosures in relation to its investment allocation pursuant to Listing Rule 5.10.7.*

- (b) Ensure that the aggregate borrowings of the REIT do not exceed 70% of the total net asset value of the REIT at all times.

3.20.2 To be eligible to List a REIT on NASDAQ Dubai, a Fund Manager of a REIT must:

- (a) Ensure that it holds good marketable legal and/or beneficial title in all its Real Property, whether directly or indirectly, through Special Purpose Vehicles controlled by the REIT, or have in place some other arrangements acceptable to NASDAQ Dubai which give it control of the Real Property;

*Guidance: This Listing Rule would generally only apply to REITs that are not directly regulated by CIR.*

- (b) Ensure in the case of a Primary Listing or Secondary Listing of a REIT (with capital raising) on NASDAQ Dubai, that all Affected Persons and Connected Persons agree not to dispose of their Securities in respect of the REIT, other than between themselves, for a period of 180 days from the date of Admission;
- (c) Ensure that it distributes to the holders of its REIT Securities as dividends each year, an amount not less than 80% of its audited annual net income in the same year;
- (d) Obtain the prior approval of the holders of its REIT Securities where the value of a proposed transaction with an Affected Person is greater than 5% of the most recent net asset value of the REIT; and
- (e) Appoint an independent valuer to produce a valuation report at the time of Admission and on an annual ongoing basis.

*Guidance: In considering:*

- (i) if a valuer is "independent" and
- (ii) the contents of the annual valuation report, NASDAQ Dubai would be mindful of the applicable provisions of the Collective Investment Rules.

### **3.21 Documents Required for Listing Approval of Units of a Collective Investment Fund**

3.21.1 In addition to the confirmations or documents required in chapter 2, before NASDAQ Dubai will grant approval for a Listing of Units of a Collective Investment Fund under Listing Rule 2.11, an Issuer must submit the following documents.

- (a) A copy of the relevant Custodian agreement;
- (b) A copy of the management agreement between the Issuer and the Investment Manager or the Fund Manager of the Fund;
- (c) An undertaking signed by each director of the Issuer (and by any other individual connected with the Issuer that NASDAQ Dubai requests to complete an undertaking), in form 4 of chapter 9, if this is the Issuer's initial Listing Application to NASDAQ Dubai in respect of Units of a Collective Investment Fund; and

*Guidance: In circumstances where an Issuer is proposing to appoint a director(s) concurrent with its Listing, an undertaking shall also be required from the proposed director(s).*

## Eligibility relating to Structured Products

### 3.22 Criteria Relating to an Issuer of Structured Products

3.22.1 To be eligible to List Structured Products on NASDAQ Dubai, an Issuer must:

- (a) Have net Tangible Assets of at least USD \$10 million, except in the case of an ETC;
- (b) Be one of the following:
  - (i) An International Financial Institution; or
  - (ii) A financial institution which is licensed and regulated by a regulatory authority acceptable to the DFSA and meets the Bank of International Settlements (“BIS”) Tier 1 capital requirements;
- (c) Ensure that on Admission, there is a minimum value of USD \$10 million of Securities issued;
- (d) Have permission or an appropriate license from the owner of any index used in the structuring of the Securities which allows the Issuer to use the index in that form and manner;
- (e) Appoint and maintain a paying agent acceptable to NASDAQ Dubai;
- (f) Itself have (or, in the case of an issue which is guaranteed by another entity, the guarantor must have) published audited accounts for the last three fiscal years immediately preceding the date of the Listing Application, and the period to which the audited accounts relate must not end more than six months prior to the date of the Listing Application;
- (g) Demonstrate genuine investor interest in the Securities for which Listing is sought; and  
*Guidance: NASDAQ Dubai expects the Issuer to maintain on an ongoing basis genuine investor interest in the Securities and would generally require the Issuer to make a submission at the time of the Listing Application as to how it will obtain and maintain genuine investor interest. NASDAQ Dubai may reject or impose conditions on a Listing Application if an Issuer fails to satisfy this rule.*
- (h) Have appropriate experience, skills and expertise in the issuance of Structured Products and in the management of the risks associated with issuing such Securities.

### 3.23 Additional Criteria Relating to Structured Products

3.23.1 The Securities must be fully paid.

### 3.24 Additional Criteria relating to an Issuer and its ETCs

3.24.1 To be eligible to List an ETC on NASDAQ Dubai, in addition to satisfying Listing Rules 3.22 and 3.23, an Issuer of an ETC must:

- (a) Appoint at least one market intermediary as an authorised participant that would facilitate the creation and redemption of Securities during the life of the ETCs;
- (b) Ensure that the Securities are fully collateralised. The Securities must be secured by a charge against the Issuer's assets (including commodity contracts);
- (c) Appoint an ETC Custodian to store, maintain, administer and safeguard the underlying commodity, where the ETC's are collateralised by a commodity in physical form;
- (d) Make appropriate arrangements with a third party who would provide the Issuer with an exposure to the relevant underlying commodity, where the ETC's are collateralised by assets other than a physical commodity;
- (e) Ensure there are appropriate mechanisms in place for the creation and redemption of the Securities during the life of the Securities;
- (f) Declare in writing that:
  - (i) The assets acquired using the proceeds derived from the issuance are separate from that of the Issuer and from that of any other issues of the Issuer;
  - (ii) The assets acquired using the proceeds derived from the issuance and the income (if any) earned on such assets shall be used to satisfy the rights incorporated in the Security and to meet the costs of the relevant transaction; and
  - (iii) No actions concerning such assets may be brought by creditors other than the holders of the Securities;
- (g) Provide a legal opinion from a law firm in support of the declaration required by Listing Rule 3.24.1(f). Where such an opinion has been provided in another jurisdiction from which the Securities are listed, a copy of such an opinion must be provided to NASDAQ Dubai; and
- (h) Ensure that the Prospectus, listing document, or a separate market disclosure at the time of Admission contains the necessary disclosures set out in Listing Rule 3.24.1(f).

*Guidance: In order to determine the eligibility of the Issuer, NASDAQ Dubai may look at the experience of the ETC sponsor/Promoter and not necessarily the Issuer alone.*

### 3.25 Documents required for Listing approval of Structured Products

3.25.1 In addition to the confirmations and documents required in chapter 2, before NASDAQ Dubai will grant approval for a Listing of Structured Products under Listing Rule 2.11, an Issuer must submit the following documents:

- (a) A Term Sheet(s) pursuant to a Prospectus or listing document of the Structured Products;
- (b) A consent letter or a copy of an appropriate license from the owner of any index used in structuring the Securities which allows the Issuer to use the index in that form and manner, where applicable;
- (c) The depository agreement, declaration of trust or other document constituting the Securities which demonstrates that there is a legally binding relationship between the holder and the Issuer;
- (d) The document constituting the Securities;
- (e) The Board resolution or an equivalent document authorising the issuance of the Structured Products;
- (f) The consent of an authorised officer of the Issuer to the Listing and the issue of the Structured Products for which the Listing has been sought;
- (g) A declaration pursuant to Listing Rule 3.24.1(f); and
- (h) Such other information or document as is necessary to show that the Issuer meets the eligibility requirements set out in the Listing Rules.

### 3.26 Additional documents required for ETCs

3.26.1 In addition to the confirmations and documents required in chapter 2, before NASDAQ Dubai will grant approval for a Listing of ETCs under Listing Rule 2.11, an Issuer must submit, where applicable, documents including, but not limited to the matters relating to the following.

- (a) The purchase and storage of commodities;
- (b) The conduct of the parties for creation and redemption of the Securities;
- (c) Any credit exposure granted to authorised participants during the creation and redemption of Securities;
- (d) Details of the charge on the assets of the Issuer in favour of the trustee to be held by the trustee on behalf of the investors; and
- (e) Any other document, agreement or contract referred to in the Prospectus or listing document.

## Eligibility relating to Sharia Compliant Securities

### 3.27 Eligibility Criteria – General

3.27.1 In addition to the general eligibility criteria in chapter 2 and this section on Sharia Compliant Securities, an Issuer making a Listing Application for a Listing of Sharia Compliant Securities must meet the following requirements (where applicable):

- (a) In the case of all Sharia Compliant Securities, the requirements set out in the Islamic Finance Rules;
- (b) In the case of Equity Securities, Listing Rules 3.1 to 3.10;
- (c) In the case of Debt Securities, Listing Rules 3.11 to 3.15;
- (d) In the case of Units of a Collective Investment Fund, Listing Rules 3.16 to 3.21;
- (e) In the case of Structured Products, Listing Rules 3.22 to 3.26; and
- (f) In the case of securities issuance programmes, Listing Rule 3.32.

*Guidance: NASDAQ Dubai recognises that Debt Securities are commonly classified as Sukuk. However, it is noted that some interpretations of Sukuk may include other Security classifications (particularly Equity Securities), and therefore an Issuer of a Sharia Compliant Security (not just of Debt Securities) may need to consider whether the requirements of Listing Rule 3.29 also apply.*

### 3.28 Criteria for Sharia Compliant Securities

3.28.1 To be eligible to List a Sharia Compliant Securities on NASDAQ Dubai, an Issuer must:

- (a) Appoint a Sharia Supervisory Board (that meets the requirements, if any, prescribed in the Islamic Finance Rules);
- (b) Ensure, to its satisfaction, that the member(s) of the Sharia Supervisory Board have adequate qualifications, experience and expertise in Islamic jurisprudence and Islamic finance. Details of the members appointed to the Sharia Supervisory Board will need to be submitted with the Listing Application;
- (c) Ensure that the Sharia Supervisory Board advises, in respect of Sharia compliance, on all aspects of the Offer;
- (d) Submit to NASDAQ Dubai the following:
  - (i) A copy of the Sharia Pronouncement issued by the Sharia Supervisory Board;
  - (ii) Details of any declaration of trust or the instrument providing for the creation and issuance of the Security;
  - (iii) A copy of all material transaction documents pertaining to the Sharia nature of the Securities; and

- (iv) Such other information/documentation which NASDAQ Dubai (or the DFSA) decides in its discretion, as being required by the investors to understand the full nature of the transaction.

*Guidance: Listing Rule 3.28.1 applies to all types of Securities that are held out as being Sharia compliant. However, the specific requirements of Sharia will vary amongst the different types of Securities.*

*The Issuer may for this purpose utilise the services of an existing Sharia Supervisory Board set up by a financial adviser that has been appointed by the Issuer to manage the issue of the Securities. An Issuer that decides to appoint its own Sharia Supervisory Board does not necessarily need to employ full-time members of the Sharia Supervisory Board but may retain the services of appropriately qualified members as and when required.*

### 3.29 Criteria for the Issuer of a Sukuk

3.29.1 To be eligible to List a Sukuk on NASDAQ Dubai where the Issuer is an SPV (which has been created for the purpose of issuing and Listing a Sukuk), the following must be met:

- (a) A corporate responsibility statement is included in the Prospectus or listing document to the effect that the information contained in the Prospectus or listing document about the Obligor, including its subsidiaries (where applicable) is true and accurate in all material respects; and
- (b) The Issuer, and where applicable, the Obligor submits an undertaking to NASDAQ Dubai to disclose on an ongoing basis, its Annual Report and audited financial statements, and the Annual Report and audited financial statements of such other entity which NASDAQ Dubai or the DFSA deems to be relevant for the benefit of the holders of the Securities.

*Guidance: Refer to the guidance in OSR A2.1.1(13) in relation to the less extensive disclosure requirements for Debt Securities.*

3.29.2 If an Issuer is required to disclose consolidated audited accounts, such accounts must have been produced in accordance with the following:

- (a) The requirements of Listing Rule 2.5; or
- (b) The accounting standards of the Accounting and Auditing Organization for Islamic Financial Institutions' (AAOIFI).

### 3.30 Documents required for Listing approval

3.30.1 In addition to the confirmations and documents required in chapter 2, before NASDAQ Dubai will grant approval of a Listing of Sharia Compliant Securities under Listing Rule 2.11, an Issuer must submit the following documents (where applicable) to NASDAQ Dubai:

- (a) In the case of Debt Securities, Equity Securities, Units of a Collective Investment Fund, Structured Products and securities issuance programmes, the requirements of Listing Rule 3.28;
- (b) In the case of Sukuk, the requirements of Listing Rules 2.12.2, 3.29.1(b), and 3.29.2.

### 3.31 Documents required for Admission

3.31.1 The following documents will be published on the NASDAQ Dubai website prior to Admission:

- (a) The Sharia Pronouncement; and
- (b) Details of the appointment of the Sharia Supervisory Board including the names, qualifications and experience of each member (if not included in the Prospectus or listing document).

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## Securities Issuance Programme

### 3.32 Eligibility Criteria

3.32.1 A Listing Application by an Issuer may be made for the following Securities to be issued under a securities issuance programme:

- (a) Debt Securities;
- (b) Structured Products; or
- (c) Sharia Compliant Securities.

3.32.2 A Listing Application for Securities to be issued under a securities issuance programme must specify the maximum value of Securities which may be issued under the programme. A Listing Application and related documents will need to be furnished both in relation to the requirements of Listing Rule 3.32.1 and the requirements in relation to Listing under a securities issuance programme.

3.32.3 NASDAQ Dubai must be satisfied that the listing document contains Prospectus level disclosure and includes sufficient disclosure as it relates to Listing on NASDAQ Dubai and the relevant securities laws of the DIFC.

*Guidance: The listing document used by NASDAQ Dubai for approving a Listing Application of a securities issuance programme, will generally consist of a Prospectus and supplementary disclosure document (if required). A supplemental disclosure document will usually be required in circumstances where a Listing Application has been made for a securities issuance programme pursuant to which a Prospectus has already been published and which has Securities listed on another stock exchange.*

*In these circumstances, NASDAQ Dubai would require a supplemental disclosure document which would include additional disclosures relating to Listing on NASDAQ Dubai and which would address the various securities laws of the DIFC, where such disclosure has been excluded from a prospectus published prior to the Listing Application. Where a supplemental disclosure document is required, this document should incorporate by reference the disclosure in the prospectus published prior to the Listing Application.*

3.32.4 If NASDAQ Dubai approves a Listing Application for a securities issuance programme, it shall grant pre-approval for the Listing of all Securities which may be issued under the programme for a period of 12 months from the date of the Listing Approval Letter, subject to NASDAQ Dubai receiving from the Issuer the following documents for each issue:

- (a) The final Term Sheet;
- (b) A Listing Application Form (form 2);
- (c) Copies of any supplementary disclosure document prepared in support of the issue;
- (d) Written confirmation that it is still in full compliance with the Listing Rules;

- (e) Written confirmation that the issue falls within the terms and conditions of the securities issuance programme pre-approved by NASDAQ Dubai; and
- (f) Written confirmation that the Securities for the issue have been issued or will be issued within a pre-determined period.

3.32.5 NASDAQ Dubai may, upon the submission by an Issuer, modify Listing Rule 3.32.4 to permit the extension of a securities issuance programme prior to its expiry in exceptional circumstances (such as where an Issuer is intending to issue Securities under the programme within a limited period of time after the date of expiry).

*Guidance: Updates to a programme may also be considered by NASDAQ Dubai, under the following circumstances:*

1. *Where the Issuer confirms there are no substantial changes to the terms of the programme, NASDAQ Dubai will conduct an expedited review process to allow a further updated programme for 12 months; or*
2. *Where the Issuer confirms there have been significant changes to the terms of the programme, NASDAQ Dubai will consider the programme as a fresh application.*

3.32.6 NASDAQ Dubai reserves the right to impose additional requirements on an issue made under a securities issuance programme, including imposing a requirement to make a fresh Listing Application in respect of that issue, if it considers that the issue does not fall within the scope of the programme.

*Guidance: For the purposes of Listing Rule 3.32.6, the Prospectus and any supplement to it used by NASDAQ Dubai to grant its pre-approval for the Listing of all Securities which may be issued under the programme for a 12 month period, should include sufficient disclosure with respect to the range of Securities which may be Listed. For example, this should include disclosure on how the return on the Securities to be Listed can be determined (i.e. index-linked, commodity-linked, fixed interest rate etc), what the possible asset classes could consist of which underlie the Securities etc.*

## Locked-In Securities

### 3.33 NASDAQ Dubai mandatory Lock-In

3.33.1 Where NASDAQ Dubai is the venue for a Primary Listing of Equity Securities, Listing Rule 3.33.2 will apply if either of the following applies:

- (a) The Issuer qualifies for Admission under the asset test in Listing Rule 3.3; or
- (b) The Issuer qualifies for Admission under the USD \$20 million market capitalisation test in Listing Rule 3.4.1(b).

3.33.2 The following holders of Equity Securities must not dispose of any interest in their Securities for a period of 12 months commencing from the date of Admission:

- (a) Connected Persons;
- (b) Promoters;
- (c) Vendors;
- (d) A person who purchased, or acquired, Equity Securities from any person in (a), (b) or (c) prior to Admission of the Securities of the Issuer; or
- (e) Any person identified for Lock-In by NASDAQ Dubai (as part of the Listing Application process).

*Guidance: NASDAQ Dubai will not waive Listing Rule 3.33.2 in any circumstances.*

3.33.3 The prohibition on disposal in Listing Rule 3.33.2 does not apply in respect of a Takeover offer for Securities of the Issuer which is open to all holders of Equity Securities, in the event of death of a party to whom Listing Rule 3.33.2 applies or in the event of an intervening court order.

3.33.4 If, in the immediately preceding 12 months before the date of the Listing Application, an Issuer Acquired a Classified Asset from a Connected Person or a Promoter, the consideration must have been Locked-In Securities unless one of the following applies:

- (a) The consideration was a reimbursement of expenditure in developing the Classified Asset; or
- (b) The Issuer satisfied the profit test in Listing Rule 3.2 or the USD \$50 million market capitalisation test in Listing Rule 3.4.1(a).

3.33.5 As Locked-In Securities and matters relating to Lock-In constitute Price Sensitive Information, the following requirements apply:

- (a) On the day of Admission, the Issuer must disclose the number of its Securities which are subject to Lock-In and disclose the expiration date for this arrangement;

- (b) At least five days prior to the expiration of the Lock-In, the Issuer must disclose the expiration date of the Lock-In and the number of Securities subject to release;
- (c) No Securities will be released until NASDAQ Dubai writes to those who have secured the Lock-In (pursuant to Listing Rule 3.35.1), advising that it is appropriate to release the Lock-In on the expiration date; and
- (d) At least five days prior to expiration of Lock-In, disclose the date of expiration and the number of Securities to be released. This Listing Rule 3.33.5(d) also applies to the release of voluntary lock-in.

*Guidance: NASDAQ Dubai requires Lock-In for the circumstances outlined in Listing Rule 3.33.2. For Issuers who meet these tests, NASDAQ Dubai will require certain holders of Equity Securities to be Locked-In for 12 months. NASDAQ Dubai wants to ensure that in connection with an IPO those shareholders who are insiders and who were involved in promoting the offering are Locked-In to ensure that they have a continued vested interest (as shareholders) for at least a limited period of time.*

*Issuers who meet the profits test are still provided the option of implementing voluntary lock in, and NASDAQ Dubai will require disclosure against this pursuant to Listing Rule 3.33.5(d).*

### **3.34 Application of Lock In and entry into Lock In Agreements**

3.34.1 During the Lock-In period, an Issuer must:

- (a) Comply with the restrictions in Listing Rule 3.33.2;
- (b) Ensure that the Lock in agreement is signed by each relevant holder of Locked-In Securities (and, if applicable, their Controllers);
- (d) Complete Lock-In agreements (or associated undertakings under Listing Rule 3.35.2) and give them to NASDAQ Dubai; and
- (e) If the Issuer has issued Locked-In Securities before it is Admitted to the Official List, comply with the requirements of Listing Rule 3.33.4.

### **3.35 Enforcement of the Lock In Agreement**

3.35.1 An Issuer must comply with, and enforce, a Lock-In agreement, to the extent lawfully applicable.

3.35.2 Prior to Admission, an Issuer must provide NASDAQ Dubai with one of the following written undertakings:

- (a) A bank's undertaking to hold the Locked-In Securities for the Lock-In period, and not release the Locked-In Securities without NASDAQ Dubai's prior written consent.
- (b) An undertaking from the Issuer's provider of registry services to impose a holding lock on the Locked-In Securities for the Lock-In period, and not remove the holding lock without the prior written consent of NASDAQ Dubai.

3.35.3 During the Lock-In period, an Issuer must not change an executed Lock-In agreement or release the Lock-In secured under Listing Rule 3.34.1 without the prior written consent of NASDAQ Dubai.

*Guidance: A lock-in may be applied on a voluntary basis between parties outside of the NASDAQ Dubai mandatory Lock-In Listing Rules. Such voluntary lock-In could be for shorter or longer periods, and apply to a narrower or wider group of persons than identified in Listing Rule 3.33.2. The provisions of these Listing Rules, however, cannot be used to enforce such a voluntary lock in.*

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