

# Nasdaq Copenhagen's Decisions and Statements in 2015

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# I. MAIN MARKET

## 1. REPRIMANDS

### SHARES

#### **1.1 Acquisition of equity interest in a company – lack of information in announcement**

*(Euroinvestor.com A/S)*

A company announced significant changes to the expectations to its revenue and profit for the year. From the announcement it appeared that the reason for the changed expectations among other things was because the company had taken over two companies which now were included fully as a part of the consolidated results.

Nearly a month before the announcement of changed expectations the company published the acquisitions of equity interest in the two companies.

It appears from rule 3.3.7 in Rules for issuers of shares that an acquisition or a sale of a company or business which is price sensitive shall be disclosed.

The disclosure shall include:

- purchase price, unless special circumstances exist;
- method of payment;
- relevant information about the acquired or sold entity;
- the reasons for the transaction;
- estimated effects on the operation of the company;
- the time schedule for the transaction; and
- any key terms or conditions that apply to the transaction, especially when such may affect the validity of the transaction.

It appears from the commentary to the rule that in conjunction with corporate transactions, specific requirements are imposed regarding the completeness of information. Based on the information disclosed about a transaction, the market participants should be able to assess the financial effects of the acquisition or sale as well as the effects on the operation of the company and the effect on the price or value of the company's securities.

Based on correspondence with the company the exchange took into account

- That the company already had a stake of about 50% of the two subsidiaries,

- That the company had information about the expected budget and expected turnover for several years to come,
- That the transaction is considered to be significant for the company as the target company represents a significant portion of the consolidated revenue.

Based on the above it was the opinion of the exchange that the company did have sufficient knowledge about the two subsidiaries to assess the effects of the transactions. The exchange found that the announcement concerning acquisition of equity interest should have contained information about the expected effects on the company's operation including the effect on the income statement or balance sheet cf. rule 3.3.7 in Rules for issuers of shares and therefore the exchange reprimanded the company.

## **1.2 Notice to attend the general meeting**

The notice to attend the general meeting in a company, including the agenda, was brought in a newspaper prior to the disclosure of an announcement from the company.

It is evident from rule 3.3.2 in Rules for issuers of shares on NASDAQ OMX Copenhagen A/S that the notice to attend the general meeting must be disclosed.

It is also evident in the comment to rule 3.3.2 in Rules for issuers of shares that even though a notice does not contain any price sensitive information the notice must in general be disclosed at the same time as the advertisement is sent to a newspaper. There may, however, be situations where certain information is still outstanding when a draft notice is sent to a newspaper for publication. This could be one reason to await the disclosure until the notice is finalized. The notice must, however, always at the latest be disclosed the evening before the notice is expected to be published in a newspaper and before it is made available on the company's web site.

The exchange reprimanded the company that the notice to attend the general meeting was brought in a newspaper prior to the disclosure of the notice from the company, cf. section 3.3.2 of Rules for issuers of shares.

## **1.3 Development of annual general meeting**

A listed company held an annual general meeting. The development of the annual general meeting was published the following trading day after the opening of the market and therefore not immediately after the annual general meeting.

In rule 3.3.2 in Rules for issuers of shares it is stated that the company shall disclose information about resolutions adopted by the general meeting of shareholders unless such resolutions are insignificant. Furthermore the commentary in rule 3.3.2 states that after the general annual meeting a notice about decisions made should be disclosed.

It furthermore follows from rule 3.1.3 that disclosure of information covered by these Rules shall be made as soon as possible, unless otherwise specifically stated.

In light of the above the exchange requested the company to explain the reason for why the development of the annual general meeting was not published immediately after the annual general meeting took place.

From the explanation it appeared that the company accepted the fact that they had not correctly and promptly disclosed the development of the annual general meeting.

The exchange reprimanded the company for not publishing the development of the annual general meeting immediately after close of the annual general meeting, in accordance with the Rules for issuers of shares rule 3.1.3 and rule 3.3.2.

#### **1.4 Disclosure of price sensitive information to journalist**

*(Viborg Håndbold Klub A/S)*

Nasdaq Copenhagen (the exchange) found that the CEO of a listed company in a newspaper article was quoted as having stated that the company's deficit would be substantially higher than the company had previously announced.

The exchange contacted the company which later the same day published an announcement including a widening of the result margin.

The exchange subsequently asked the company to explain the sequence of events prior to and in connection with the article.

In the explanation the company stated that the CEO and the journalist had had an informal talk and that the statements made by the CEO were not intended for quotation.

The exchange found it regrettable that the company's CEO had not paid sufficient attention not to disclose price sensitive information to external interests. The exchange reprimanded the company for disclosing price sensitive information to a journalist without simultaneously informing the market, cf. rule 3.1.1 in Rules for issuers of shares.

#### **1.5 Disclosure of the interim report**

*(Dantax A/S)*

A company disclosed its interim report on a Wednesday morning. From the interim report it appeared that the board and management had approved this the day before.

It appears from rule 3.1.1 in Rules for issuers of shares on NASDAQ OMX Copenhagen (the exchange) that a company shall, as soon as possible, disclose information that are price sensitive if this information directly affects company.

Furthermore it appears from rule 3.1.3 in Rules for issuers of shares that disclosure of information covered by these Rules shall be disclosed as soon as possible, unless otherwise specifically stated. This means that the disclosure of annual reports and interim reports must be made immediately following the board meeting where the annual report or interim report is approved.

The exchange requested the company to explain the process leading up to the disclosure of the interim report.

From the explanation it appeared that the board meeting was held Tuesday during which the interim report had been approved.

Furthermore it appeared that the interim report had been scanned and tried published through the company's Service Provider immediately after the approval. The company received an immediate notification that the announcement had been registered, but did not follow up on the disclosure.

Late in the evening the company realised that the interim report had not been disclosed and it was therefore disclosed the following morning.

On this basis the exchange found that the interim report had not been disclosed as soon as possible after the board approval, and the exchange reprimanded the company.

## **1.6 Lack of information in announcement**

*(Columbus A/S)*

A company published an announcement regarding the acquisition of a company. Nasdaq Copenhagen (the exchange) contacted the company after the company had published the announcement as the exchange was of the opinion that the announcement was insufficient in proportion to the size of the transaction, cf. rule 3.3.7 in Rules for issuers of shares. For instance the announcement did not contain information about the purchase price and method of payment.

The next day the company published a follow-up announcement containing additional information including the purchase price and method of payment.

From rule 3.3.7 in Rules for issuers of shares it appears that an acquisition or a sale of a company or business which is price sensitive shall be disclosed.

The disclosure shall include:

- Purchase price
- Method of payment
- Relevant information about the acquired or sold entity
- The reasons for the transaction
- Estimated effects on the operation of the company
- The time schedule for the transaction
- Any key terms or conditions that apply to the transaction

The company or business acquired shall be described in a manner that addresses its key line(s) of business, historical financial performance and financial position.

It appears from the commentary to the rule that in conjunction with price sensitive corporate transactions, specific requirements are imposed regarding the completeness of information. Based on the information disclosed about a transaction, the market participants should be able to assess the financial effects of the acquisition or sale as well as the effects on the operation of the company and the effect on the price or value of the company's securities.

On this basis the exchange reprimanded the company that the first announcement published by the company did not contain the required information in accordance with Rules for issuers of shares rule

3.3.7. The exchange acknowledged that the company subsequently published the missing information to the market.

### **1.7 Disclosure of interim management statement**

*(ChemoMetec A/S)*

A company postponed a planned disclosure of an interim management statement from Friday till Monday. The reason for the postponement was, according to the announcement, that Copenhagen Exchange was closed on the Friday.

When the interim management statement was published on Monday, it was apparent that it contained a major upward adjustment.

On this basis the exchange requested the company to concretely and in detail explain the process that preceded the disclosure of the interim management statement.

From the explanation it appeared that the final financial figures for the period were available Wednesday and that the chairman and vice chairman approved the third quarter report the same day. Furthermore, it appeared that an upward adjustment at that time was a possibility, but that there was not a final clarification as to what the new guidance figures should be, and a joint decision was made to wait until Friday with the final guidance figures.

Furthermore, it appeared that the management on Wednesday were aware that the Exchange was closed Friday and therefore it was decided that the third quarter announcement should be postponed until Monday.

The exchange found that the company did not disclose the interim management statement for the third quarter of 2014/2015 as soon as possible after the approval and the Exchange reprimanded the company.

## **BONDS**

### **1.1 Missing disclosure of the notice and development of extraordinary general meeting**

*(GW Energi A/S)*

A company held an extraordinary general meeting on a Friday. The notice of the extraordinary general meeting had not been published and the development of the general meeting was published Sunday and therefore not immediately after the general meeting.

From rule 3.2.2 in Rules for issuers of bonds it appears that disclosure of information covered by these Rules shall be made as soon as possible.

Furthermore it appears from rule 3.3.13 that in the event that an extraordinary general meeting is convened, the reason for this shall be disclosed as soon as possible. Moreover it appears that information about the general meeting, including information about resolutions passed, shall be published immediately after the general meeting.

In light of the above the exchange requested the company to explain the reason why the development of the extraordinary general meeting had not been published immediately after the meeting.

The company explained that the extraordinary general meeting in accordance with the articles of association was convened with one week's notice to the company's owner of capital. Furthermore it appeared that the development of the general meeting was announced along with the publication of third quarter report.

On this basis the exchange found that the notice of the extraordinary general meeting should have been published as a company announcement in accordance with the rules of the exchange and that the development of the extraordinary general meeting had not been published as soon as possible, and the exchange reprimanded the company.

## **1.2 Disclosure of annual financial report**

*(Mare Baltic PCC Limited)*

A company applied Nasdaq Copenhagen for a temporary exemption in respect of disclosure of annual financial report 2014.

According to rule 3.3.7 in Rules for issuers of bonds on NASDAQ OMX Copenhagen (the exchange) the annual financial report shall be disclosed not later than three months from the expiry of the reporting period.

The reason for the request was that the company, its auditors and external valuation specialist had identified a possible misstatement in the valuation of the bonds. In order to investigate and have the value adjusted, the company was not able to disclose the annual financial report in due time. Accordingly the company asked for a postponement for disclosure of the annual financial report.

Nasdaq Copenhagen decided not to grant an exemption because the request was based on problems arising from within the company causing an incorrect valuation of the bonds cf. Rule 2.1.8 that states that the issuer must establish and maintain adequate procedures, controls and systems, including systems and procedures for financial reporting, to enable compliance with its obligation to provide the market with timely, reliable, accurate and up-to-date information as required by the exchange.

The annual financial report was published with a delay of 15 days and Nasdaq Copenhagen asked the company to explain in detail the course of this delay. The company explained that during the audit of the valuation of the bonds its auditors noted errors in the valuation model for the bonds. The error had led to an overstatement of the nominal value of the bonds.

On basis that the annual financial report was not disclosed within three month from the expiry of the reporting period in accordance with the exchange rules, Nasdaq reprimanded the company.

## 2. DECLARATIONS AND OTHER CASES

### 2.1 Issuance of shares in companies already admitted to trading on Nasdaq Copenhagen or First North

When issuing new shares, companies, already admitted to trading on Nasdaq Copenhagen (the exchange) or First North, shall prepare a prospectus according to the regulation governing securities trading. The Danish Financial Supervisory Authority (FSA) is the competent authority in order to approve prospectuses. It is also the FSA who interprets the rules in the provisions of the securities trading legislation, including if a specific issue is subject to exceptions. The prospectus must be approved by the FSA prior to publication.

The exchange's rules – 'Rules for issuers of shares' and 'First North Nordic Rulebook' – contains no requirements for prospectuses for companies that are already admitted to trading at the exchange or First North.

When a company, which is already admitted to trading, wants new shares to be admitted to trading, the exchange must among other things be submitted with a draft of the time table as basis for the admittance to trading. Furthermore, the exchange must receive detailed information about the issue in question, see the list below. The time table and the detailed information will be the basis for the exchange's approval of admission to trading of the new shares.

Finally, the exchange must receive an application for admission to trading regarding the new shares. It is of course possible to include the application in the detailed information about the issue.

The filing of the application, including the draft of a time table and the details of the issue, is usually done while FSA reviews the draft of prospectus. The exchange must be informed if there are changes in the time table or if there are changes in other factors. The exchange's comments to the description of the terms can cause changes in the draft of the prospectus being reviewed by the FSA. In the description of the terms the same terminology ought to be used as in the prospectus.

Applications to the exchange must always be submitted via email to: [aktieteam@nasdaq.com](mailto:aktieteam@nasdaq.com)

The exchange requires that the company's issuing bank is aware of the time table and that the bank has accepted it. The exchange must be informed of a contact person at the issuing bank, including phone number and mail address.

Below are listed a number of factors which must be forwarded to the exchange. Please notice that the factors depend on the type of issue.

- Type of issue (rights issue, directed issue etc.).
- The rate of the issue, stated in both nominal value and number of shares, and minimum offer if relevant.
- Share capital before the issue, stated in nominal and in number of shares.
- Share capital after the issue, stated in nominal and in number of shares.



- Description of guarantee/advance commitments, if any, including the name of the guarantor(s) and the amount of the guarantee provided by the individual guarantor(s). If there are conditions for a guarantee, these conditions must be described.
- Face value.
- Subscription price, including how the subscription price is fixed.
- Dividend for the new shares for the current year and possibly previous financial year. The latter is relevant if the transaction is to be carried out before the company has held its annual general meeting.
- Subscription ratio. The subscription ratio indicates how many new shares, the shareholder may subscribe in proportion to the shareholders' existing shares. If the subscription ratio, for example, is 1:10, the existing shareholders of the company can subscribe for one new share for every 10 existing shares. Existing shareholders will thus be allocated one subscription right for each existing share they own, and to subscribe for one new share 10 subscription rights are needed. If the subscription ratio is 2:1, the existing shareholders of the company can subscribe two new shares in the company for each existing share, and existing shareholders have granted two subscription rights for each existing share. You need one subscription right to subscribe for one new share.
- ISIN, new shares, pre-emptive rights etc.  
The exchange must be informed whether the temporary ISIN for the new shares is to be admitted to trading on the exchange or whether the new shares are to be admitted to trading after the new shares have been registered in the Danish Business Agency. If the temporary ISIN is not to be admitted to trading, it must be stated clearly that the temporary ISIN registered with VP Securities A/S is only for the purpose of subscribing new shares.
- When the prospectus is expected to be approved by the FSA.
- When the prospectus is expected to be published.
- Last day of trading in existing shares including pre-emptive rights.
- First day of trading in existing shares excluding pre-emptive rights. This is the same day as the trading of pre-emptive rights will start.
- Trading period for pre-emptive rights.  
The exchange recommends that the period is at least 10 business days, starting two business days before the subscription period starts and ending two business days before the subscription period is closed.
- When pre-emptive rights will be allocated in VP Securities A/S.
- Subscription period.  
The Danish Companies Act contains details of the subscription period in which the shareholders shall make use of the subscription right. The exchange recommends that the period is at least 10 business days, starting two business days after the trading of subscription rights starts and ending two business days after the trading of subscription period is closed.
- When the new shares will be paid
- When the new shares are expected to be registered in the Danish Business Agency.
- Expected first day of trading in the new shares.  
If the new shares are intended to be admitted to trading under the ISIN code of the existing shares, the new shares shall carry the same right to dividend as the existing shares. It is also a

condition that the exchange has received documentation in the form of a resume of the registration of the new shares by the Danish Business Agency.

- Description of possible options for the withdrawal of the offering.

Should the implementation of a corporate action before the issuance of new shares be necessary, for example in the form of a reduction in share capital, changes in the face value of the shares (stock split) or the like, it is essential that this is clear from the schedule, and it must be described in the application and terms.

It should be emphasized, that the above terms only are relevant with respect to share issues made by companies already admitted to trading on the exchange or First North. Please see the Listing Requirements which are specified in Rules for issuers of shares or First North Nordic Rulebook, when new companies apply for trading on Nasdaq Copenhagen or First North.

The rules can be downloaded from the Nasdaq Copenhagen website.

<http://www.nasdaqomx.com/listing/europe/rulesregulations/>

## **II. FIRST NORTH**

### **1. REPRIMANDS**

#### **SHARES**

##### **1.1 Disclosure of information to the press**

*(Medical Prognosis Institute A / S)*

A company informed the exchange that news of a planned IPO of a spinout unfortunately could be read in a newspaper the day before the company disclosed a notice about it.

According to the company the error was caused by a combination of adverse factors, including that the two companies have much overlapping personnel, that the establishment of the new company (spinout) was postponed a day, that part of the press were pre oriented and subject to embargo and that the communication officers did not inform the press about the postponement of the establishment.

Based on the above the exchange requested the company for additional information regarding the pre orientation of the press.

From rule 4.1 (a) in First North Rulebook it appears that a Company must as soon as possible publish any decisions taken by it as well as any facts and circumstances pertaining to the Company that are likely to have a significant effect on the price of its financial instruments.

Companies that are admitted to trading on First North, has the obligation to ensure that all have simultaneous access to information that are likely to have a significant effect on the price of its financial instruments, and companies must ensure that no unauthorised party is given such information prior to disclosure. As a consequence such information may not be given in statements, explanations and interviews etc., unless such information is simultaneously made public to the market.

Based on the company's explanation, the exchange found that the information disclosed to the market was price sensitive and thus it was the exchange's opinion that the information should have been disclosed to the market no later than at the time where the press received the information.

The exchange therefore reprimanded the company that the company's management had provided the press with information without this information being disclosed to the market simultaneously in accordance with First North Rulebook rule 4.1 (a.).

## **BONDS**

### **1.1 Late disclosure of development of the general meeting**

A company held an annual general meeting on a Monday after normal working hours. The development of the annual general meeting was published Wednesday and therefore not immediately after the annual general meeting.

From rule 4.8 in First North Bond Market Rulebook it appears that the Issuer shall disclose resolutions adopted by the general meeting of shareholders, unless such resolutions are insignificant.

Furthermore it appears from rule 4.2 in First North Bond Market Rulebook that publication of information covered by these rules shall take place as soon as possible.

It appears from the company's explanation that the company has a procedure concerning publications to Nasdaq First North in order to ensure the quality to be correct. The verification was completed two days after the general meeting and the publication took place immediately after.

Based on this the exchange found that the development of the general meeting was not published as soon as possible and the exchange reprimanded the company.

### **1.2 Disclosure of annual report**

*(Haldor Topsøe A/S)*

A company held a board meeting on a Thursday where the annual report was approved. Friday the company published an announcement with the wording; "Disclosure of annual report".

From rule 4.6 in First North Bond Market Rulebook it appears that the issuer shall immediately publish the annual report after the Issuer's Board of Directors has approved.

Furthermore it appears from rule 4.2 in First North Bond Market Rulebook that publication of information covered by these rules shall take place as soon as possible.

From the explanation by the company it appeared that it was due to an internal misunderstanding that the company published the annual report the day after the board meeting.

Based on this the exchange found that the annual report had not been published as soon as possible and the exchange reprimanded the company.

## **2. DECLARATIONS AND OTHER CASES**

### **2.1 Review of companies and Certified Advisers on First North**

For the purpose of ensuring confidence and quality on First North Nasdaq Copenhagen has together with the other Nasdaq Nordic exchanges conducted a review of the companies' compliance with the listing requirements on the market and the role of the Certified Adviser on First North.

A vital characteristic of First North is the requirement for Certified Advisers who have an active and important role to a functioning market and therefor the companies' communication to the market.

The review was intended to ensure:

- Issuers on First North to fulfill the ongoing listing requirements as well as disclosure- and information requirements in the First North Nordic Rulebook ("the rules"),
- Certified Advisers to fulfill the requirements and obligations they have under the regulatory framework
- Certified Adviser to take an active role in the communication between the exchange and the Company.

The review, which took place in September/October 2014, included 12 companies listed on First North and 4 Certified Advisers. The exchange reviewed the companies' website, financial reports, insider transactions, and the company's capacity to disclose price sensitive information. The Certified Advisers were i.a. asked to describe how they monitor the companies to continually fulfill the listing - and disclosure requirements on First North, and they were asked to forward internal rules and procedures to the exchange.

In general the companies and Certified Advisers fulfill the requirements from the rules although the exchange can conclude that there are a few deficiencies i.a. in connection with disclosure of inside transactions. According to the rules, supplement D – Denmark rule 4.1.4 disclosure of insider transactions shall be in accordance with § 28a of the Securities Trading Act, after which a series of information must be included in the announcement.

The exchange expects to conduct a similar review of the companies and Certified Advisers on a regular basis.

### III. THE OVERALL MARKET

## 2. DECLARATIONS AND OTHER CASES

### 2.1 The exchange will cease using the term matching halt and will harmonise with international standards

Starting May 4<sup>th</sup> 2015 the exchange will no longer be using the term *matching halt*<sup>1</sup>. From now on the exchange will only use the term *suspension* in every situation where the trading of a security shall be suspended for a certain period of time.

For example the exchange can decide to suspend trading in situations where the market does not have equal access to information regarding a particular Instrument, where the market does not have sufficient information regarding an Instrument, where proper market functions cannot be sustained or where sustaining the trading of an Instrument could potentially be damaging to the investors.

Until now the matching halt has generally been used for short term suspensions of trading in a security. During a trading halt it is not possible to register orders to buy or sell, but it has been allowed for members of the exchange to place manual trades and report these to the trading systems of the exchange. In the future, when the exchange suspends trading in a security it will not be possible to trade the securities on the exchange. It will not be possible to register new orders to buy or sell in the trading system or to report manual trades. In the period where a security is suspended security traders can publish OTC trades (traded outside the exchange) through the trading system of the exchange.

All orders in the order book of a suspended security will be cancelled. Therefore there will not be any active orders in the order book once the trading of a suspended security is resumed.

The exchange can decide to reinstate trading in a suspended security with a 10 minute auction.

Today the term suspension is used in national legislation and in EU regulations. The individual EU member states' supervisory authorities may decide a regulatory suspension of trading in a security. A regulatory suspension has an effect on all trading venues in the EU for the security in question.

Information regarding the establishment and termination of a suspension will as before be announced on the market.

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<sup>1</sup> NASDAQ OMX Nordic Member Rules, version 2.7 – applicable from May 4<sup>th</sup> 2015