

Securities and Commodities Regulations in the United Arab Emirates

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The Emirates' first stock exchange, the Dubai Financial Market, has been trading since mid 2000. A stock exchange was subsequently established in Abu Dhabi. Although the two markets are not presently linked, they are both subject to regulation under the UAE Securities & Commodities Exchange Law (the "Law"), which is a Federal legislation. The markets are additionally regulated by Emirate level legislation under the laws of their respective Emirates.

Federal Regulations

The Law promulgated pursuant to Federal Law No. 4 of 2000, established a UAE Securities and Commodities Authorities ("Authority") governed by a Board of Directors. The Law empowers the Authority to issue regulations, regulate the securities and commodities markets, receive reports and complaints relevant to the activities of the markets, and to impose penalties for non-compliance. The Law contemplates multiple licensed securities and commodities markets electronically connected. The Law also applies to commodity trading, although regulations have not yet been promulgated to address commodity trading.

Each market is required to have a Board of Directors to manage the activities of the market, appoint the market's director general and deputy director general, monitor trading on a daily basis and issue the press releases necessary to ensure transparency and disclosure of information. The Law also requires brokers and their representatives to adhere to the regulations issued pursuant to the Law.

The Law provides for display in the market of trading prices for securities and commodities, and provides that separate regulations will address selling, purchasing, set-off and settlement procedures. The Board of Directors of the Authority may order the temporary suspension of trading in a market, trading of shares of a particular company, or trading of any securities upon the occurrence of exceptional circumstances that threaten the good conduct of the market.

The Law envisages regulations of the market both by the Authority and through rules to be made by the individual Stock Markets.

The Law creates provisions governing the mischief of price manipulations and insider trading. Otherwise, rule making is delegated by the Law to an administrative body.

Briefly, the provisions of the Act governing price manipulation, insider trading and disclosure are described below.

Brokers are prohibited from participating in or arranging sham transactions that do not result in a genuine transfer of securities or assets that are the subject matter of the trade. In addition, Article 36 of the Law outlaws “the submission of false statements, data or information that will effect the market value of the securities, or the decision of an investor to insist or refrain from doing so”.

Insider trading is prohibited in two ways under the Law. The “exploitation of non-public information that could affect the prices of securities” is prohibited under Article 37 and “trading and securities based on non-public or non-disclosed information that is known by virtue of its position” will offend Article 39. Article 39 makes it plain that employees of a company, including the Chairman and members the Board may not exploit inside information. This is not to say that the Law prohibits employees of a company from trading in its own securities and the circumstances in which this is permitted are described in the Article 38 of the Law.

Disclosure rules are contained in Articles 33 to 35. Essentially, Article 33 gives the Authority permission to require disclosure and empowers the Authority to conduct investigations it considers necessary. More importantly Article 34 requires immediate notification to the exchange of “any information affecting the price...”.

Lastly, Article 35 broadly requires publication of “any clarifying information relating to (listed company) circumstances, activities or anything that would guarantee the

integrity of the transactions and confidence of the investors whenever requested to do so”.

Regulations under the Law are made by cabinet resolutions. The most recent cabinet resolutions are briefly described below.

Cabinet Resolutions

Three Cabinet Resolutions promulgated in July 2000 elaborate and extend the provisions of the Law. Cabinet Resolution No. 11 addresses the licensing and supervision of markets and prohibits securities or commodities trading on any market in the UAE unless the market holds an license. Resolution No. 12 governs the listing of securities and provides that no securities may be listed on any securities market without the Authority’s approval, and that trading on markets is restricted to listed securities. Resolution No. 13 governs the internal regulation of the Authority, outlines its objectives, and empowers it to supervise and control the operation of securities and commodities markets in the UAE.

A detailed discussions of the Cabinet Resolutions is beyond on the scope of this article, but the salient provisions of Resolutions 11 and 12 are as follows:

Cabinet Resolution 11 - Licensing and Supervision of Exchanges

To obtain the necessary license to engage in securities and commodities trading, an applicant must be a local public corporation occupying suitable premises and have the necessary technical equipment to function electronically and be linked electronically to the other UAE Exchanges. The Authority has the power to conduct inspections, to police complaints with relation to the substantive rules and to receive charges in the form of complaints concerning activities of both brokers and exchanges. The Authority has the power to stop trading.

Cabinet Resolution 12 – Approval of Securities or Commodities for Listing

Companies incorporated in the UAE and foreign issuers are subject to different listing conditions. The scope of this article is not sufficient to provide complete listing regulations. Briefly, these requirements relate to the age of the company, the existence of financial statements, value of paid up capital, the amount of shareholders' equity, equality amongst the shareholders of each class of shares, issuer's net assets to paid-up capital or issuer's earnings relative to paid-up capital, proof of annual General Meetings, publication of financial statements prior to trading, and any other condition the Authority imposes.

The Authority has been given discretion to approve non-UAE companies for listing in addition to shares of shareholding companies either incorporated or having their headquarters in the UAE. Debt instruments and any other securities may be approved for listing.

Article 9 of Cabinet Resolution 12 imposes liability on members of the Board of Directors (and applicants for listing) as to the completeness and accuracy of the information submitted to the Authority. New ongoing obligations are imposed, including submission to the Authority of information requested by the Authority, notification of material developments affecting the price of securities, interest and transactions by members of the Board of Directors, disposition of assets, change in the composition of the Board of Directors or management and provision of identification of shareholders holding equity more than 5%. Special rules apply to banks and financial institutions holding more than 5% of the shares of a listed company.

Article 20 of the Cabinet Resolution 12 provides for suspension of the listing due to sudden increases or defined decreases in capitalization and failure to comply with some of the other obligations described above.

Cabinet Resolution 13 – Internal Regulation of the Authority

Authority's Regulations

The Authority issued three sets of regulations in late 2000 governing the licensing and regulation of brokers, the rules for market membership, and market transparency. The regulations on brokers provide that no one can act as a broker without holding a license from the Authority, defining brokerage in broad terms that include not only

intermediation but also solicitation of the purchase or sale of securities or commodities. The regulations address the procedures for applying for a brokerage license, the substantive qualifications with which a broker must comply, the obligations that a broker must observe, and the penalties for non-compliance.

The market membership regulations require all brokers to become members in the UAE securities and commodities markets in which they operate, and further require that all shareholding companies and other issuers of traded securities must become members in the markets in which their securities trade. The membership regulations require members to comply with the Law and the regulations issued by the Authority. The membership regulations detail the membership application process, and empower the Authority's Board of Directors to appoint inspectors to conduct on-site inspections of members' offices during business hours and to obtain copies of documents and records of members' activities. The membership regulations also provide for a general assembly to be formed consisting of all the members of the securities market and permit a representative of the Authority to attend meetings thereof as an observer. Membership in a securities market can be revoked by the Authority's Board of Directors in coordination with the securities market's Board of Directors if a member fails to meet all the conditions required therefor.

The regulations on the disclosure and transparency of information govern the activities of the Authority, the securities markets and traded companies. The

Authority is prohibited from carrying on commercial business, having a benefit in any project, or owning or issuing securities. Each member of the Board of Directors of the Authority must disclose any securities owned by him, his wife or his minor children. Similar conflict-of-interest rules apply to the members of the Board of Directors of a securities market.

The disclosures and transparency regulations impose upon the securities markets in the UAE the duty to report to the Board of Directors of the Authority information about companies whose securities are listed. Every securities market must maintain a record of transactions regarding securities traded and must submit a daily report to the Authority on securities traded, the prices and quantities of those securities and the total number of transactions. An issuer of securities that wishes to trade the securities on a securities market in the UAE must file an application with the Authority, and such application must be supported by a detailed report issued by the applicant's Board of Directors. Members of the Board of Directors of a listed company or an applicant for listing are liable for the accuracy and completeness of all information submitted to Authority and the relevant securities market. Listed companies have certain ongoing obligations towards the Authority and the securities market on which they are listed. Once listed, a company may not enter a change in the ownership of shares in the company's share register unless the securities market on which the company's securities are traded approves such change. Sanctions may be imposed in the event of insider trading or circulation of false information.

Emirate regulation

Each of the Abu Dhabi Security Exchange Law and the Dubai Financial Market Decree (No.14) impose additional requirements. The comparison of Emirate level regulation and the Federal level regulation is beyond the scope of this brief Article.

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