
ANALYSIS OF LAWS RELATING TO CAPITAL MARKETS IN USA AND UAE

Chaitanya Nikhil Vaidya, ILS Law College

Analysis of Laws relating to Capital Markets in USA

The government of the United States of America is a Federal government composed of fifty states, a federal district, five major self-governing territories and several island possessions. The United States is often described as a ‘capitalist economy’, however, it does exhibit characteristics of socialism. The United States embraces economic freedom when it comes to capital use, but it also allows for government intervention for the public good. The United States puts great emphasis on private ownership. Most goods and services are produced by private businesses, and almost two-thirds of the nations’ economic output goes to individuals for personal use. The United States economy is sometimes described as a ‘consumer economy’ because of the great role played in it by the consumers. The United States Capital Markets are the largest in the World, so much so that, the U.S. equity markets represent 41% of the \$118 trillion in the global equity market cap. The New York Stock Exchange (NYSE) is the largest stock exchange in the world. On the federal level, the primary securities regulator is the Securities and Exchange Commission (SEC) and with respect to the commodities market, the primary regulator is the Commodity Futures Trading Commission (CFTC).

➤ U.S. Securities and Exchange Commission

The U.S Securities and Exchange Commission (SEC) is an independent body of the United States federal government that oversees securities exchanges, securities brokers and dealers, investment advisors, and mutual funds to promote fair dealings. The SEC emphasizes full public disclosure, protection of investors against fraudulent and manipulative practices in the market, and monitoring of corporate takeover actions in the United States. The SEC was created in 1934 by the Congress as the first regulator of the securities markets under Section 4 of the Securities Exchange Act of 1934. The SEC is headquartered in Washington, D.C. The two major U.S. financial securities markets are the “New York Stock Exchange (NYSE)” and the “NASDAQ “.

The composition of the SEC is such that it consists of five Commissioners who are appointed by the President of the United States such that, no more than three Commissioners may belong to the same political party. The terms of the Commissioners is such that, it lasts for five years wherein, one Commissioners term ends on June 5 of each year. One of them is designated as the Chairman of the Commission.

The SEC consists of five divisions which are –

- Division of Corporate Finance –
The primary function of the Division of Corporate Finance consists of overseeing the corporate disclosure of important information to investors by reviewing on a regular basis the disclosure of documents that are filed by corporations.
- Division of Trading and Markets –
The Division of Trading and Markets ensures a fair, orderly and efficient marketplace by overseeing the activities of major securities market participants, securities firms, securities exchanges, self-regulatory organizations, clearing agencies, transfer agents, credit rating agencies, as well as securities information processors.
- Division of Investment Management –
The Division of Investment Management oversees the country's investment management industry by ensuring the disclosure about investments that are useful to the retail customers and by ensuring that the regulatory costs are not too high.
- Division of Enforcement –
The Division of Enforcement is responsible for the enforcement of the Securities laws and gives recommendations on the commencement of investigations of securities law violations.
- Division of Economic and Risk Analysis –
The Division of Economic and Risk Analysis provides economic analysis and data analysis and interacts with all other divisions of the SEC regarding the same.

The SEC is allowed to bring only civil actions, either in federal court or before an administrative judge. Criminal cases fall under the jurisdiction of law enforcement agencies within the Department of Justice, however, the SEC often works closely with such agencies to provide evidence and assist with court proceedings. The SEC seeks an injunction on persons or companies violating laws or regulations to prohibit future violations, ignoring such injunction is liable to further actions leading to fines or imprisonment for contempt. In certain

cases, the SEC may also seek orders from the court for suspending individuals from acting as corporate officers or directors. The SEC may also bring a variety of administrative proceedings, which are heard by internal officers and the commission. Common proceedings include cease and desist orders, revoking or suspending registration, and imposing bars or suspensions of employment. The laws that govern the Securities industry and are enforced by the SEC along with the Rules and Regulations include “Securities Act of 1933” that seeks to ensure that the investors receive financial and other significant information concerning securities being offered for public sale and prohibition of deceit, misrepresentation, and other fraud in the sale of securities, “Securities Exchange Act of 1934” that gives a wide range of powers to the SEC over the aspects of the securities industry such as regulating the brokerage firms, transfer agents, SROs and stock markets, “Trust Indenture Act of 1939” that applies to debt securities, “Investment Company Act of 1940” that focuses on regulating the organization of companies, including mutual funds that engage in trading of securities, “Investment Advisers Act of 1940” that regulates the investment advisers, “Sarbanes-Oxley Act of 2002” that is responsible for the creation of ‘Public Company Auditing Oversight Board’ for overseeing the activities of the auditing profession, “Dodd-Frank Wall Street Reform and Consumer Protection Act” that seeks to promote accountability and transparency in the financial system, protect American taxpayer, to protect consumers from abusive financial services practices and for promoting financial stability, “Jumpstart our Business Startups Act of 2012” that aims to help small business sector raise funds in public capital markets by minimizing regulatory requirements.

➤ **Commodity Futures Trading Commission**

The Congress created the Commodity Futures Trading Commission (CFTC) in 1974 as an independent federal regulatory agency under the Commodity Futures Trading Commission Act of 1974 to replace the U.S. Department of Agriculture’s Commodity Exchange Authority. The CFTC is an independent federal body that regulates the derivatives market which includes futures, swaps and options. The goal of CFTC is to oversee the derivatives market by encouraging their competitiveness and efficiency, ensuring their integrity, protecting market participants against manipulation, abusive trade practices, fraud, and ensuring the financial integrity of the clearing process. The CFTC is based in Washington D.C. and has four major operating units based in Chicago, New York, Kansas City, Missouri.

Similar to the SEC, the CFTC consists of five Commissioners appointed by the President of the United States to serve staggered five-year terms. The President of the United States nominates a Chairman of the Commission from the Commissioners.

The CFTC consists of the following major divisions –

- Division of Enforcement –
The Division of Enforcement investigates and persecutes alleged violations of the Commodity Exchange Act and CFTC regulations.
- Division of Market Oversight –
The Division of Market Oversight is responsible for initial recognition and continuing oversight for trade execution facilities, including new registered futures exchanges, swap execution facilities, and swap data repositories.
- Market Participant Division –
The Market Participants Division primarily oversees derivatives market intermediaries, including commodity pool operators, commodity trading advisors, futures commission merchants among other things.
- Division of Clearing and Risk –
The Division of Clearing and Risk oversees derivatives clearing organizations and other market participants in the clearing process.
Clearing is the post-transaction management which ensures that transactions on an exchange will settle.

With respect to the legislations, the CFTC ensures the enforcement of The Commodity Exchange Act, Dodd-Frank Act and the CFTC regulations. “The Commodity Exchange Act” regulates the trading of commodity futures in the United States. The Commodity Exchange Act establishes the statutory framework under which the CFTC operates. The act aims to facilitate honest and fair practices and to restrain fraud, excessive speculation and manipulation in the commodity exchanges. “Dodd-Frank Wall Street Reform and Consumer Protection Act (The Dodd-Frank Act)” has written rules to regulate the swaps marketplace. “The CFTC regulations” are found at Title 17 Chapter 1 of the Code of Federal Regulations.

Analysis of Laws relating to Capital Markets in UAE

The United Arab Emirates is a *de facto* hereditary elective monarchy formed from a federation of seven emirates, consisting of Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al

Khaimah, Sharjah and Umm Al Quwain. Abu Dhabi is the capital of The United Arab Emirates. The Federal Judiciary is one of the five federal authorities of the UAE Government. It includes Federal Supreme Court, Federal courts and Public Prosecution. It is presided by the Federal Supreme Court as the highest judicial authority in the UAE. Under the UAE Constitution, each of the emirates retains substantial control over the conduct of government affairs within the emirate. The complex nature of the UAE Capital Markets is generally a source of confusion for investors. With some exceptions, regulation of Capital Markets is generally a matter of UAE federal law. The exceptions concerning Capital Markets regulations apply to the areas of the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM). The federal regulator governing the UAE Capital Markets consist of The Emirates Securities and Commodities Authority (SCA), the regulator in the area of Dubai International Financial Centre (DIFC) is the Dubai International Financial Services Authority (DFSA) and The Financial Services Regulatory Authority (FSRA) is the regulator for the region of Abu Dhabi Global Market (ADGM). The security exchanges in UAE include the Abu Dhabi Securities Exchange (ADX), the Dubai Financial Market (DFM) and NASDAQ Dubai. With regard to the laws and regulations affecting capital markets, the DIFC and the ADGM are effectively different jurisdictions altogether, with rules and regulations that differ significantly from the UAE federal regulatory scheme.

The Capital Markets in Dubai consists of –

- 1.) Dubai Financial Market (DFM)
- 2.) Abu Dhabi Securities Exchange (ADX)
- 3.) NASDAQ Dubai

The Securities and Commodities Authority (SCA) is the primary regulator of capital markets under the UAE federal scheme. The Authority is a legal entity, which is financially and administratively independent, reported directly to the Economy Minister. The main objective of the Authority is to supervise and monitor the markets. SCA regulates all securities-related activity within the UAE excluding activity within the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM). The UAE federal regulator, SCA, is the principal regulator for the Abu Dhabi Securities Exchange (ADX) and the Dubai Financial Market (DFM). In addition to the rules and regulations of the SCA, each exchange has its own rules and regulations.

The DFM is the first financial market to have offered its shares through an IPO in the Middle East. Established as a public institution with an independent legal entity by virtue of Decree 14/2000 issued by the Government of Dubai, the DFM launched its activities on 26th March 2000. The Dubai Financial Market (DFM) is governed and regulated by the UAE Securities and Commodities Authority (SCA) which has the authority to impose laws and standards which the DFM must comply. The Dubai Financial Market (DFM) provides a wide choice of financial instruments to investors which include Listed Equities and Bonds as well as other financial instruments which are currently being developed including ETF's, Rights Issues and Covered Warrants.

ADX is a market for trading securities; including shares issued by public joint-stock companies, bonds issued by governments or corporations, exchange-traded funds, and any other financial instruments approved by the UAE Securities and Commodities Authority (SCA). The ADX market complies with the regulations provided by the regulator, SCA. In addition to the rules and regulations of the SCA, ADX has its own rules and regulations.

The Dubai International Financial Centre (DIFC) is a special economic zone in Dubai covering 110 ha (272 acres). DIFC has its own independent, internationally regulated regulator and judicial system. The Capital Market regulator is the **Dubai Financial Services Authority (DFSA)**, which regulates the conduct of financial services in and from the DIFC. The DFSA is distinct from the UAE's federal Securities and Commodities Authority, whose jurisdiction covers the wider UAE outside the boundaries of the DIFC. The Dubai International Financial Centre (DIFC) was established as a financial free zone with its own body of laws and regulations, which are largely separate from the UAE legal system. It also has its own courts. The DIFC laws and rules of court are largely based on English common law and the procedural rules currently in place in England and Wales. In the DIFC, NASDAQ Dubai is the securities exchange that is subject to the regulation set out by the DFSA. NASDAQ Dubai is governed by the regulations set up by DFSA.

Abu Dhabi Global Market (ADGM) was established pursuant to Federal Legislation and Abu Dhabi Legislation including Abu Dhabi Law No. 4 of 2013, as a financial free zone, in the Emirate of Abu Dhabi, with its own civil and commercial laws. The Capital Markets in ADGM are governed by the **Financial Services Regulatory Authority (FSRA)**. The FSRA has its own framework of legislation that is to be complied with in the ADGM.

Footnote –

<https://www.sec.gov/>

<https://www.cftc.gov/>

In review: capital markets law in United Arab Emirates

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<https://u.ae/en/information-and-services/finance-and-investment/financial-markets>

<https://www.dfsa.ae/laws-rules>

<https://en.adgm.thomsonreuters.com/rulebook/fsra-legislation>