



Consultation on Nasdaq's Nordic Main Market Rulebook: Summary of responses and next steps

30 Jun 2023

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1. INTRODUCTION

This paper follows the consultation of December 2022 on further changes to continue developing the Nasdaq Stockholm Main Market listing platform. It summarizes responses received and explains how Nasdaq Stockholm plans to proceed.

As a reminder, the areas of consultation covered were:

- (i) Potential revision of liquidity requirement on Nasdaq Stockholm to move away from the existing 25% free float threshold, increasing flexibility and predictability while maintaining the underlying requirement of sufficient liquidity;
- (ii) Potential broadening the category of legal advisors permitted to perform legal due diligence on companies seeking admission to trading on Nasdaq Stockholm;
- (iii) Potential adjustment of the existing requirement for a company to be profitable or alternatively to demonstrate 12 months working capital from first day of trading in their shares, in order to require all companies listing to demonstrate 12 months working capital; and
- (iv) A request for views on the content of the Exchange's published guidance on governance and internal control in listed companies.

The feedback received, and the decision on what action taken, in respect of each of the above points is summarized below. A more complete summary of individual, anonymized, feedback received, can be found in the separate summary table.

Where rule changes are planned in light of the consultation (see sections 1.1 and 1.3), we intend to implement these by 1 January 2024. The usual process for rule changes will be followed, as set out in the Nordic Main market Rulebook for Issuers of Shares, section 1.2. and part A of Supplement D.

1.1 Revision of liquidity requirement (Rule 2.13)

1.1.1 Consultation proposal

Rule 2.13.1 in the Nordic Main Market Rulebook for Issuers of Shares ("Rulebook") currently sets out the following:

Conditions for sufficient demand and supply ("Liquidity") shall exist in order to facilitate a reliable price formation process. Sufficient number of Shares shall be distributed to the public. In addition, the Issuer shall have a sufficient number of shareholders.

Pursuant to rule 2.13.2 in the Rulebook, the requirement set out in rule 2.13.1 will be presumed to be met in cases where:

- a) *25% of the Issuer's Shares within the same class are in Public Hands; and*
- b) *the Issuer's Shares are held by at least 500 Qualified Shareholders. If, however, the number of Qualified Shareholders is less than 500, but more than 300, the Exchange may consider this requirement satisfied if the Issuer retains the services of a Liquidity Provider.*

According to rule 2.13.3, in cases where the thresholds in 2.13.2 (free float and/or number of Qualified Shareholders) are not met, the Exchange may, upon request, consider that the Liquidity requirement in 2.13.1 is nonetheless met if it is satisfied that the market will operate properly in view of the large number of shares that are distributed to the public.

In an effort to make the question of liquidity more predictable for companies applying for admission to trading, Nasdaq Stockholm proposed in the consultation to change the existing liquidity rule as follows:

2.13.1. Conditions for sufficient demand and supply ("Liquidity") shall exist in order to facilitate a reliable price formation process. Sufficient number of Shares shall be distributed to the public. In addition, the Issuer shall have a sufficient number of shareholders.

2.13.2. The requirement set out in 2.13.1 shall be deemed to be met in cases where:

- a) *25% of the Issuer's Shares within the same class are in Public Hands; or*
 - b) *At least 10% of the Issuer's Shares within the same class are in Public Hands as long as the value of the aforementioned Shares is at least EUR 10 million;*
- and*
- c) *the Issuer's Shares are held by at least 500 Qualified Shareholders. If, however, the number of Qualified Shareholders is less than 500, but more than 300, the Exchange may consider this requirement satisfied if the Issuer retains the services of a Liquidity Provider.*

The above proposals would mean that companies could meet the liquidity requirement at time of admission to trading through either meeting thresholds (a) and (c) combined, or through meeting thresholds (b) and (c) combined.

1.1.2 Feedback received from consultation

Below is a summary of some of the comments and feedback received together with Nasdaq's conclusion on the matter based on an overall assessment of the responses received.

Positive feedback

Most of the respondents were positive or had no comments on the proposal. Several have commented that the proposed change would provide increased predictability compared to the current arrangement, which requires an advance ruling in the event of a free float of less than 25 %. Thus, it has been commented that a lower threshold would reduce the element of uncertainty and subjective assessments.

We have also received comments that it is positive that the rules and requirements for Nasdaq Stockholm are adapted to the levels applied by peers and that it could enable an increased number of companies to list on Nasdaq Stockholm. Further, it has been commented that more globally aligned rules may lead to fewer globally oriented Nordic companies choosing to list outside their home countries and instead choosing to list in the Nordics.

Some respondents have proposed implementing a sliding scale free float requirement based on the market capitalization of the companies. One proposal received is that companies with a market capitalization of at least EUR 50 million should have a free float of at least 20 %, while companies with a market capitalization of at least EUR 75 million should have a free float of at least 15 %.

Negative Feedback

The respondents who are opposed to the proposal have stated that a lower free float percentage and, especially the valuation of the free float in absolute terms, are too far-reaching and risk impairing the quality of a listing on Nasdaq Stockholm.

Arguments have been put forward that the proposed minimum value threshold of EUR 10 million is too low to provide conditions for a reasonable trading volume, that it risks resulting in insufficient institutional trading and that it would make it difficult for companies to obtain a diversified ownership base. Concerns have been raised that this in turn could have a negative impact on Nasdaq Stockholm as a marketplace since low liquidity negatively affects both companies and investors.

The most significant objections relate not to the proposed 10% free float level, but rather to the minimum proposed value threshold. Several respondents proposed to increase the minimum free float value in absolute terms, with revised thresholds of EUR 20 million, EUR 50 million and EUR 100 million proposed. A higher minimum value threshold would, it is argued, allow even relatively small companies to achieve a diversified ownership base and improve liquidity compared to the original proposal.

1.1.3 Conclusion

Overall, Nasdaq is of the opinion that the arguments in favor of the proposal outweigh the arguments against the proposal, which is why Nasdaq has decided to proceed with amending the existing liquidity rule. However, Nasdaq has taken into consideration the negative feedback received from several stakeholders. It is of importance that the threshold applied provides conditions for a functioning price mechanism and that the market feels confident in the threshold chosen.

Nasdaq has carefully considered the proposals received regarding a sliding scale free float requirement but has decided to keep a revised rule as simple as possible at this time. Consequently, it has been decided that the minimum free float level in a revised rule shall be 10%, as originally proposed, but that the value of the free float must be at least SEK 500 million, as compared to the EUR 10 million originally proposed.

The new alternative threshold (b) – see below - will allow admission to trading at a free float percentage of at least 10% as long as the free float represented a minimum value of SEK 500 million. It would generally not be allowed for companies to list at a lower free float level percentage level, though exemption applications can be made in cases where a company can show that sufficient liquidity can be achieved at a level below 10%. Such exemption decisions would be taken on a case-by-case basis, based on the specific facts and analysis at hand, by the CEO of Nasdaq Stockholm AB. This flexibility for exemptions under 10% reflects the latest European legislative discussions in the context of the Listing Act.¹

Under the revised rule, liquidity would remain, as today, an ongoing listing requirement.

Finally, since the revised rule will apply only in Sweden at this time, the currency thresholds in the revised rule will be expressed in SEK rather than in EUR. Thus, the liquidity requirement will be amended as follows (revised text is underlined to show changes from current rulebook text):

2.13.1. Conditions for sufficient demand and supply ("Liquidity") shall exist in order to facilitate a reliable price formation process. Sufficient number of Shares shall be distributed to the public. In addition, the Issuer shall have a sufficient number of shareholders.

2.13.2. The requirement set out in 2.13.1 shall be deemed to be met, at time of admission to trading, in cases where:

a) 25% of the Issuer's Shares within the same class are in Public Hands; or

b) at least 10% of the Issuer's Shares within the same class are in Public Hands as long as the value of the aforementioned Shares is at least SEK 500 million;

and

¹ https://ec.europa.eu/finance/docs/law/221207-proposal-listing-sme-directive_en.pdf

c) the Issuer's Shares are held by at least 500 Qualified Shareholders. If, however, the number of Qualified Shareholders is less than 500, but more than 300, the Exchange may consider this requirement satisfied if the Issuer retains the services of a Liquidity Provider.

1.2 Expanding the category of legal professionals permitted to perform legal due diligence in listings on Nasdaq Stockholm (Supplement D)

1.2.1 Consultation proposal

According to rule 3.iii-vi in Supplement D of the current Rulebook, the following applies in relation to the legal due diligence to be performed in conjunction with admission to trading on Nasdaq Stockholm:

“iii. In conjunction with the Listing Auditor’s review, the Issuer shall be subject to a legal examination. The legal examination shall be performed by an attorney².

iv. The attorney shall issue a written report from the legal examination. The report shall be supplied to the Listing Auditor and form part of the basis for the Listing Auditor’s report.

The scope and structure of the legal examination is regulated in more detail in the Exchange’s instruction for the legal examination. The Issuer is responsible for supplying all information the attorney may need for the legal examination.”

The rule text is further elaborated upon in the Terms of Reference for Legal Due Diligence, which the Exchange has published on its website, as follows:

² The English term “attorney” has been used by Nasdaq as a translation of the Swedish term “advokat”.

“Except for the area related to the Group’s tax position, the due diligence shall be carried out by an attorney (Sv. advokat). The due diligence of the Group’s tax position shall be conducted by a reviewer with the required expertise in tax law, but not necessarily a lawyer.”

Nasdaq Stockholm raised the potential in the consultation to expand the scope of legal professionals considered suitable, and therefore permitted, to perform legal due diligence in listings beyond the category of “advokater”. This would entail a change in both the rulebook and in the accompanying Terms of Reference.

1.2.2 Feedback received from consultation

Positive Feedback

About half of the respondents were positive or had no comments on the proposal. It can be noted in this context that a few law firms also responded positively or had no objections to the proposal.

The respondents have presented arguments such as that the proposal would give issuers more freedom to choose its legal advisors and that a legal professional does not have to hold the title “advokat” to be able to perform the legal due diligence; competence and experience in relevant fields may also be found in other legal professional organizations.

Several respondents are in support of the inclusion of a broader group of legal professionals if it can be ensured that due qualifications, integrity, and independence of the reviewer can be guaranteed and that the lawyers performing the legal due diligence are recognized and respected with a deep understanding of capital market activities in general and the listing process in particular. In this context, it has been suggested that legal advisers should be pre-approved by Nasdaq or the listing auditor and that Nasdaq should have the option to refuse the appointment of certain legal advisers if they are not considered to have sufficient experience. Nasdaq is not in favour of such a setup, however, since it would entail case-by-case assessments of legal advisers by Nasdaq which would reduce predictability for companies when selecting advisers.

It has also been noted that it is important that there is sufficient capacity within the legal professional organizations to ensure adequate and timely support.

Negative Feedback

Those respondents who were opposed to the proposal argued that it risks having a negative impact on the quality of the legal review and that both public trust in the listing process as well as investor protection may be negatively affected if the current attorney requirement is changed.

(i) Code of Conduct of the Swedish Bar Association

Many respondents have commented that the Code of Conduct of the Swedish Bar Association, to which every attorney must adhere, and which is enforced by the Bar Association's Disciplinary Committee, is important in ensuring the independence and high quality of the work carried out by attorneys.

The Code of Conduct sets out requirements on e.g., independence (including preventing remuneration structures that may affect the attorney's independence), training, and client confidentiality. It has been argued that other legal professionals are not subject to as demanding standards as the Code of Conduct and that they do not face consequences in case of non-compliance like the process at the Bar Association's Disciplinary Committee. It has been argued that the strict rules with which attorneys must comply have a positive effect on investor protection and that it provides a baseline robustness with regards to the integrity of the legal due diligence performed in connection with listings.

(ii) Coordinating responsibilities

Other comments received highlight the fact that the Swedish attorney has the overall coordination responsibility and takes responsibility for the legal assessments that are made, including in cases where foreign legal counsel is engaged to assist in the legal due diligence. Feedback has been received that, without this structure, there is a risk that the quality of the legal review will decrease.

(iii) Legal expertise

Furthermore, comments have been received that a legal review in a listing process does not only require knowledge of capital market and corporate law, but that the review is a much broader review of legal matters and risks that the company to be listed is subject to. It is required that the reviewer also possesses knowledge in other legal areas such as contract law, litigation, employment law and environmental law. Concerns have been raised that such a variety of knowledge and expertise may be difficult to provide by specialized firms and accounting firms, whereas large law firms generally have expertise in all these areas.

(iv) Other disclosure documents

Respondents have answered that the legal due diligence is closely associated with disclosure documents in a listing process such as prospectuses and ancillary presentations and releases, where law firms with access to specialist expertise in several areas (see also point iii above) are needed to ensure that disclosures to the market are made in a correct manner. Comments have also been received that a prerequisite for law firms to issue legal opinions is that they have previously carried out a customary legal due diligence of the company. The current process provides issuers with a "one stop shop" whereby the law firm is responsible for the legal due diligence review as well as driving the disclosure work streams. Respondents have commented that this combination leads to enhanced quality of both the legal due diligence and the disclosure work stream. We have also received comments that the current proposal risks leading to companies having increased costs related to the legal review if several parties are involved in carrying out these work streams.

1.2.3 Conclusion

Overall, Nasdaq is of the opinion that the arguments against the proposal outweigh the arguments for introducing the proposal, which is why Nasdaq has decided to maintain the current requirement that the legal review be performed by an attorney.

While Nasdaq is mindful of not unnecessarily restricting those professionals who may perform advisory work in relation to listings, it is of paramount importance to ensure high standards in a foreseeable manner. The requirement for an attorney to be responsible for the legal due diligence in a listing process entails the application of the Code of Conduct of the Swedish Bar Association, which is a significant safeguard. We also find persuasive the points raised in responses around the coordinating role of the attorney, the breadth of legal expertise required in the due diligence and also the close link between legal due diligence and production of the prospectus.

1.3 Adjusting the existing profitability/working capital requirement (rule 2.9)

1.3.1 Consultation proposal

Rule 2.9 in the Nordic Main Market Rulebook for Issuers of Shares ("Rulebook") sets out the following:

2.9.1. The Issuer shall demonstrate that it possesses documented earnings capacity on a business group level. This means that the Issuer shall be able to document that its business has generated profits during the most recent fiscal year.

2.9.2. If the Issuer does not possess documented earnings capacity in accordance with 2.9.1, the Issuer shall demonstrate that it has sufficient working capital available for its planned business for at least twelve (12) months after the first day of trading.

We proposed in the consultation that it would be a positive investor safeguard to require that all companies listing should have in place working capital for the coming 12 months, regardless of whether or not they have generated profits to date.

A proposed revised rulebook text was proposed as follows:

~~2.9.1. The Issuer shall demonstrate that it possesses documented earnings capacity on a business group level. This means that the Issuer shall be able to document that its business has generated profits during the most recent fiscal year.~~

2.9.2. If the Issuer does not possess documented earnings capacity in accordance with 2.9.1, the Issuer shall demonstrate that it has sufficient working capital on a business group level available for its planned business for at least twelve (12) months after the first day of trading.

1.3.2 Feedback received from consultation

The majority of respondents were positive to the proposal. Of the negative responses received, the common concern was how a new requirement for twelve months working capital could impact issuers in certain sectors: property companies; portfolio companies of private equity firms; and research-stage pharmaceutical companies.

Taking these specific sectors in turn, Nasdaq notes the following.

- Property companies – We understand the standard practice of refinancing loans periodically, which may make it challenging for some (though not all) property companies to prove at time of listing that 12 months working capital has been secured.
- Portfolio companies of PE firms – We do not believe any special treatment is required since it should be possible for such companies to have in place 12 months working capital by first day of trading, taking account of IPO proceeds.
- Research-stage pharmaceutical companies – We do not believe any special treatment is required since such companies should be able to plan twelve months ahead from first day of trading, and ensure sufficient working capital, even if there may be uncertainty over dates of clinical approval and so on. Further, such companies are rarely profitable, which means they face the same challenge according to the present rule (non-profitable companies must demonstrate 12 months working capital already today).

1.3.3 Conclusion

Nasdaq has decided to proceed with implementing a rule requiring twelve months working capital for all companies listing on Main Market. We consider it to be important from an investor protection perspective, not least in light of recent dramatic interest rate increases (affecting in particular property companies), to require all issuers to have twelve months working capital at time of listing. We see it as logical for the Main Market to have at least the same requirement in this regard as the First North market already does. We take seriously the input received concerning how challenging this may be, in particular for certain property companies, and have considered whether a new rule should in some way address this or other types of company. We have, however, concluded that the priority is to have a clear and objective rule, applicable to all types of issuers, and that it is not necessarily desirable to provide specific rules or guidance for individual types of company.

Issuers will have the possibility to seek exemption from this rule if they can demonstrate that the aim behind the rule is fulfilled in some other way. Applications for exemption from listing requirements are

addressed to and decided upon by Nasdaq. In a technical question such as the existence of working capital, expert input from the issuer's listing auditor would also be required.

Revised rule (and guidance text):

2.9.1. The Issuer shall demonstrate that it has sufficient working capital on a business group level available for its planned business for at least twelve (12) months after the first day of trading.

In this context, "sufficient working capital" means that the Issuer shall demonstrate that it is able to access cash and other available liquid resources in order to meet its liabilities as they fall due for at least 12 months from the first day of trading. The working capital requirement can be fulfilled through injection of capital raised in connection with the listing or other binding commitments of financing.

1.4 Clarifying the scope of review of internal procedures and systems (rule 2.15.3)

1.4.1 Consultation proposal

With regard to the current listing requirements' provisions on internal governance and control, Nasdaq Stockholm has developed and published Guidance on Governance and Internal Control in Listed Companies. We requested comments and suggestions on the content of the Guidance on Governance and Internal Control in Listed Companies.

1.4.2 Feedback received from consultation

Negative Feedback

Three law firms provided negative views on the rule and Guidance. Broadly speaking, their views were that the rule and the way in which it is assessed by Listing Auditors today is unclear, unpredictable and too subjective. The law firms in question requested clearer, more objective formulations in the rule and the Guidance. Nasdaq takes these concerns seriously. However, in our view this is an area where a qualitative analysis is required. The qualitative analysis will, by definition, vary according to the individual company being reviewed and it is therefore not feasible to, for example, define a minimum threshold for implementation of internal controls. The Guidance is a tool to ensure consistency of approach between different Exchange Auditors tasked with reviewing companies' internal controls. The Exchange's Surveillance team also holds regular meetings with the Listing Auditors to discuss and exchange best practices, with the aim of ensuring consistency in review methodology.

Positive Feedback

We are encouraged to note that the majority of respondents were positive, or at least neutral, in their views of the Guidance provided by the Exchange in this area. We received a number of helpful suggestions for clarifications to the existing Guidance.

1.4.3 Conclusion

We received a number of helpful suggestions for clarifications to the existing Guidance, which we have reviewed carefully, and we will implement those with which we agree in a forthcoming update to the Guidance on our website.