

# Chapter 6 Securities and Proposed Actions

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## General

### 6.1 Maintaining an orderly market

- 6.1.1 If an Issuer proposes to reorganise its issued capital structure, it must consult with NASDAQ Dubai in advance to ensure that an orderly market is maintained in its Securities.

### 6.2 Maintaining a registrar

- 6.2.2 If an Issuer does not maintain its own register, the Issuer must notify NASDAQ Dubai of the appropriate arrangements made with its registrar to ensure compliance with these Listing Rules.

### 6.3 Record Date

- 6.3.1 An Issuer must, without delay, disclose when it has determined a Record Date or any change to a proposed Record Date.
- 6.3.2 An Issuer must disclose a Record Date at least seven Business Days in advance of the Record Date or any change to a proposed Record Date.

## Terms of Securities

### 6.4 Appropriate and Equitable

- 6.4.1 An Issuer must ensure that the terms that apply to each Class of Security are appropriate and equitable.

*Guidance: NASDAQ Dubai will consider the relationship between voting and other rights, and the rights between the different Classes of Securities when it considers whether the rights and obligations are appropriate and equitable.*

### 6.5 Ordinary Shares

- 6.5.1 An Issuer must have only one Class of ordinary Shares unless the additional Class is of partly paid ordinary Shares which, if fully paid, would be in the same Class as the fully paid ordinary Shares.

*Guidance: Depository Receipts issued over an Issuer's ordinary Shares are not an additional Class of ordinary Shares.*

### 6.6 Preference Shares

- 6.6.1 The holders of preference Shares must be entitled to a dividend, at a rate in preference to holders of ordinary Shares.

*Guidance: In considering whether this Listing Rule has been met, NASDAQ Dubai will consider the rate of return relative to the return on an Issuer's ordinary Shares, and the return available in the money market generally.*

- 6.6.2 A holder of preference Shares may only vote in the following limited circumstances:
- (a) During a period in which a dividend (or part of a dividend) on the preference Share is in arrears (on all matters provided to ordinary Shareholders for approval);
  - (b) On a proposal to reduce an Issuer's Share capital;
  - (c) On a proposal to approve the terms of a SRP or a tender offer;
  - (d) On a proposal that affects rights attached to the preference Shares;
  - (e) On a proposal to wind up or terminate, or during the winding up or termination, of the Issuer; and
  - (f) On a proposal for the disposal of all, or substantially all, of the Issuer's assets or business operations.
- 6.6.3 An Issuer of Equity Securities cannot List with preference Shares only.
- 6.6.4 When considering Listing Rule 3.1.4(a), preference Shares may constitute up to 50% of the free float of an Issuer. An Issuer may have different Classes of preference Shares.

## 6.7 Preference Securities

- 6.7.1 A preference Security that is not a preference Share will entitle the holder to a right to vote on the matters set out in Listing Rule 6.6.2, with any necessary adaptation specified by the Issuer provided such adaptation does not in any way limit the holders' rights.

*Guidance: A trust, scheme or Collective Investment Fund issuing preference Securities must comply with this Listing Rule. However, this Listing Rule is subject to the obligations and requirements of the jurisdiction in which the scheme, trust or Collective Investment Fund is located and regulated.*

- 6.7.2 A holder of preference Securities must be entitled to a dividend (in the case of a trust, a distribution) at a commercial rate in preference to holders of ordinary Securities.
- 6.7.3 If the Issuer is wound up or dissolved, the holders of preference Securities must be entitled to a return of capital in priority to holders of ordinary Securities.

*Guidance: This also applies to holders of preferential Units in a Collective Investment Fund (where applicable).*

- 6.7.4 A holder of preference Securities must be entitled to the same rights as a holder of ordinary Securities in the same Issuer in relation to all corporate notifications of the Issuer, including but not limited to receiving notices, reports and audited accounts, and attending meetings.

## Proposed Actions - SRP

### 6.8 Securities repurchase via a Share Repurchase Programme (“SRP”)

6.8.1 **Repurchases up to 20% permitted.** An Issuer, in compliance with these Listing Rules, may purchase up to 20% of its Equity Securities under an SRP during a 12 month period.

*Guidance: If applicable, an Issuer may need to consider the requirements of OSR A3.1.1, which relate to events requiring the approval of Security holders.*

6.8.2 **NASDAQ Dubai facilities.** Each repurchase must occur through the facilities of NASDAQ Dubai.

### 6.9 Application for a SRP

6.9.1 NASDAQ Dubai must grant written approval of the SRP before the Issuer commences repurchases under the SRP.

6.9.2 An Issuer must submit a written application to NASDAQ Dubai with respect to an SRP, containing the details set out below.

*Guidance: NASDAQ Dubai will review the draft resolution and notice of meeting pursuant to Listing Rule 4.13.1(d) prior to the Issuer sending the relevant documents out for Security holder approval.*

(a) **Intent to repurchase.** A statement of the Issuer’s intention to repurchase outstanding Equity Securities over the next 12 month period;

(b) **Number of Securities/Allocated funds.** The number of Equity Securities the Issuer’s Board has determined may be repurchased or the amount of money that has been put aside to make such repurchase(s);

(c) **Percentage of outstanding Securities.** The percentage of outstanding Securities that the SRP represents in relation to the total amount of issued and outstanding Listed Securities;

(d) **Reasons for the SRP.** An explanation of the Issuer’s objectives and justification for the SRP;

*Guidance: Subjective opinions or views relating to the valuation of an Issuer’s Securities will generally not be acceptable as valid reasons for an SRP.*

(e) **Capital structure post-SRP.** The proposed capital structure of the Issuer following the SRP;

(f) **Period of SRP.** The period during which the Issuer expects the SRP to be conducted;

(g) **Past repurchases.** Details of any repurchases undertaken during the preceding 12 months under a previous SRP or otherwise;

(h) **Directors/officers selling Securities.** Details of every director or officer of the Issuer who intends to sell Securities during the SRP, and to the extent known by the

Issuer's directors or officers, the names of each associate of any director or officer of the Issuer who intend to sell Securities during the SRP;

- (i) **'Blackout periods'**. The Issuer's plans to implement any restrictions on trading during the periods preceding the release of financial or other Price Sensitive Information, including the Issuers' use of 'blackout periods' with respect to the SRP; and
- (j) **Direct or indirect benefits to Directors/officers**. A statement of any direct or indirect benefits to any person specified in Listing Rule 6.9.2(h) by selling or not selling Securities during the course of the SRP.
- (k) **Documents**. A draft copy of the Board resolutions approving the SRP and a draft copy of any required Security holder resolution with respect to SRP approval.

## 6.10 The NASDAQ Dubai SRP Review Period

6.10.1 NASDAQ Dubai will advise the Issuer in writing within five Business Days after receipt of the Issuers' written SRP application whether it approves the Issuer's application, does not approve the application, or requires additional documents or information. The Issuer may not commence the SRP, or look to obtain any relevant Security holder approvals without obtaining NASDAQ Dubai's prior approval of the SRP.

## 6.11 Commencement of the SRP

6.11.1 Upon receipt of NASDAQ Dubai's approval for the SRP, the Issuer must, without delay upon deciding to commence the SRP, disclose the information set out in form 6 of chapter 9 (Notice of Share Repurchase Programme). Repurchases under the SRP may begin on the first Business Day following the disclosure of form 6 of chapter 9.

## 6.12 Operation of the SRP

6.12.1 The Issuer may not take any action with respect to the SRP that would result in unequal treatment of Security holders. Specifically, the Issuer must comply with the following rules:

- (a) The price paid by the Issuer for the repurchase of its Securities must not be higher than the volume weighted average price (VWAP) calculated on the daily transaction prices for the period commencing six months prior to the commencement of the SRP;
- (b) A pre-arranged trade is not permitted where the seller is a director or officer of the Issuer or an associate of a director or officer of the Issuer;
- (c) Should any unpublished Price Sensitive Information come to the attention of the Issuer or any of its directors or officers, the Issuer must immediately suspend the SRP until the Price Sensitive Information has been publicly disclosed; and
- (d) An Issuer may make repurchases of its Listed Securities from directors and officers of the Issuer and from associates of the directors and officers of the Issuer under an

SRP provided no more than such person's Pro-rata share of the Listed Securities is repurchased.

- 6.12.2 During the course of the SRP, an Issuer may amend its SRP application by increasing or decreasing the number of Securities sought to be repurchased through the SRP, provided the maximum percentage of 20% is not exceeded within the 12 month period. Upon receipt of NASDAQ Dubai's approval, any amendment or any other changes to the SRP must be promptly disclosed, as set out in form 8 of chapter 9 (Notice of change to Share Repurchase Programme).
- 6.12.3 On any day that a repurchase occurs under an SRP, the Issuer must disclose the details of the repurchase as required in form 7 of chapter 9 (Daily Share buy back notice).
- 6.12.4 The Issuer must include a table in its next Annual Report, the next interim financial report or such other document as may next be sent to the holders of the Issuer's Equity Securities which are Listed on NASDAQ Dubai specifying the total number of Equity Securities repurchased during the preceding financial year, and, where applicable, any additional Equity Securities repurchased through to the date of the last disclosure. The table must include the average repurchase price and whether the repurchased Securities have been cancelled, reserved for issuance or otherwise dealt with and an updated capital structure of the Issuer.
- 6.12.5 The Issuer must at all times during the SRP maintain compliance with the 'free float' obligation under Listing Rule 4.9.3, as well as all other Listing Rules and the OSRs in relation to any SRP, and the obligations under the laws, rules or regulations of any other relevant jurisdiction.

## 6.13 Suspension or Termination of an SRP

- 6.13.1 NASDAQ Dubai may require the Issuer to suspend or terminate the SRP immediately if:
- (a) The Issuer does not continue to meet the ongoing eligibility requirements set out in the Listing Rules;
  - (b) The Issuer is not in compliance with the Listing Rules, and in particular the 'free float' obligation in Listing Rule 4.13, if all the re-purchases contemplated by the SRP were made; or
  - (c) The Issuer is in possession of Price Sensitive Information that has not been disclosed.

*Guidance: The suspension or termination of a SRP will not prejudice any transaction that occurred under the SRP before the suspension or termination. NASDAQ Dubai takes the view that repurchases under an SRP should not occur 10 days prior to the release of financial results, Annual Reports or other key Price Sensitive Information disclosures.*

- 6.13.2 NASDAQ Dubai reserves the right to impose a restriction on the aggregate number of Equity Securities of the Issuer that may be repurchased pursuant to a SRP, in any rolling 30 calendar day period, if NASDAQ Dubai believes that such a restriction is necessary in order to maintain a fair and orderly market.

6.13.3 NASDAQ Dubai will notify an Issuer in writing if it intends to take action under Listing Rules 6.13.1 or 6.13.2.

## Proposed Actions – tender offers

### 6.14 Securities repurchase via a tender offer

6.14.1 **Repurchases up to 10% permitted.** An Issuer, in compliance with these Listing Rules, may repurchase up to 10% of its Securities by way of a tender offer during a 12 month period. The Issuer must ensure that:

- (a) It obtains Board approval (and if required, Security holder consent), prior to initiating the tender offer, and discloses such approval;
- (b) Where the tender offer results in a reduction of capital in the Issuer, it complies with the applicable Listing Rules and Offered Securities Rules; and

*Guidance: If applicable, an Issuer must ensure compliance with the requirements of OSR A3.1.1. Furthermore, an Issuer will need to consider any requirements or obligations pursuant to the Takeover Rulebook of the DFSA.*

- (c) The tender offer must be made by way of an offer document in accordance with Listing Rule 6.17 to all Security holders of the Issuer on a Pro-rata basis, and in such a way so as to ensure continuous equality of all its Security holders, including minority Security holders.

### 6.15 Application for a tender offer

6.15.1 NASDAQ Dubai must grant written approval of the tender offer before the Issuer commences the tender offer.

*Guidance: NASDAQ Dubai will review the draft resolution and notice of meeting pursuant to Listing Rule 4.13.1(e) prior to the Issuer sending the relevant documents out for Security holder approval.*

6.15.2 An Issuer must submit a written application to NASDAQ Dubai with respect to a tender offer, containing the details set out below:

- (a) **Intent to repurchase.** A statement of the Issuer's intention to repurchase outstanding Securities by way of tender offer over the next 12 month period;
- (b) **Number of Securities/Allocated funds.** The number of Securities the Issuer's Board has determined may be acquired or the amount of money that has been put aside to make such tender offer;
- (c) **Reasons for tender offer.** An explanation of the Issuer's objectives and justification for the tender offer;

*Guidance: Subjective opinions or views relating to the valuation of an Issuer's Securities will generally not be acceptable as valid reasons for a tender offer.*

- (d) **Past repurchases.** Details of any repurchases or tender offer that has been carried out during the preceding 12 months;
- (e) **Key details.** Details of the Issuer's tender offer including the key dates; and
- (f) **Proposed use of Securities.** The proposed use of the Securities purchased under the tender offer.

## 6.16 The NASDAQ Dubai tender offer Review Period

- 6.16.1 NASDAQ Dubai will advise the Issuer in writing within five Business Days after receipt of the Issuer's written tender offer application whether it approves the Issuer's application or requires additional documents or information.
- 6.16.2 An Issuer may not commence the tender offer, or look to obtain any relevant Security holder approvals without obtaining NASDAQ Dubai's prior approval of the tender offer.
- 6.16.3 Upon receipt of NASDAQ Dubai's approval for the tender offer, the Issuer must, without delay upon deciding to commence the tender offer, disclose the information set out in form 9 of chapter 9 (Notice of repurchase of Securities via a tender offer).

## 6.17 The tender offer document

- 6.17.1 The tender offer document must be disclosed to the market at least five Business Days prior to commencement of the tender offer.
- 6.17.2 The tender offer document must include the following details, along with the information required by form 9 of chapter 9:
  - (a) The key dates (including, but not limited to, the Record Date and payment date, and length of the tender offer (open and closing));
  - (b) The material terms of the tender offer (including, but not limited to, the mechanism for determining the purchase price);

*Guidance: The discount or premium threshold for the tender offer should generally not exceed 10-20% of the current market price of the Securities.*

- (c) A clear articulation of the price that will be set under the tender offer, the justifications for that price, including an explanation as to the fair treatment of all Security holders. The tender offer document will need to contain appropriate third party legal or broker advice on the pricing mechanism;
- (d) The process of conducting the tender offer, including, but not limited to, the mechanism by which Security holders can participate and records are kept (including if a tender offer agent has been appointed);

- (e) Any insider trading protections and details (including, but not limited to, 'blackout periods');
- (f) Any proposed participation of directors and their associates (subject to the offer being conducted on a Pro-rata basis);
- (g) The relevant jurisdictional restrictions or disclaimers depending on where the tender offer is conducted;
- (h) Full details as to whether the Securities repurchased will be cancelled, reserved for future issuance or otherwise dealt with; and
- (i) The procedures for modifying a tender offer after it has commenced.

## **6.18 Operation of the tender offer**

- 6.18.1 An Issuer must keep its market fully informed at all times and include appropriate disclosures in the Issuer's Annual Report or earlier as may be appropriate. In keeping the market fully informed, an Issuer must ensure that all disclosures to Security holders are complete, true and plain and not misleading, false or deceptive.
- 6.18.2 The Issuer must include a table in its next Annual Report, the next interim financial report or such other document as may next be sent to the holders of the Issuer's Listed Securities specifying the total number of Securities repurchased during the preceding financial year, and, where applicable, any additional Securities repurchased through to the date of the last disclosure. The table must include the average repurchase price and whether the repurchased Securities have been cancelled, reserved for issuance or otherwise dealt with and an updated capital structure of the Issuer.
- 6.18.3 During the course of the tender offer, if the Issuer intends to make any changes to the terms of the tender offer, a notification must be submitted to NASDAQ Dubai for approval without delay. Once approved by NASDAQ Dubai, any changes must be promptly disclosed to the market as set out in form 10 of chapter 9 (Notice of Change to tender offer).
- 6.18.4 The final results of an Issuer's tender offer must be disclosed to the market within five Business Days from the close of the tender offer.
- 6.18.5 The Issuer must at all times ensure compliance with the requirements under the Listing Rules and the OSRs as well as the obligations under the laws, rules or regulations of any other relevant jurisdiction.
- 6.18.6 NASDAQ Dubai reserves the right to impose additional conditions on the tender offer as may be appropriate in order to maintain a fair and orderly market.

## Proposed Actions - General

### 6.19 Timetables for Proposed Actions

- 6.19.1 In relation to any Proposed Action, an Issuer must comply with Listing Rules 6.19.2 to 6.22.1, and the timetables set out in chapter 9.
- 6.19.2 An Issuer must provide in writing any announcement of the timetable for any Proposed Action affecting the rights of existing holders of its Securities which are Listed to NASDAQ Dubai for consultation at least 24 hours in advance of the proposed disclosure of the Proposed Action.
- 6.19.3 An Issuer must disclose the final timetable for any Proposed Action affecting the rights of existing holders of Securities which are Listed without delay after finalisation of the timetable with NASDAQ Dubai.
- 6.19.4 An Issuer must disclose immediately any proposed amendments to a timetable, including amendment to the publication details of an announcement following agreement on the amendments to the timetable with NASDAQ Dubai.

### 6.20 Rules that apply to all entitlement issues

- 6.20.1 If an Issuer is conducting more than one Proposed Action, it must not have a Record Date to identify holders in a subsequent Proposed Action until the Securities register has been updated for the previous one.
- 6.20.2 An Issuer may not declare a Record Date for any Proposed Action until at least six Business Days after its last Record Date. An Issuer may have an identical Record Date for different Proposed Actions.
- 6.20.3 If an Issuer requires the approval of Security holders to make an entitlement offer, or issue Securities, the Record Date to allocate entitlements to Security holders must be at least seven Business Days after the approval of Security holders was obtained.

### 6.21 Rules that apply to all Pro-rata issues of Securities

- 6.21.1 A Pro-rata issue of Securities must meet the following minimum criteria:
- (a) The basis for allocating the entitlement by the Issuer must not change during the offer period;
  - (b) The issue price of each Security must not contain fractions;
  - (c) The ratio of Securities offered must not be greater than one Security offered for each Security held by a Security holder, except in the event of a bonus issue, or if the offer is renounceable; and
  - (d) The offer must not include alternative offers to Security holders, except to allow full or partial payment upon acceptance.

## 6.22 Reorganisation of Securities

6.22.1 If an Issuer proposes to reorganise its capital, it must disclose:

- (a) The effect of the proposal on the number of Securities on issue;
- (b) The proposed treatment of fractional entitlements; and
- (c) The proposed treatment of any convertible Securities.

6.22.2 Listing Rule 6.22.1 is also applicable to Units of a Collective Investment Fund.

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