

Client Alert

Latham & Watkins
Corporate Department

New Share Disclosure Rules Relating to UAE Listed Companies

The Securities and Commodities Authority (SCA) has recently published amended market disclosure rules relating primarily to shares in companies listed on the Dubai Financial Market (the DFM) or the Abu Dhabi Securities Exchange (the ADX). The new rules principally amend the Decision No (3/R) of 2000 Concerning the Regulations as to Disclosure and Transparency (Regulations for Disclosure and Transparency) by bolstering the early warning regime designed to inform the market of stakebuilding in DFM/ADX listed companies. The new rules appear to be published in response to recent stakebuilding activity in Arabtec Holding PJSC, which surprised the market.

"The new rules bolster the early warning regime designed to inform the market of stakebuilding in, and possible changes of control of, DFM/ADX listed companies."

5 per cent Disclosure Rule

The previous rules required natural persons, together with their minor children, as well as individual companies (but without aggregating holdings of their affiliated companies) to disclose to the market their ownership of 5 per cent or more of the shares of any company listed on the DFM/ADX. This rule has been amended to require disclosure of 5 per cent stakes in DFM/ADX listed companies held in aggregate by corporate entities or their affiliates, which include parent companies, subsidiaries or other companies that belong to the same group. There is no guidance provided as to what constitutes membership of the same group of companies, but common ownership is, in our view, likely to be sufficient. Despite the uncertainty around the definition of group companies, this is a sensible change designed to prevent companies from avoiding the disclosure regime through share purchases by affiliates.

10 per cent Disclosure Rule

The previous rules also required disclosure at 10 per cent as per the previous 5 per cent rule discussed above, except that disclosure was also required for holdings equivalent to, or in excess of, 10 per cent. of the shares of a parent, subsidiary, affiliate or allied company¹ of a DFM/ADX listed company. The new rule broadens the scope of the previous rule by aggregating the holdings of corporate groups as per the change to the 5 per cent rule discussed above.

30 per cent Disclosure Rule

The previous rules required all natural persons and individual companies who owned 10 per cent or more of the shares of a DFM/ADX listed company

to report immediately to the market any intention to purchase 20 per cent or more of the same company's shares, and provided the DFM/ADX the right, after consultation, with the SCA, to prohibit the acquisition if it would prejudice the interest of the national economy. The new rule drops the baseline requirement of a 10 per cent ownership stake, aggregates the holdings of corporate groups (as per the change to the 5 per cent rule discussed above) and provides for a new disclosure threshold of 30 per cent. In addition, the DFM/ADX are given the ability to block such a transaction where the stock exchange determines that the acquisition would harm the interests of the stock exchange itself, or the national economy. These are sensible changes which align the UAE more closely with many other jurisdictions. However, it would be preferable for shareholders to be given an opportunity to decide upon or otherwise participate in a change of control transaction, rather than the regulator of an exchange having broad discretion to block a transaction.

1 per cent Change Rule at 5 per cent

In addition, the new rules provide that once the 5 per cent threshold has been crossed, any 1 per cent increase or decrease in share ownership must be disclosed to the market. This is a significant and sensible change which brings the UAE regime line with many other jurisdictions. Interestingly, no time period is specified for the disclosure, although we would expect the SCA to require the disclosure "immediately".

Director and Officer Dealings

The new rules also include an amendment to the SCA's Regulations for the Listing of Securities and Commodities. Article 17 of such regulations prohibits the chairman, board members, general manager and any other employee of a DFM/ADX listed company from effecting dealings in the securities of such company unless the contemplated transaction has been disclosed to the market, including the quantities and prices of the securities subject to the transaction, and the prior approval has been obtained of the market manager for the transaction in question. The new rules expand the scope of this rule by requiring disclosure of any transactions involving the securities of parent companies, subsidiary companies or affiliated companies of DFM/ADX listed companies *provided that they are also themselves listed*. As drafted, this new rule would not require disclosure of transactions in group companies unless those group companies are also listed on the ADX/DFM. This is unusual as the 10 per cent rule referred to above applies to holdings in group companies of DFM/ADX listed companies, and does not also require the other group companies to be listed.

Conclusion

The recent rule changes outlined in this *Client Alert* impede the ability of corporate groups to build silently significant stakes in DFM/ADX listed companies or to acquire control of such companies from below a base level holding of 10 per cent. Timely disclosure of changes in substantial shareholdings should increase investor confidence and warn investors of pending changes of control. The next step will be for the UAE to put in place a meaningful shareholder-driven regime to regulate changes of control of DFM/ADX companies.

Endnotes

¹ An “Allied Company” is defined as a company that is “linked to another company by a contract of cooperation or coordination.”

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