

Guidance Notes

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Important notice - The use of guidance notes

These guidance notes provide guidance **only** and do **not** form part of the Listing Rules. NASDAQ Dubai issues guidance notes to promote regulatory and commercial certainty, reduce costs to business and assist Issuers and their advisors. NASDAQ Dubai is available to discuss any questions in relation to a guidance note.

NASDAQ Dubai may amend or introduce guidance notes at any time. Issuers and their advisors should check the NASDAQ Dubai website so that they have the latest version of the guidance notes. NASDAQ Dubai will also publish any new guidance notes.

As a guidance note is only a guide to NASDAQ Dubai policy and practice, Issuers and their advisors are advised to contact NASDAQ Dubai to discuss their particular circumstances and the application of the Listing Rules. NASDAQ Dubai cannot give legal advice to Issuers and their advisors, and recommends that they consider taking advice from qualified professional advisors.

Guidance Note 1: Disclosure of information about bookbuilds

1. Issuers that plan to conduct an IPO, or other capital raising, by way of a bookbuild should be aware that NASDAQ Dubai requires the disclosure of certain information (particularly in relation to the outcome of the bookbuild) prior to Admission and the commencement of trading of an Issuer's Securities. This information is required to ensure that the market remains fully informed.
2. Issuers and Lead Managers should have in place procedures to ensure that the market is at all times informed of any Price Sensitive Information arising from a bookbuild. As such, NASDAQ Dubai expects Issuers and Lead Managers to have regard to the objectives of the Listing Rules in chapter 1, which are to:
 - *Follow internationally recognised standards of regulation in relation to the Listing of Securities, and*
 - *Ensure a timely flow of disclosures and financial information by Issuers.*
3. In a bookbuild process, the following information may be required to be disclosed:
 - Details of concessionary fee arrangements and other conduct or arrangements entered into which may cause the issue price paid by certain allottees to differ materially from the bookbuild price announced by the Issuer; and
 - Other conduct or arrangements entered into which may cause the value of the consideration for each Security passing from certain allottees to differ materially from the bookbuild price announced by the Issuer.
4. NASDAQ Dubai expects an Issuer to have in place procedures so that it can obtain appropriate information from the Lead Manager / bookrunner(s) in order to meet its disclosure obligations. NASDAQ Dubai recommends that an Issuer make appropriate enquiries of its Lead Manager / bookrunner(s) to determine the price sensitivity of any information and therefore ensure that it can make the appropriate disclosures to the market.
5. NASDAQ Dubai may, pursuant to Listing Rule 2.14.1(h) exercise its discretion to require disclosure by the Issuer in relation to the bookbuild before the Issuer's Securities are Admitted to the Official List.
6. This guidance is not intended to result in disclosure of sub-underwriting and cornerstone arrangements entered into in the normal course of a bookbuild.

Guidance Note 2: Disclosure of information about underwriting agreements

1. Issuers that plan to conduct an IPO or other capital raising with the support of underwriters should be aware that NASDAQ Dubai requires the disclosure of certain information (particularly in relation to the key terms of the underwriting agreement for eg: identify the underwriter, the basis of the underwriting and the fees involved) prior to Admission and trading of an Issuer's Securities. This information is required to ensure that the market remains fully informed.
2. Underwriters may underwrite an Offer on either a "firm commitment" or "best efforts basis". In a firm commitment offering, the underwriters will purchase the Shares at a discount (generally between 4 – 10%) and resell them at the full IPO price to institutional and retail investors. In contrast, best efforts underwriting means that the underwriters are only committing their best efforts to sell the Shares.
3. NASDAQ Dubai expects the Prospectus or Offer document (and associated documents) to clearly state the key terms of the underwriting agreement, particularly if it is a firm commitment or on a best efforts basis. If the underwriting is to occur on a best efforts basis, there should be appropriate warnings provided to investors, such that all parties understand whether there is a 'guarantee' by the underwriter to raise funds, or best efforts to raise the funds.
4. Issuers should have a process in place to ensure that the market is at all times informed of any Price Sensitive Information arising from the underwriting process. As such, NASDAQ Dubai expects Issuers and underwriters to have regard to the objectives of the Listing Rules, which are to:
 - *Provide certainty of trading for investors and market participants, and*
 - *Protect investors and the integrity of the market through internationally recognised standards of regulation.*
5. Prior to Admission of an Issuer's Securities, NASDAQ Dubai may require for the Issuer to confirm that the underwriting agreement has remained intact throughout the Offer and that the underwriting agreement was not terminated by the underwriter or the Issuer (or other interested party).

Guidance Note 3: Disclosure about oil and gas exploration

1. If test results or progress in drilling programs generate information that a reasonable person would expect to be Price Sensitive Information, Listing Rule 4.2 requires that it be disclosed. It is unlikely that all the requirements pursuant to the exceptions in Listing Rule 4.3 would be met in relation to any oil and gas explorations results.
2. NASDAQ Dubai expects Issuers to adopt a regime of structured and periodic disclosure at regular intervals for each drilling program following the initial disclosure of information about progress in that program under Listing Rule 4.2. Issuers need to apply this regime consistently. It may be appropriate for fortnightly or even weekly reporting. Whatever the interval, the Issuer is to provide useful information on a regular basis.
3. Information that is likely to be relevant in these structured and periodic disclosures includes, but is not limited, to the following:
 - The name of the well.
 - The permit in which the well is located.
 - The well's position in the permit with respect to previous wells, known oil or gas fields, or towns.
 - The depth of the well.
 - Progress since the last disclosure.
 - Details of any indications of hydrocarbons and fluids observed while drilling.
 - The entity's beneficial percentage interest in the well.
 - The timeline by which progress is reported.

Guidance Note 4: Lead Managers

1. An Issuer may appoint a Lead Manager in a number of circumstances (refer to Listing Rule 2.16), but primarily in relation to a Primary Listing on NASDAQ Dubai of an Equity Security. NASDAQ Dubai considers that there are a number of circumstances where a Lead Manager will generally not be required (for example in relation to Wholesale Issues, Structured Products and non-capital raising Secondary Listings).
2. The purpose of the Lead Manager regime is to help provide a flexible and credible Listing and regulatory framework. As NASDAQ Dubai will also require a Prospectus Offer (which will be filed with the DFSA), appropriate investor and market protections are now in place.
3. Chapter 2 contains rules governing a Lead Manager. An Issuer's Listing Application must include a Lead Manager's Declaration, in which a Lead Manager will be required to declare the following:
 - (a) That in advising the Issuer, it has conducted itself with due skill, care and diligence;
 - (b) The key information required to determine the suitability of an Issuer and its Securities have been disclosed in the Prospectus or in writing to NASDAQ Dubai; and
 - (c) It is satisfied that the directors of the Issuer have had explained to them and understand their obligations in relation to the Listing and being Listed.
4. The aim of this framework is to establish a standard level of performance by a Lead Manager, irrespective of which institution is acting as Lead Manager (and whether or not they are an Authorised Firm). NASDAQ Dubai believes this will result in higher standards of disclosure and a greater directors' understanding of their obligations.
5. Authorised Firms (as regulated by the DFSA) will generally be approved as a Lead Manager, as these entities are obligated under DFSA rules to conduct themselves with due skill, care and diligence. However, entities that are not Authorised Firms are encouraged to apply for approval as Lead Managers. Generally, entities that were approved as sponsors under the previous NASDAQ Dubai sponsor regime will be deemed acceptable upon application.

Skill, care and diligence

6. A Lead Manager should perform and oversee a diligence process of the Issuer with sufficient rigour, having regard to the general disclosure obligations of the Markets Law, and the specific Prospectus disclosure obligations under the Offered Securities Rules. Importantly, this may not necessarily change the way in which liability or responsibility is attached pursuant to a Prospectus (refer to Article 51 of the Markets Law and Article 6.2 of the OSRs).
7. Failure by a Lead Manager to meet the requisite standard of skill, care and diligence, such that its confirmations were potentially breached by its action (or inaction), may expose it to sanctions under the Listing Rules.

8. It should be left to the relevant Lead Manager to assess what is necessary to meet the requirement of due skill, care and diligence, but a Lead Manager would likely consider, among other things, the Issuer's financial reporting systems and controls (both internal and external), the degree to which the Issuer has a satisfactory audit function and the position the Issuer is in, in relation to meeting the requirements of becoming and being a Listed entity and Reporting Entity.
9. NASDAQ Dubai provides four alternative eligibility tests for Equity Securities, namely the assets test, the profits test and two market capitalisation tests and it would be expected that a Lead Manager tailor its due diligence process to reflect the applicable test.

Disclosure

10. The intention behind the second declaration (refer to Listing Rule 2.17.1(b)) is to provide satisfaction, both to NASDAQ Dubai and importantly to the Lead Manager itself. The Lead Manager would be expected to have overseen a full and substantive due diligence review of the Issuer and its operations, so that it can be satisfied, on a reasonable basis, that the disclosure document does not contain an untrue statement of any Price Sensitive Information or omit any Price Sensitive Information necessary to prevent the disclosures from being misleading and that no significant change had occurred, since the latest audited accounts, in the financial position of the Issuer.
11. This review should be done with regard to the various disclosure obligations in the Listing Rules, the Offered Securities Rules and the Markets Law. The review may also reference other disclosure or general obligations contained, for example, in the Companies Law of the DIFC.
12. Importantly, as the confirmation is in relation to suitability, it is broader than a test of eligibility under the Listing Rules or the Offered Securities Rules. It therefore captures a wider criteria, including whether the Issuer's Securities should be available to (certain types of) investors.
13. NASDAQ Dubai and the DFSA, by their own remit, must come to their own determinations in relation to the disclosures contained in a Prospectus and will not simply rely on the confirmation by a Lead Manager as a signal that all required disclosures have been made.

Directors' responsibilities

14. As there may be several advisors appointed by an Issuer to help educate a Board on its responsibilities, the Lead Manager may wish to focus an Issuer and its Board's attention on the practical applications of the Listing Rules and the OSRs, rather than simply provide an explanation of the various rules and requirements.
15. Careful explanation of how an IPO and a Listing is to be conducted. More importantly, a Board must be prepared, not just for the IPO itself, but also for what its obligations will be post Listing.

Common and real-life examples and situations need to be examined by the directors, and senior officers of a potential Issuer.

16. A Lead Manager should take steps to ensure that by the time of Admission (at the very latest), arrangements are in place to assist directors in satisfying the Issuer's continuing obligations (ie., corporate governance, black-out periods, internal controls, financial reporting, and disclosure / communication policies and procedures) and that the Issuer has implemented a process to communicate the obligations of an Issuer/Reporting Entity to its employees.

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Guidance Note 5: *Pro Forma* Information

If an Issuer is required to disclose pro forma financial information, particularly in relation to information required to determine eligibility at the time of Admission, NASDAQ Dubai requires the balance sheet to be presented in the following manner:

1.	The pro forma information must include a description of the transaction, the businesses or entities involved and the period to which it refers, and must clearly state the following: (a) the purpose to which it has been prepared; (b) the fact that it has been prepared for illustrative purposes only; and (c) the fact that because of its nature, the pro forma financial information addresses a hypothetical situation and, therefore, does not represent the company's actual financial position or results.
2.	In order to present pro forma financial information, a balance sheet and profit and loss account, and accompanying explanatory notes, depending on the circumstances.
3.	The pro forma financial information must normally be presented in columnar format, comprised of: (a) the historical unadjusted information; (b) the pro forma adjustments; and (c) the resulting pro forma financial information in the final column. The sources of the pro forma financial information have to be stated and, if applicable, the financial statements of the acquired businesses or entities must be included in the Prospectus.
4.	The pro forma information must be prepared in a manner consistent with the accounting policies adopted by the Issuer in its last or next financial statements and shall identify the following: (a) the basis upon which it is prepared; and (b) the source of each item of information and adjustment.
5.	The pro forma information may only be published in respect of: (a) the current financial period; (b) the most recently completed financial period; and/or (c) the most recent interim period for which relevant unadjusted information has been or will be published or is being published in the same document.
6.	The pro forma adjustments related to the pro forma financial information must be: (a) clearly shown and explained; (b) directly attributable to the transaction; and (c) factually supportable. In addition, in respect of a pro forma profit and loss or cash flow statement, they must be clearly identified as to those expected to have a continuing impact on the Issuer and those which are not.
7.	The report prepared by the independent accountants or auditors must state that in their opinion: (a) the pro forma financial information has been properly compiled on the basis stated; and (b) that basis is consistent with the accounting policies of the Issuer.