

# The Authority's Board of Directors' Decision No (16) of 2014 Concerning the Regulation of Sukuk

The Chairman of the Board of Directors of the Securities and Commodities Authority,

Having considered Federal Law No (10) of 1980 concerning the Central Bank, Monetary System and Regulation of Banking Profession, as amended;

Federal Law No (8) of 1984 concerning Commercial Companies, as amended;

Federal Law No (5) of 1985 concerning the Issuance of the Civil Transactions Law of the UAE, as amended;

Federal Law No (4) of 2000 concerning the Emirates Securities and Commodities Authority and Market, as amended;

Federal Decree No (32) of 2013 concerning the Formation of the UAE Cabinet;

Council of Ministers' Resolution No (12) of 2000 on the Listing of the Securities and Commodities, as amended;

Council of Ministers' Resolution No (13) of 2000 on the Functioning System of the Securities and Commodities Authority, as amended;

Council of Ministers' Resolution No (108/7 and /5) of 2010 on the Reformation of the Board of Directors of the Securities and Commodities Authority;

Authority's Board Decision No (3) of 2000 concerning the Regulations as to Disclosure and Transparency, as amended;

Authority's Board Decision No (2) of 2001 concerning the Regulations on Trade, Clearing, Settlements, Transfer of Ownership and Securities Keeping, as amended;

Authority's Board Decision No (3) of 2001 concerning the Regulation as to the Functioning of the Market, as amended;

Authority's Board Decision No (7) of 2002 concerning the Listing of Foreign Companies;

Authority's Board Decision No (93R) of 2005 concerning the Listing of Islamic Bonds;

Authority's Board Decision No (37) of 2012 concerning the Regulations on Mutual Funds as amended;

Based on the approval of the Board of Directors at its twenty third meeting of the fourth session held on 23 April 2014;

And as required by the public interest;

**Has Decided:**

## **Chapter One:**

### **General Provisions**

#### **Definitions**

##### **Article (1)**

**The following terms shall have the following meanings when used in this Resolution unless the context otherwise requires:**

State: The State of the United Arab Emirates.

Law: Federal Law No. (4) of 2000 concerning the UAE Securities and Commodities Authority and Market as amended.

Government : The government of the the United Arab Emirates, or any of the local governments of the member emirates and any of the government departments thereof and any other public entity.

Central Bank: The Central Bank of the United Arab Emirates.

Authority: The Securities and Commodities Authority.

Board : The board of directors of the Authority.

Financial Free Zone: Any financial free zone established in the State pursuant to the Federal Law No (8) of 2004 concerning financial free zones.

Market: A securities and commodities market licensed in the State by the Authority.

Financial Free Zone Market: A securities market in a Financial Free Zone licensed by a supervisory authority which carries out similar functions as those of the Authority.

Foreign Market: A securities market outside the State and licensed by a supervisory authority which carries out similar functions as those of the Authority.

**Arranger:**A bank or a financial company licensed by the Central Bank to operate in the State or any arranger licensed by the Authority and which is responsible for the management, and organization of the Issue on behalf of the Obligor.

**Constitutional Documents:**Any law, regulation or decision incorporating an entity, its memorandum and articles of association, by-laws and any other comparable document which governs and regulates the objects, administration and dealings of this entity.

**Securities:**Shares, stocks, Sukuk and financial bills issued by joint stock companies, as well as Sukuk, bonds and bills issued by the Federal Government or any of the local governments, public authorities and public institutions within the State. This also includes any local and non-local financial instruments accepted by the Authority.

**Sukuk:**Tradable financial instruments of equal value which represent a share of ownership of an asset or a group of assets and are issued in accordance with Shari'a.

**Convertible Sukuk:**Sukuk that are convertible to or exchangeable for shares in the Obligor's capital or any other company in accordance with the content of a Prospectus.

**Government Sukuk:**Sukuk issued by the Federal Government, any of the local governments or their affiliated government authorities, any public entity or companies wholly owned by the Government in accordance with the Islamic Shari'a.

**Institutional Sukuk:**Sukuk where the minimum value of each is AED 500000 or its equivalent in any foreign currency and shall not be offered through a public subscription.

**Retail Sukuk:**Sukuk where the maximum value of each is AED 100000 and shall be offered through a public subscription.

**Obligor:**A company, entity or legal person receiving the funds resulting from the Issuer's issuance of the Sukuk or from offering such Sukuk in exchange for the asset or assets transferred to the Issuer.

**Issuer:**A legal person (whether company, fund or other legal entity) issuing Sukuk on an asset it owns or have the right to dispose of.

**Trustee:**An independent representative appointed by virtue of a trust agreement to represent the interests of the sukuk-holders.

**Paying Agent:**An agent responsible for paying the principal and the profits under the Sukuk as well as their redemption value on behalf of the Issuer.

**Public Subscription in Retail Sukuk:**Offering Retail Sukuk to the public in the State through a public invitation to subscribe in accordance with a Prospectus.

**Prospectus:**A document offering Sukuk for subscription prepared in accordance with the form specified by the Authority and shall include, as a minimum, the information determined in these Regulations.

**Primary Listing:**Listing the Sukuk in the Market for the first time at each issuance.

**Dual Listing:**Listing the Sukuk in more than one Market, where a Foreign Market or a Financial Free Zone Market is the main market.

Shari' a Committee: A consultant or committee to ensure that the Sukuk comply with the principles and provisions of Islamic Shari'a.

## **Scope of Applicability**

### **Article (2)**

1. The provisions of these Regulations shall apply to the issuance of Sukuk in the State or to listing such Sukuk in the Market.
2. Government Sukuk shall be excluded from the application of the provisions of these Regulations. In case there is a desire to list such Government Sukuk in the Market, the provisions concerning listing and trading in these Regulations shall apply in accordance with the governmental nature of such Sukuk.
3. The provisions of these Regulations shall not apply to Sukuk which will not be offered through public subscription and will not be listed in the Market.

## **The Obligatory Nature of Listing and Approval**

### **Article (3)**

1. Subject to the exception stated in Article (2/2) of these Regulations, Retail Sukuk shall only be issued in the State through public subscription and shall be listed in the Market in accordance with the provisions of these Regulations.
2. Subject to Article (2/3) of these Regulations, the Obligor must obtain the Authority's approval before issuing or listing any Sukuk in the Market in accordance with the provisions of these Regulations.

## **Chapter Two:**

### **Issuance And Listing Conditions**

### **Conditions Concerning the Obligor**

### **Article (4)**

Obligors must satisfy the following conditions:

1.The Obligor’s Constitutional Documents must not contain any restrictions which prevent the Obligor to act as an Obligor with respect to the issuance and listing of Sukuk in accordance with the provisions of these Regulations.

2.Concerning the Primary Listing of Retail Sukuk, the Obligor must be incorporated in the State and outside a Financial Free Zone.

## **Conditions Concerning the Issuance and Primary Listing of Sukuk**

### **Article (5)**

Applications for the issuance and Primary Listing of Sukuk must satisfy the following conditions:

1.The Sukuk must be approved by the Shari’a Committee at the Obligor. If the Obligor does not have a Shari’a Committee, the Sukuk must be approved by a Shari’a Committee approved by the Arranger.

2.Unless the Authority decides otherwise, the total nominal value of Sukuk to be issued and listed must not be less than AED 10,000,000 (ten million Dirhams) or its equivalent in any foreign currency accepted by the Authority and the Market.

## **Chapter Three:**

### **Conditions And Procedures For Approving The Issuance And Listing Of Sukuk**

#### **Conditions for Approving the Issuance and Primary Listing**

### **Article (6)**

In order to obtain an approval for the issuance and Primary Listing of Sukuk in the Market, the Obligor must:

1.Prepare and submit a Prospectus according to a form to be approved by the

Authority.

2.If the Sukuk are convertible, the Prospectus must include details of the Convertible Sukuk and details of the conversion procedure, the terms and all matters related to the conversion or exchange according to the form prescribed by the Authority.

3.The issuance, listing and offering of the Sukuk may be done according to a Sukuk issuance programme to be approved by the Authority and in accordance with the procedures and documents it may request.

4.Entering into a trust agreement which must include a confirmation of the Trustee's right to obtain any information regarding the Sukuk as well as the Trustee's obligations to protect the rights and interests of the Sukuk holders.

5.Appoint one of the licensed banks in the State to act as a Paying Agent in the State.

## **Conditions and Documents for Requesting the Approval for Issuance and Primary Listing**

### **Article (7)**

An Obligor wishing to issue, offer and conduct a Primary Listing of Sukuk in the Market must submit an application of such to the Authority. The application must be signed by an authorized person and in the form specified by the Authority together with the supporting information, data and documents, in particular:

1.A draft Prospectus.

2.Statements confirming the disclosure in the Prospectus, signed by the Obligor.

3.A resolution of the Obligor's general assembly/board of directors/relevant body approving the issuance and listing of the Sukuk in accordance with the Obligor and the Issuer's Constitutional Documents and whether the Sukuk are convertible to shares or otherwise.

4.The most recent audited financial statements of the Obligor.

5.If the Sukuk are guaranteed by any other company, the most recent audited financial statements of the guarantor.

6.If the Sukuk are guaranteed by the Government, a copy of the law, regulation,

resolution or document allowing that governmental entity to provide such guarantee must be submitted together with a guarantee document for the Sukuk to be issued and listed.

7.Payment of the fees specified by the Authority.

8.Any other documents, requirements, conditions or controls specified by the Authority.

## **Conditions and Documents for Requesting Approval for Dual Listing**

### **Article (8)**

An Obligor wishing to conduct a Dual Listing of Sukuk in the Market must submit an application of such to the Authority. The application must be signed by an authorized person and made on the form specified by the Authority together with the supporting information, data and documents, in particular:

1.A draft Prospectus which received a preliminary or final approval from a supervisory authority which carries out similar functions as those of the Authority.

2.A resolution of the Obligor's general assembly/board of directors/relevant body approving the issuance and listing of the Sukuk in accordance with the Obligor and the Issuer's Constitutional Documents and whether the Sukuk are convertible to shares or otherwise.

3.A resolution from the board of directors of the Obligor and the Issuer approving the Dual Listing of Sukuk.

4.A preliminary or final approval from a Foreign Market with respect to the listing of the Sukuk which are the subject of the Dual Listing.

5.Payment of the fees as specified by the Authority.

6.Any other documents, requirements, conditions or controls specified by the Authority.

## **Bond Issuance and Listing Applications' Register**

### **Article (9)**

The Authority shall prepare a register in which Sukuk issuance, Primary Listing

and Dual Listing applications of Sukuk are recorded in serial numbers and organized by date. Each application shall have a designated file in which all the relevant documents concerning the application and its procedures are kept. The Authority shall provide the applicant with a receipt confirming the applicant's submission of the application which shall include its date and recording number in the said register

## **Reviewing Bond Issuance and Listing Applications**

### **Article (10)**

1. The Authority shall issue its decision to approve or reject the application within (5) business days of the date on which a complete application was submitted. If the Authority does not issue the said decision within the stated time frame, the application shall be considered as being rejected. The Authority has the right to enclose with its approval any conditions or restrictions it might deem necessary to impose according to the public interest.

2. A rejection decision may be appealed within (7) business days of the notification date or of the date when the application was considered rejected. The appeal shall be made to the chairman of the Authority and a decision regarding such appeal shall be issued within (15) business days of the date when a completed appeal was submitted.

## **Using the Issuance Returns**

### **Article (11)**

The Obligor must ensure not to use the returns from issuing the Sukuk except for purposes which comply with the Islamic Shari'a. This shall be confirmed through the approval of the Shari'a Committee.

## **Using Announcements and their Approval**

### **Article (12)**

With the exception of Government entities, any document or advertisement which is to be issued in the State and which is to be issued by or on behalf of an Obligor or an Issuer for the purpose of announcing the admission to listing must be authorized for publication by the Authority before publication. Any such advertisement or document must contain a statement that the publication of such statement has been authorized by the Authority.



# **No Liability upon the Authority or the Market**

## **Article (13)**

The Authority and the Market shall not be liable for any lists, financial information, accounts, information, reports or documents submitted by the Obligor or the Issuer whether submitted for publication or for purposes of the Market. The Authority or the Market's review or publication of such information in their bulletins shall not be taken as a confirmation of the authenticity of such information.

## **Chapter Four:**

### **Listing and Trading of Sukuk**

#### **Listing in the Market**

##### **Article (14)**

The Authority's decision approving the listing of the Sukuk pursuant to the provisions of these Regulations shall entitle the listing of such Sukuk in the Market. The Market must inform the Authority within (7) days of the listing thereof.

#### **Code and Name of Issuing Party**

##### **Article (15)**

Where listing of Sukuk on a Market have been approved, that Market shall designate the Issuer with a distinct trading symbol and an abbreviated name in both Arabic and English. Selecting the symbol and the short names shall be within the Market's competence which shall ensure that the names in the markets are not similar.

#### **Trading, Winding-up and Settlement**

##### **Article (16)**

1. The Sukuk listed in the Market may be traded, cleared and settled through or outside the Market in accordance with the Market procedures.

2. Any trading occurring outside the Market -where the Sukuk are listed in as Primary Listing- must be registered in a register maintained by the Market for

such purpose within the timeframe specified by the Market.

3. Any trading occurring outside the Market where the Sukuk are listed in as Primary Listing shall be considered null and void if such Sukuk are not registered in accordance with paragraph (2) of this article.

## **Chapter Five:**

### **The Obligors' Continuing Obligations Concerning the Primary Listing Of Sukuk**

#### **Article (17)**

An Obligor must, with respect to Primary Listing for Sukuk in a Market, comply with the following continuing obligations:

1. Immediately notify the Authority and the Market of any new developments or information which are not public knowledge and which may be expected to materially affect market activity in or the price of the listed Sukuk or the ability of the Obligor or the Issuer to meet their commitments. The Obligor must, immediately after obtaining the approval of the Authority, publish such new developments on its website in the Arabic and English language.

2. Continuously maintain a Paying Agent in the State until the Sukuk are finally redeemed. The Obligor must also notify the Authority and the Market of any change which relates to the Paying Agent.

3. Inform the Authority and the Market of any of the following events as soon as the same shall come to the attention of the Obligor and publish the same on its website:

a. The presentation of any winding-up petition, or the appointment of a provisional liquidator in respect of the Issuer, the Obligor, the Obligor's holding company or any of its subsidiaries.

b. The passing of any resolution by the Issuer, the Obligor, the Obligor's holding company or any of its major subsidiaries that it be wound-up or dissolved.

c. The termination or suspension of activities for any period of time which may cause the winding-up of the Issuer, the Obligor, the Obligor's holding company or any of its subsidiaries.

4. Submit to the Authority and the Market the audited annual financial statements within (180) days after the end of the fiscal year. The financial statements must be prepared according to international auditing standards.

5. Pay the specified annual fees to the Authority and to the Market.

6. Provide the Authority with all information which it deems necessary for the protection of investors and any other information that the Authority may request from time to time to ensure compliance with the provisions of these Regulations.

## **Continuing Obligations Concerning the Retail Sukuk**

### **Article (18)**

In addition to the obligations mentioned in Article (17) of these Regulations, the Obligor must comply with the following continuous obligations regarding Retail Sukuk listed in the Market:

1. Immediately announce the following through the means determined by the Authority:
  - a. Any issuance of any block of shares or new program by the Obligor.
  - b. Any change in the terms and conditions of the Retail Sukuk.
  - c. Any redemption or cancellation of the Retail Sukuk.
  - d. Any appointment or replacement of the Trustee or Paying Agent as applicable.
  - e. Any event of default concerning the conditions of issuing and listing the Retail Sukuk.
  - f. Any event requiring the immediate notification of the Trustee by virtue of the trust agreement.
2. Sending to the Authority and the Market a copy of all correspondence sent by the Obligor or the Issuer to the Retail Sukuk holders as well as any other information or documentation regarding the meetings of Retail Sukuk holders as soon as such information or documentations are issued.
3. Notify the Authority and the Market of any of the following events, information or matters as soon as they come to the Obligor's attention. The Obligor must also publish the same on its website upon the approval of its board of directors/managers:
  - a. Any decision not to pay any profit payment for any of the Obligor's Retail Sukuk.

b. Any proposal to issue new Securities by the Obligor, as well as any guarantee or warranty which relates to this new issuance.

c. Any amendments to the Obligor's Constitutional Documents which may materially affect the Retail Sukuk holders.

d. Any proposed changes to the structure of the Obligor's share capital which may materially affect the Retail Sukuk holders.

e. Any decision to change the nature of the Obligor's activities or business if such change may negatively and materially affect the Retail Sukuk holders.

f. Any change to the composition of the Obligor's board of directors or to its managers.

g. The termination of any period of time which causes the winding up of the Issuer, Obligor, Obligor's holding company or any of its subsidiaries.

h. Taking a possession or the sale by any mortgagee of a portion of the Issuer or Obligor's assets which in aggregate value represents an amount in excess of ten per cent. of the book value of such assets.

i. The issuance of any judgment, or order by any court of competent jurisdiction, which may adversely affect the Issuer or the Obligor's enjoyment of any portion of its assets which in aggregate value represents an amount in excess of ten per cent. of the book value of such assets.

j. Passing of any law, decree or government decision by any competent party to wind-up or dissolve the Issuer or the Obligor.

4. Any purchase, redemption or cancellation by the Issuer or the Obligor, or any member of its group, of its debt securities or Sukuk must be disclosed to the Authority and the Market, as soon as possible after such purchase, redemption or cancellation and such operation must be published on the Obligor's website. The announcement should also state the amount of the relevant debt securities or Sukuk outstanding after such operations.

5. If the Retail Sukuk are traded outside the Market, the Obligor must immediately disclose, through the means determined by the Authority, any information that may materially affect the following:

a. The price and value of the Retail Sukuk.

b. The investor's decision to invest in the Retail Sukuk or otherwise.

## **Chapter Six:**

### **Suspension And Cancellation Of Bond Listing**

#### **Prerogative of Suspending and Cancelling the Listing**

##### **Article (19)**

The Authority may, after deliberation with the Market, suspend the listing and trading of any Sukuk or cancel their listing in the Market if exceptional circumstances arise or if an event occurs that may threaten the maintenance of an orderly market. The Authority may also do so if it considers it necessary for the protection of investors and normal Market activities, if it sees a violation of the Sukuk holders' right or if the Obligor fails to comply with the provisions of these Regulations, undertakings, requests and documents it has signed.

#### **Suspension of Listing and Ceasing of Trade**

##### **Article (20)**

1. Without prejudice to the provisions of Article (19) of these Regulations, the Authority may suspend the listing and trading of any listed Sukuk in any of the following events:

a. If the Obligor ceases to comply with any of the listing conditions or violates any of the conditions stated in these Regulations.

b. If the specified listing fees or fines have not been paid.

2. A temporary suspension of trading may be requested by an Obligor upon the occurrence of a material event that requires immediate disclosure under these Regulations, provided that an announcement of the material information is made as soon as practicable following the suspension. The Authority may accept or reject the request for suspension in its absolute discretion.

3. The Authority may decide to cancel the suspension of trading of any Sukuk upon the Obligor's request and where the reasons for the suspension cease.

# **Cancellation of Listing**

## **Article (21)**

Without prejudice to the generality of Article (19) of these Regulations, the Authority may cancel the listing of any listed Sukuk in any of the following circumstances:

- a.If a decision is made to dissolve or wind-up the Issuer or the Obligor.
- b.If the suspension of listing continues for more than six months.
- c.If the relevant Sukuk are redeemed completely.

## **General Provisions Concerning the Cancellation of Listing Suspension**

### **Article (22)**

- 1.Trading in suspended or cancelled Sukuk is prohibited.
- 2.Neither the Authority nor the Market shall be responsible for indemnifying any person or entity for any loss which occurs to such person as a result of the suspension or cancellation of the listing of any Sukuk.

## **Voluntary Cancellation of Listing**

### **Article (23)**

Subject to the provisions of Article (3/1) of these Regulations, the Obligor may submit to the Authority a request to cancel the listing of its Sukuk in accordance with the terms of the Prospectus and provided the following conditions are met:

- 1.The Obligor must obtain the approval of its general assembly/board of directors/relevant body in accordance with the requirements of its Constitutional Documents.
- 2.Notifying the relevant Sukuk holders, the Authority and the Market in writing at least (90) days in advance. The notification must include a comprehensive and sufficient clarification of the Obligor's decision to cancel the listing, as well as the Authority's approval.

## **Chapter Seven:**

### **Penalties And Obligation To Publish Information**

#### **Obligation to Publish Information**

##### **Article (24)**

The Authority may require an Obligor who listed Sukuk in the Market to publish (at his own cost) such information as it considers appropriate for the purpose of protecting investors and maintaining the orderly operation of the market. If an Obligor fails to comply with this requirement the Authority may publish the information after having given the Obligor an opportunity to make clarifications as to why the information should not be published.

#### **Penalties**

##### **Article (25)**

If the provisions of these Regulations or the decisions or controls issued thereunder are violated, the Authority may impose any of the following sanctions:

1. Issue a warning to the violator and ordering it to stop the violation within a timeframe set by the Authority.
2. A fine of no more than the maximum limit provided for in the Law and the regulations issued in this regard.
3. Suspend or cancel the listing of Sukuk in accordance with the provisions of these Regulations.

## **Chapter Eight:**

### **Final Provisions**

## **Article (26)**

The provisions of Article (29) of Resolution No (3) of 2001 concerning the Regulations on the Market Functioning issued by the Board shall not apply to Sukuk listed on a Market.

## **Article (27)**

Board's Resolution No (93R) of 2005 concerning the regulation of listing Islamic Bonds and any other provisions contradicting the provisions of these Regulations shall be repealed.

## **Publication and Coming into Force**

## **Article (28)**

This Decision shall be published in the Official Gazette and shall become effective on the day following the date of its publication.

**Engineer / Sultan Bin Saeed Al Mansouri**

**Chairman of the Board of Directors**

Issued in Abu Dhabi on: 18/05/2014

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