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NASDAQ Dubai Ltd
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By email: listing.authority@nasdaqdubai.com

Dear sirs

CONSULTATION PAPER NO 1 OF 2011
PROPOSED CHANGES TO THE NASDAQ DUBAI LISTING RULES

ICAEW is pleased to respond to your request for comments on proposed new Listing Rules issued by NASDAQ Dubai in January 2011.

Please contact me or Amanda Line, Regional Director, Middle East (+971 (0)4 408 00010), should you wish to discuss any of the points raised in the attached response.

Yours faithfully

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ICAEW REPRESENTATION

PROPOSED CHANGES TO THE NASDAQ DUBAI LISTING RULES

Memorandum of comment submitted in March 2011 by ICAEW, in response to the NASDAQ Dubai consultation *Proposed Changes to the Listing Rules* issued in January 2011.

Contents	Paragraph
Introduction	1
Who we are	2 - 5
General comments	6 - 8
Specific comments	9 - 26

INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the NASDAQ Dubai consultation *Proposed Changes to the Listing Rules*.

WHO WE ARE

2. ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, we provide leadership and practical support to over 136,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. We are a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
3. Our membership includes numerous audit committee chairs, finance directors and members involved in investment management activities as well as auditors. Members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. We ensure these skills are constantly developed, recognised and valued.
4. The ICAEW Middle East regional office opened in 2009 and is based in DIFC, Dubai, United Arab Emirates. The key focus of the office is to support ICAEW's wider international strategy to ensure the highest standards within the accountancy profession. Across the region, ICAEW Middle East provides support to over 1,100 members and students, and works closely with governments, regulators and key stakeholders. Examples include assisting the DFSA in audit quality monitoring, working with Hawkamah to increase awareness about the importance of developing and applying good corporate governance practices, and producing a series of thought leadership and technical events for both members and non-members, within the GCC.
5. The ICAEW Corporate Finance Faculty is a network of some 5,000 professionals, including sponsors, nominated advisers, reporting accountants, lawyers, bankers and brokers. The faculty regularly responds to consultations from listing authorities and regulators in the UK and Europe. Our response to the NASDAQ Dubai consultation paper has been informed by the views of members practising in the UAE and wider region and of members with experience in UK and European capital markets.

GENERAL COMMENTS

6. We are supportive of NASDAQ Dubai in its objectives to provide a strong and liquid market to serve the interests of market participants, to add clarity and certainty to the application process and to enhance transparency and reporting. We believe there are many positive outcomes from this proposal and, particularly, the clarity given to the role of the Dubai Financial Services Authority (DFSA).
7. Meeting the objectives will be a challenge due to, inter alia:
 1. the lack of recent listing activity;
 2. uncertain demand for holdings in SMEs and family-owned companies;
 3. unknown appetite for retail shareholder interest (direct, or by way of pensions and life assurance);
 4. perceived cultural barriers to ownership dilution and governance among SME and family-owned companies; and

5. the complications arising from a potential additional layer of regulation from Emirates Securities and Commodities Authority (ESCA).
8. We agree with the flexible approach proposed by NASDAQ Dubai for administering the Listing Rules. This intended flexibility combined with the inclusion of, and future additions to, Guidance Notes in the new rules will promote market access for potential Issuers and advisers and help develop consistent market practice.

SPECIFIC COMMENTS

Chapter 1 Introduction

Q. Are the broad objectives of the Listing Rules appropriate? Is NASDAQ Dubai's interpretative approach too broad, or does it give NASDAQ Dubai the latitude required to administer the Listing Rules?

9. We agree with the broad objectives of the Listing Rules and the direction of approach set out in the consultation paper. We agree flexibility will be required to respond to a new IPO climate and to cope with new market entrants with diverse characteristics.

Chapter 2 General Admission Rules

Q. Do you have any comments or concerns as to whether the changes to the Admission rules and the Application process are clear and enforceable?

10. We welcome the certainty introduced to the application process and the associated cost certainty for potential Issuers.
11. We note the intention to permit admission to Issuers reporting under the mining disclosure requirements of Australia; NASDAQ Dubai may wish to consider whether Australian IFRS (as issued by the Australian Accounting Standards Board) might also be deemed acceptable GAAP for an Issuer's audited accounts.

Q. Do you have any concerns or comments about the proposed change to a Lead Manager regime? Should the Lead Manager regime be an optional or a mandatory one, considering that the obligations of the Listing Rules (both initial and ongoing) sit clearly with an Issuer? Would it be preferable to use a different term than 'Lead Manager', such as 'Listing Adviser', particularly if the Lead Manager subject to these Listing Rules was a different entity to the Lead Manager who assists with the capital raising as part of an IPO?

12. We welcome the clarification of responsibilities of Issuers and Lead Managers in the new rules.
13. We consider that there are more drawbacks than advantages to the proposal to replace the mandatory Lead Manager regime with an optional one. We recognise that the proposal and its potential for reduced administration and cost may incentivise SME and family-owned businesses to consider a listing. In the interests of investor protection and development of consistent market practice, we believe that the proposal should be reconsidered. Although there may be scope for an optional Lead Manager regime with some listings, we would recommend that the appointment of a Lead Manager for equity listings be mandatory.
14. The obligations of the NASDAQ Dubai Listing Rules sit with the Issuer while the Lead Manager has an implementation role. In the experience of our members, the 'sponsoring' adviser role is indispensable in applications for listing of smaller companies in the UK. The nominated adviser and corporate adviser are mandatory for applicants to AIM and PLUS Quoted markets respectively. They help prepare an applicant to be fit for listing and they address gaps in the Issuer's awareness of IPO requirements, corporate governance and

continuing obligations. In all cases, the responsibility for the admission document lies with the Issuer and its directors.

15. Under the proposals in chapter 7, NASDAQ Dubai may require an Issuer to make an appointment of a 'Compliance Advisor' if the Issuer does not sufficiently understand its continuing obligations. We support this position to ensure that a company, once listed, continues to comply with its obligations and regulations on an ongoing basis.
16. An optional regime also risks creating a perception that those Issuers who engage a Lead Manager during the application process constitute a 'safer' investment compared to ones who do not engage such an adviser and are better informed of their ongoing obligations.
17. We agree that the term 'Listing Adviser' instead of 'Lead Manager' would provide appropriate differentiation with the sponsor required for a Prospectus Offer by the DFSA.

Chapter 3 Security Specific Admission Rules

Equity Securities

Q. Do you have any comments or concerns in relation to Prospectus Offers?

Q. Whilst it is now proposed to let Issuers choose either a Retail Set Aside or a minimum of 400 holders, should NASDAQ Dubai consider a different minimum number of holders? If so, why?

Q. Do you have any concerns or comments about the proposed Equity eligibility tests? Are the different eligibility tests, with the inbuilt flexibility, set at the right levels? Do you have any other concerns or comments about the changes in relation to general eligibility for Equity Securities?

18. The new rules would require all equity IPOs to be offered by way of a Prospectus and they abolish Exempt Offers for primary listings. When encouraging smaller businesses to consider IPO, we accept there will be a tension between achieving high investor protection (by requiring a Prospectus) and proportionality (ie avoiding excessive administrative or procedural burdens for smaller issuers). However, we would support a general principle of following the EU Prospectus Directive and thereby favouring investor protection over proportionality. (We would observe that the amended EU Prospective Directive is set to introduce the principle of proportionate disclosure for certain types of offers, including offers by SMEs).
19. We support the alternative eligibility tests and our members suggest that smaller and family business would largely meet the tests. We would prefer to see further clarity in respect to asset tests, ie are they applied pre or post listing.
20. The proposed requirement for a Retail Set Aside (or a minimum of 400 holders) is intended to increase retail shareholder interest and ensure an adequate volume of trading for an orderly market. We agree with the principle of a minimum requirement that, together with a regular volume of trading, can help perceived as well as actual liquidity, both of which will be important for raising new funds. Some of our members have voiced concern that 400 is, in the current climate, a high number to achieve and we would suggest that this requirement is amended to be a 'significant number as determined in consultation with the Lead Manager' and that 400 holders is mentioned only in the Guidance Notes.
21. To encourage retail investment the listing authority will need to spearhead an educational campaign in order to ensure that new market participants understand the structure, standards and terminology of the listing regime. A genuine effort will also be required of the business and financial media for responsible commentary.

Chapter 4 General Ongoing Obligations

Q. Do you have any concerns or comments in relation to the clarity or enforceability of the Price Sensitive Information Listing Rules (including the disclosure exceptions), or the use of an Uninformed Market Listing Rule?

- 22.** We believe that the reasonable person test with respect to confidentiality may not be entirely appropriate, as there has been limited opportunity for the concept of reasonable person to become defined in the context of NASDAQ Dubai listings. We recommend that, given the potential for different interpretations of the reasonable person test across different markets, the guidance on the reasonable person test is extended and clarified.

Chapter 5 Security Specific Ongoing Obligations

Q. Do you have any comments in relation to the introduction of specific mining Listing Rules and requirements? Do you have any comments on whether Issuers who report under the mining disclosure requirements of Canada, South Africa, or Australia should be permitted to list on NASDAQ Dubai?

Q. Are there any other industry specific sectors which NASDAQ Dubai should consider introducing Listing Rules for (for example, biotech or clean energy)? If so, should special rules or disclosure requirements apply?

- 23.** The introduction of specific listing rules for mining is a progressive step notwithstanding competition in this sector from well-established liquid markets.
- 24.** As well as industry-specific sectors, the listing authority could consider special listing rules and disclosure requirements for investment companies.

Guidance Notes

Q. Do you have any concerns or comments in relation to the Guidance Notes?

- 25.** We believe that Guidance Notes to the Listing Rules will be a valuable way of communicating NASDAQ Dubai's approach on various themes. The practice is consistent with other markets (eg AIM and PLUS Quoted in the UK) that additionally have a mandatory 'sponsoring' adviser.
- 26.** NASDAQ Dubai's proposals seek to encourage SMEs into the main market rather than creating a new market for such companies. When developing guidance it will be important that the listing authority 'thinks small first' so that the approach to approving a listing is not unduly onerous and is transparent.

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