

Dual Listings of Swedish Listed Companies on Nasdaq in the United States

Introduction

We have prepared this presentation together with Nasdaq in Stockholm where we in the coming pages will address the current topic of dual-listing Swedish companies on The Nasdaq Stock Market in the United States. We were part of the Calliditas Therapeutics' US listing in June 2020 and many other Swedish companies may follow suit in the coming years. Baker McKenzie is a global law firm and ideally placed to assist companies in cross-border transactions.

In case of an interest in a US listing, our Swedish capital markets team with partners Joakim Falkner (who is also heading up the capital markets group in Europe, Middle East & Africa) and Henric Roth are available to discuss a potential transaction also involving our global capital markets team.

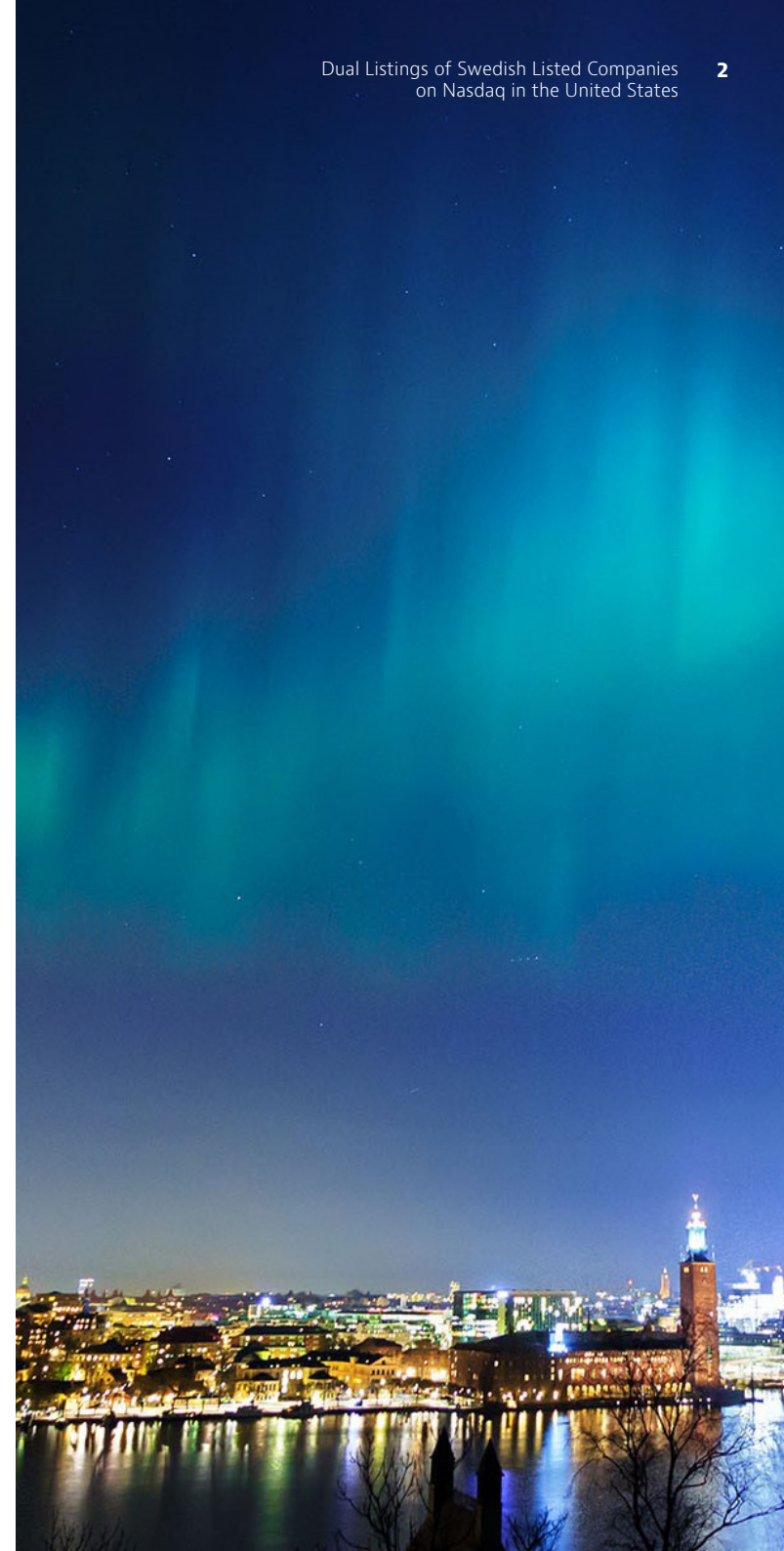
This document summarizes the key considerations involved in a public offering and listing on The Nasdaq Stock Market ("Nasdaq Stock Market") in the United States by a Swedish company¹ and in particular:

- the consequences of registering securities (shares and American Depositary Receipts ("ADRs")) in the United States;
- the process of registering securities with the US Securities and Exchange Commission (the "SEC");
- material reporting obligations and disclosure requirements under the US Securities Act of 1933 (the "Securities Act"), the US Securities Exchange Act of 1934 (the "Exchange Act"), and the related rules and regulations promulgated by the SEC;

- aspects of being a dual listed company from a Swedish point of view; and
- liabilities associated with the process of registering securities with the SEC and being an SEC-registered company.

We have highlighted examples in relation to the Swedish market and issues arising specifically in the Swedish context. This presentation assumes that the company is listed on a regulated market such as Nasdaq Stockholm, but we would also be pleased to discuss the issues herein with companies listed on other trading venues, such as Nasdaq First North Growth Market. We are, of course, also pleased to engage in discussions with private companies that are contemplating to list in the US only. Feel free to contact us at the details included on the last page of this presentation.

¹) Swedish (or other non-US companies) generally qualify as "foreign private issuers". In rare circumstances, a Swedish (or other non-US company) may be treated as a US company if more than 50% of its voting securities are directly or indirectly owned by US residents and depending on the proportion of the company's assets in the United States, proportion of US directors and officers or the business being administered in the United States. If you are concerned about this issue, we would be happy to help you with the analysis.



Nasdaq Stock Market as a listing venue

The Nasdaq Stock Exchange is an electronic stock exchange with more than 4,100 company listings. It currently has a greater trading volume than any other U.S. stock exchange, carrying out several billion trades per day.

Nasdaq Stock Market has been dominated by tech companies in industries such as Tech, bio-technology, and consumer oriented companies. However, financial, industrial, healthcare and consumer companies now account for more than half of Nasdaq Stock Market's listings. Nasdaq Stock Market has developed to today being the largest electronic stock market.

Nasdaq's DNA is rooted in innovation and in the spirit of partnership. Nasdaq has built teams, tools and assets to support the listed companies throughout their entire life cycle. Companies that list on Nasdaq leverage their shareholder engagement and intelligence tools, visibility platform, issuer advocacy and support, and client network to thrive in today's competitive marketplace.

The Nasdaq Stock Market has three distinctive tiers: The Nasdaq Global Select Market®, The Nasdaq Global Market® and The Nasdaq Capital Market®.

Applicants must satisfy certain financial, liquidity and corporate governance requirements to be approved for listing on any of these market tiers. The initial financial and liquidity requirements for the Nasdaq Global Select Market are more stringent than those for the Nasdaq Global Market and likewise, the initial listing requirements for the Nasdaq Global Market are more stringent than those for the Nasdaq Capital Market.

Corporate governance requirements are the same across all Nasdaq market tiers. It is important to note that even though a company's securities meet all enumerated criteria for initial inclusion, Nasdaq may deny initial listing, or apply additional conditions, if necessary to protect investors and the public interest.

Listing applications and related forms are available electronically through the Nasdaq Listing Center. Before completing your application electronically, please take a few minutes to review our Initial Listing Guide.

<https://listingcenter.nasdaq.com/assets/initialguide.pdf>



Nasdaq Stock Market is a computerized market without a stock exchange floor. Instead, there are more than 200,000 vendor terminals around the world, which provide comprehensive quote and last-sale information to dealers and brokers. The vendor terminals are not trading terminals and cannot be used to make markets or direct orders in securities listed on Nasdaq Stock Market. Non-US broker/dealers typically obtain Nasdaq Stock Market information from vendor terminals and contact broker/dealers in the United States to execute orders.

Companies listed on Nasdaq Stock Market are separated into three markets (going from smallest to largest capitalization):

» the Nasdaq Capital Market

» the Nasdaq Global Market

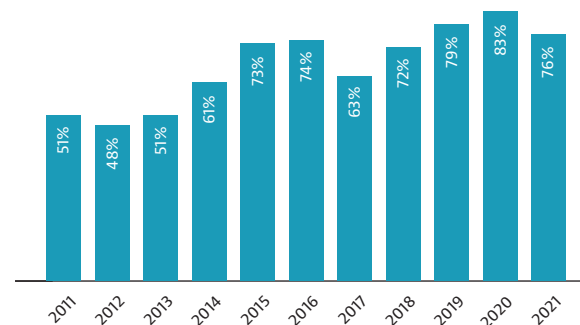
» the Nasdaq Global Select Market

The Nasdaq Global Select Market imposes the most demanding quantitative listing requirements and the Nasdaq Capital Market imposes the least demanding quantitative listing requirements. All markets require listed companies to follow certain corporate governance procedures.

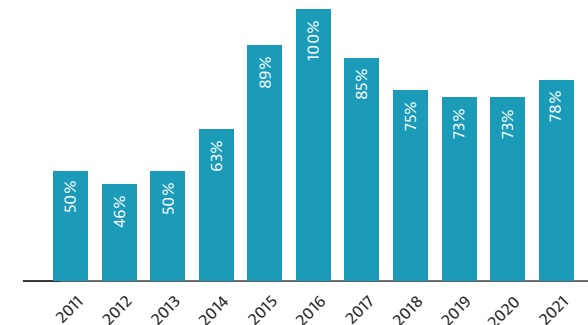
The initial and continuing listing requirements for each Nasdaq market are set out in the Appendix.

Nasdaq's IPO Win Rate History

IPO Win Rate



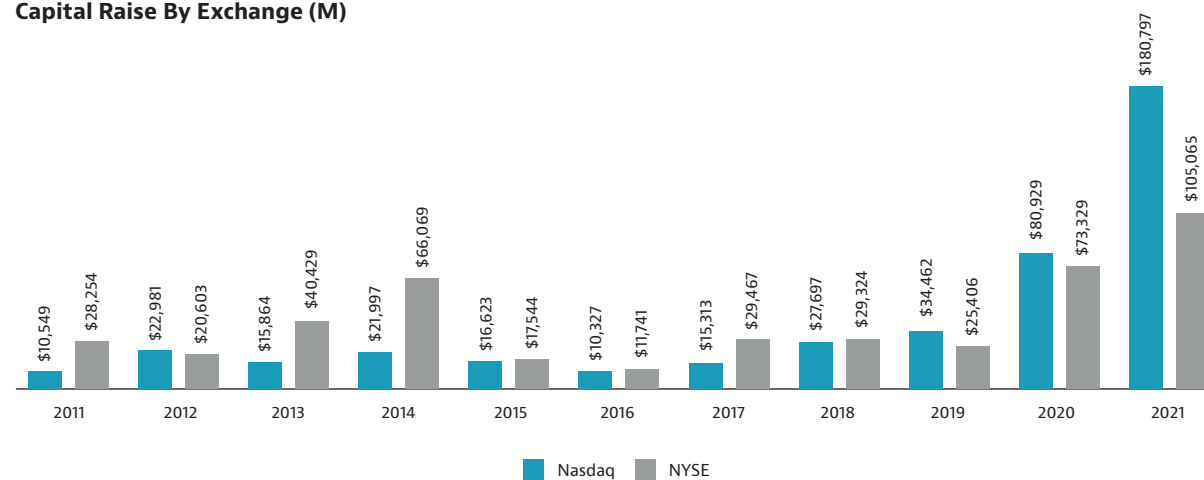
EMEA IPO Win Rate



2019 – 2021 exclude SPAC IPOs

IPO Capital Raise History

Capital Raise By Exchange (M)



Registration with the US Securities and Exchange Commission

Additional Nasdaq Stock Market Listing Requirements

- Although US *domestic companies* that list on Nasdaq Stock Market are required to comply with certain corporate governance requirements, a Swedish company may in general follow Swedish corporate governance requirements instead of those required by Nasdaq Stock Market, subject to certain exceptions. Companies choosing to follow Swedish corporate governance practice in lieu of related Nasdaq Stock Market rules must submit a written statement to Nasdaq Stock Market from Swedish legal counsel certifying that the company's practices are not prohibited by Swedish laws and/or if the company is prohibited from complying with certain rules.
- As part of the US listing, a depositary bank will issue ADRs against the company's deposit of its shares. The ADRs (and not the shares) are listed and traded on Nasdaq Stock Market. US-listed ADRs are settled and cleared through The Depository Trust Company, or the DTC (the US equivalent of Euroclear Sweden for Nasdaq Stockholm-listed shares).
- When a company offers and sells securities in the United States by means of ADRs, the bank acting as depositary will be required to file a short-form registration statement (Form F-6) with the SEC covering the ADRs, which are treated as a second security in addition to the underlying shares. The depositary handles this part of the process.

"Foreign Private Issuer" and Emerging Growth Company

Under the US rules, a non-US company will typically qualify as being a Foreign Private Issuer ("FPI"), which allows the company to adhere to a listing procedure with certain simplified requirements. For example, the disclosure requirements are lower, the company may continue to rely on the Swedish corporate governance requirements and the subsequent periodic reporting as a company listed on Nasdaq Stock Market are more streamlined. Swedish companies generally qualify as FPIs.

The company may also qualify as being an Emerging Growth Company, the main requirement of which is that the company has less than \$1.07 billion in revenues during its most recently completed financial year, which gives similar benefits to being a FPI as well as some additional flexibilities, such as the shorter period of historical financial statements initially required by the SEC, as discussed below. Emerging Growth Companies accounted for approximately 90% of recent US IPOs.

Financial Information Requirements

In addition to the Nasdaq Stock Market-related requirements for listing, the company must register the class of securities it intends to list with the SEC by filing a registration statement (on Form 20-F). If there is a capital raising in connection with the listing, this registration would occur via a registration statement relating to the offering itself (typically on Form F-1 for an initial US listing), which would include a prospectus. The SEC registration statement (on Form 20-F or Form F-1) must include certain specified historical financial data.

- Assuming the company is an Emerging Growth Company it will be required to include its most recent two years of audited financial statements, while a company that is not an Emerging Growth Company has a requirement of three years of audited financial statements.
- The consolidated financial statements, audited by an independent auditor and accompanied by an audit report. Any audited financial statements included in a registration statement or annual report must be prepared in compliance with US GAAP or IFRS (as issued by IASB), and an auditor's certification to the same must be provided. In most cases, there will be no material difference between financial statements prepared in accordance with IFRS (as issued by the IASB) and IFRS (as adopted by the European Union). However, the audit report covering the historical financial statements will need to be reissued to state compliance with IFRS (as issued by the IASB) in order to meet SEC requirements.
- The most recent audited financial statements generally may not be older than 15 months at the time of the dual listing, and, in the case of an IPO, may not be older than 12 months.
- Reviewed (but not audited) consolidated interim financial statements will generally be provided for the most recent interim periods that are available, and will be required if the registration statement becomes effective more than nine months after the end of the most recent audited financial year.
- A statement regarding capitalization and indebtedness must also be included in the registration statement.
- If the registration with the SEC and listing on Nasdaq Stock Market is being made pursuant to an IPO, then financial information regarding proceeds and use of proceeds may also be required.
- There may also be a requirement for pro forma financial information if there have been material acquisitions or dispositions. The SEC threshold for triggering these pro forma requirements is if an acquisition/disposal has an effect of 20% on certain of the listed company's key financial measures, compared to the EU/Swedish threshold of 25%.

Other information that must be included in the Form 20-F or Form F-1

The SEC registration statement will also include disclosures that would be substantially similar to what would be included in a Swedish prospectus. There will be a number of additional technical sections, many of which will be drafted by the legal counsel (such as a description of US tax implications). Disclosures that may be new or more detailed may include:

- Management's discussion and analysis of financial condition and results of operations.
- Officers' and directors' background, compensation, management options and interests in transactions with the company.
- Corporate governance policies and practices, disclosure controls and internal accounting controls as assessed by management.
- Off-balance sheet arrangements, contractual obligations and contractual commitments.
- Exchange controls and tax and other foreign governmental limitations affecting US shareholders.
- Changes in the company's certifying accountant and ADR fees and payments.

It is of critical importance to note that in addition to the prospectus included in the registration statement, there are a number of required exhibits, including material contracts in their entirety, which must be filed and ultimately become public. Although it is possible to redact various specific items within those material contracts, the fact that these material contracts ultimately become public must be considered carefully.

SEC Filing and Related Processes

Substantially all filings with the SEC must be made electronically through the SEC's electronic EDGAR system.

Swedish companies may make the initial filing (and all but the final draft) of its registration statement with the SEC on a confidential basis. The draft registration statement (and all amendments responding to the SEC's comments on the confidential filing) will subsequently be made publicly available on the EDGAR system.

The SEC will review and comment upon the registration statement. The company will respond to these comments by confidentially submitting amended registration statement(s) until all comments from the SEC are cleared. At that point, the company will make a public filing with the SEC and request that the SEC declare the registration statement effective.

The SEC will not declare the registration statement effective until the US Financial Industry Regulatory Authority, Inc. (FINRA) clears the underwriting arrangements for any related public offering.

After the SEC declares the registration statement effective, the offering will formally launch and sales will commence.

Process

In preparing the SEC registration statement, the parties and their advisers will wish to carry out a US due diligence exercise in order to establish a due diligence defense to potential US federal securities law liabilities (as discussed below) and to ensure that the registration statement is free of material misstatements and omissions. A US due diligence exercise will require the involvement of US lawyers and may be broader in scope and involve further and more detailed follow up questions and investigations than would be the case in a typical offering in Sweden.

In addition, from the time the company decides to make a public offering in the US, throughout the SEC's confidential review process, the company must not engage in publicity for the offering or that may stimulate interest in the company or its securities (although certain "test-the-waters" communications with US investors are permissible in specified circumstances). These restrictions on publicity are stricter than for a similar IPO in Sweden. After the registration statement is filed publicly, but before the securities are all distributed to investors and final prospectuses delivered, the company must continue to restrict its public communications and use of offering-related materials. Normally, the listing process takes 4-6 months to complete.

The company and its retained underwriters will also negotiate and enter into various transaction agreements, such as an underwriting agreement and a deposit agreement, and the legal advisors will issue various legal opinions.

Trading will begin provided that Nasdaq Stock Market has approved the company's application for listing and the SEC has declared the company's registration statement effective (which is similar to an approval of a prospectus by the Swedish FSA, but the SEC declaration occurs later in the process, in connection with the outcome of the bookbuilding/transaction being announced to the market).

Transaction structure

The only IPO in the United States by a Swedish company whose shares were already listed on Nasdaq Stockholm is Calliditas Therapeutics AB (publ). In connection with a secondary listing, the company and the underwriters may elect to structure the offering in two ways:

1. Simultaneously with the public offering and listing in the United States, a private placement to investors outside of the United States is made.
2. The offering is completed solely in the United States with no concurrent private placement outside the United States.

Subsequently, and provided that the size of the offering is large enough, a Swedish listing prospectus is completed for purposes of listing the shares offered in the US public offering and, if applicable, the non-US private placement on Nasdaq Stockholm (see further below on page 17) under "Disclosure Requirements".

The settlement process, especially in connection with a combined US offering and a non-US private placement, must be prepared and scheduled in detail well in advance. There will be several stakeholders involved, different time zones, several settlement systems, multiple transfers of funds and securities, registration procedures with authorities, currency aspects and multiple trading venues why the relevant steps both in Sweden and in the United States must take place in a certain sequence. An experienced legal advisor knowing both the Swedish and the US legal system and market is of crucial importance.

Stabilization

As the final offering price typically will be decided the evening before the first day of trading on Nasdaq Stock Market in New York (i.e. early morning Swedish time), ordinary trading on Nasdaq Stockholm will normally commence before Nasdaq Stock Market opens and the initial trading begins. The stabilization aspects in a dual listing, particularly where there are time

zone differences, must be considered carefully early in the process.

Any stabilization that takes place must be reported to the market in accordance with the reporting obligations set out in the EU Market Abuse Regulation.

Timetable

The following is a fairly typical process and timetable for a listing of either a domestic or foreign private issuer on Nasdaq Stock Market via an underwritten public offering in the US.

	Month 1	Month 2	Month 3	Month 4	Month 5
Planning meeting	■				
Drafting preliminary US prospectus	■ ■ ■ ■ ■				
Initial filing with the SEC (confidential in certain circumstances)		■ ■ ■ ■ ■	■		
File with, and address comments from, Nasdaq			■ ■ ■ ■ ■		
Address comments from the SEC				■	
File preliminary prospectus on EDGAR and print	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■
Auditors work on financial statements and comfort letter	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■
Ongoing legal work	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■
Swedish listing prospectus	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■
Due diligence by underwriters, including review sessions with management, counsel and auditors	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■ ■ ■ ■ ■	■	
Preparation of marketing documents/road show presentation				■ ■	
Investor presentations				■ ■	
Institutional one-on-one meetings					■
Pricing, closing, listing and settlement					■
Possible exercise of underwriters' overallotment option					■

Research

Typically, in a European IPO, a presentation will be made to connected analysts, who will subsequently produce pre-deal research in connection with the offering. In a US public offering, while it is theoretically possible to have pre-deal research, this is typically not done in light of liability concerns in the United States.

Companies whose shares are already listed outside the United States (e.g. on Nasdaq Stockholm) will likely already have coverage by analysts on an ordinary course basis. The Securities Act provides a safe harbor that is

generally available to foreign private issuers with an aggregate worldwide market value of its voting and non-voting common equity held by non-affiliates of \$75 million which is listed on a designated offshore securities market (which includes Nasdaq Stockholm). On that basis, research analysts already covering the company could continue to issue research reports in the ordinary course, although this is typically not done during the pendency of the offering due to the abovementioned liability concerns.

Liabilities associated with the Registration Process

Under US securities laws, it is unlawful for any person to make any material misstatements or omissions in connection with the purchase or sale of securities. The following offering participants have potential liability for material misstatements in, and omissions from, the registration statement:

- the company;
- underwriters (investment banks);
- members of the company's board of directors;
- any person who signs the registration statement (which may include the chief executive officer and principal financial and accounting officers);
- controlling shareholders of the company; and
- any experts (i.e., accountants, appraisers, etc.) who agreed to act as experts with respect to the registration statement.

However, each of them (other than the company itself) may be absolved from such liability if they exercise "due diligence" in connection with the preparation of the registration statement. To avail itself of a due diligence defence, a defendant must generally establish that he/she had, after reasonable investigation, reasonable ground to believe that the information in the registration statement was correct and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that he/she did not know, and in the exercise of reasonable care, could not have known of the untrue statement or omission. Consequently, underwriters will often require "comfort letters" to be provided by the company's auditors and "disclosure letters" to be delivered by legal counsels to the company and underwriters to help establish their due diligence defence.



After the Listing

- Life as a company listed on Nasdaq Stock Market

In addition to Swedish requirements applicable to companies already being listed in Sweden, as a publicly listed company in the United States, a company would be required to comply with a number of ongoing obligations:

Periodic Reporting Requirements

Annual report on Form 20-F. A Swedish company is required to file its annual report on Form 20-F within four months after its fiscal year end. Form 20-F requires substantially the same information and exhibits as are required in the SEC registration process.

Reports on Form 6-K. A Swedish company is also required, from time to time, to provide reports to the SEC on Form 6-K, including any information that:

- it makes public pursuant to the law of its home country;
- it files with any non-US stock exchange on which its securities are listed and that is made public by the exchange; or
- is distributed to its security holders.

This information could concern changes in management or control, acquisitions or dispositions of a material amount of assets, changes in the certifying accountants, the company's

financial condition and results of operations, material legal proceedings, or any other information deemed to be important.

Nasdaq Stock Market also requires listed companies to provide reports on Form 6-K that include certain financial information for the first six months of the fiscal year as well as to provide voting materials to US shareholders.

Nasdaq Board Diversity Disclosure

Nasdaq's Board Diversity Rule, which was approved by the SEC on August 6, 2021, is a disclosure standard designed to encourage a minimum board diversity objective for companies and provide stakeholders with consistent, comparable disclosures concerning a company's current board composition.

Nasdaq's Board Diversity Rule requires companies listed on its U.S. exchange to:

- Publicly disclose board-level diversity statistics using a standardized template; and

- Have, or explain why they do not have, at least two diverse directors, including one female AND one underrepresented individual or two female directors.

If an issuer has five or fewer directors, the company can meet the diversity objective by including one diverse director who is either female or an underrepresented individual.

The Rule defines an "underrepresented individual" as a person who self-identifies as an underrepresented individual based on national, racial, ethnic, indigenous, cultural, religious, or linguistic identity in the country where the Foreign Issuer's principal executive offices are located.

Additional information is available here: <https://listingcenter.nasdaq.com/assets/Foreign%20Issuers%20Listing%20on%20Nasdaq.pdf>

Sales and Resales of the Company's Securities

Private placements. Generally, offers and sales of securities in the US must be registered with the SEC unless an applicable exemption is available. However, companies can use an exemption from registration if the offering is made to a limited number of investors who are sophisticated and capable of evaluating the merits and risks of the investment. The availability of an exemption from SEC registration under the Securities Act does not provide an exemption from the antifraud provisions of US federal securities laws in connection with the offering, nor does it eliminate the obligation to list the additional securities on Nasdaq Stock Market.

Restrictions on sales by affiliates. The Securities Act limits the extent to which officers, directors, and other control persons of a company can sell their securities publicly in the US. Generally, in the absence of any available exemption, none of the principal officers or

directors of a public company may sell their shares in the US market unless there is a currently effective registration statement covering such shares. However, under Regulation S, sales by officers and directors of a FPI of ordinary shares through ordinary brokerage transactions on most major non-US stock exchanges are unrestricted by US federal securities laws.

Insider trading. Public companies and their "insiders" (i.e., officers, directors, and controlling persons) have potential liability if they fail to deal fairly with investors with respect to matters that could affect the price of the company's stock. A public company and its officers, directors, and other insiders must refrain from all transactions in securities of the company during any period when there is undisclosed material information about the company. For this reason, most public companies have formal trading policies applicable to insiders.

Reports of Principal Shareholders and Certain Transactions

Schedule 13D. If a person or group of persons acting in concert (whether US or non-US) acquires “beneficial ownership” of more than 5% of any registered class of voting equity securities (whether ADRs or the underlying shares), reporting/filing requirements will be triggered. “Beneficial ownership” is broadly defined, and includes possession or shared possession of the right to vote, direct the voting, dispose or direct the disposition of voting equity securities. In general, a report on Schedule 13D must be filed within 10 calendar days after an acquisition that brings a stockholder

above the 5% beneficial ownership threshold, and must be amended promptly after any material change in the facts disclosed.

Schedule 13G. Under certain circumstances, Schedule 13G (a less detailed disclosure document) may be filed instead of a Schedule 13D if the beneficial owner holds less than 20% of the class of securities in question and does not intend to acquire control or influence the management and policies of the company. In addition, all holders (whether US or non-US)

of more than 5% of the outstanding voting securities (whether ADRs or the underlying shares) at the time of its public offering in the US would be required to file a Schedule 13G within 45 calendar days after the end of the year in which the offering takes place as long as they continue to hold more than 5% of the outstanding voting securities (after giving effect to the public offering) at year-end. If they acquire additional securities before that time and their beneficial ownership increases by 2% or more, a filing on Schedule 13D or 13G may be required.

General Disclosure

After-market requirements. Public companies are subject to the generally applicable anti-manipulation and antifraud provisions of the Exchange Act. As a result, a public company must ensure that all material information is disseminated uniformly to the marketplace and must avoid activities designed to manipulate the company’s stock price.

Annual reports. Annual reports to shareholders are not required to be reviewed or pre filed with the SEC. The annual report and any other materials distributed to shareholders in

connection with shareholder meetings (e.g., proxy or voting instruction cards) would be furnished to the SEC with a Form 6-K when it is distributed to shareholders.

Press releases. Press releases must avoid misstatements or material omissions. Earnings releases are reviewed by outside counsel and will determine trading “windows” under a public company’s insider trading policy. Earnings releases and other press releases disclosing material information would be furnished to the SEC under cover of a Form 6-K and must be

submitted to Nasdaq’s MarketWatch Department in advance of dissemination (see IM-5250-1).

Meetings with analysts. It is permissible for companies to have individual discussions with an analyst covering general or background information. However, it is important not to release “material” non-public information to even a single person who may purchase or sell securities based upon that information without simultaneously releasing it to the general financial community.

Corporate Governance Requirements

The Sarbanes-Oxley Act sets forth specific corporate governance standards with which an SEC-registered company must comply or face liability. Specific requirements under the Sarbanes-Oxley Act and related rulemaking include:

- **CEO/CFO Certifications.** CEOs and CFOs of FPIs must provide detailed certifications regarding a company's disclosure controls and the accuracy of its financial statements included in Form 20-F. In addition, the management team, with the participation of the company's CEO and CFO, must evaluate and report on the effectiveness of the company's internal controls over financial reporting. FPIs (other than FPIs having a worldwide equity market capitalization held by non-affiliates under \$250 million and revenue under \$100 million) must also provide an "attestation report" of their outside auditors regarding the management report on internal control over financial reporting.
- **Prohibition on loans to executives.** Under the Sarbanes-Oxley Act, it is illegal for companies to make or to continue to effect personal loans to directors and officers (other than loans that were outstanding on July 30, 2002 and certain other exceptions). The rules governing this restriction are very broad and could be deemed to include a wide range of transactions.
- **Insider trades during blackout periods.** Certain directors and officers of a public company are prohibited from trading during so-called retirement plan "blackout periods" in equity securities which are acquired in the course of service or employment with the company.
- **Code of ethics for senior financial officers.** An FPI must adopt and maintain a code of ethics for its CEO, CFO, principal accounting officer, and controller (or persons performing similar functions). Public companies must disclose this code of ethics in their public filings or, if none exists, explain why not.
- **Forfeiture of certain bonuses.** If an FPI prepares an accounting restatement due to its material non-compliance, its CEO and CFO must reimburse the company for any bonus or other incentive-based or equity-based compensation received during the 12 months preceding the initial filing of the incorrect financial documents.
- **Audit committee.** A public company must maintain an independent audit committee charged with responsibility for the company's internal controls, financial reporting and audit functions. The audit committee is directly responsible for the appointment, compensation, and oversight of the company's outside auditor, and the audit committee should be authorized to engage independent counsel and other advisers if necessary. Preferably, one of the audit committee members should be an "audit committee financial expert" as defined in the SEC's rules.

The Dodd-Frank Act also includes key corporate governance provisions and disclosure requirements, including:

- **Independent compensation committees.** For Nasdaq Stock Market-listed US companies, compensation committees (or any board committee performing the functions of a compensation committee) are required to be independent, taking into account certain enumerated factors under the Dodd-Frank Act as well as other criteria required by the exchange. Nasdaq Stock Market-listed Swedish companies are exempt from the Nasdaq Stock Market compensation committee rule provided they disclose in their annual reports why they do not maintain an independent compensation committee.
- **Compensation advisers.** Compensation committees must be adequately funded, have the authority to engage compensation consultants, counsel and other advisers, and be solely responsible for the appointment and oversight of their advisers. In selecting advisers, they are required to consider specified factors potentially affecting the advisers' independence.
- **Whistleblower protection.** This provision creates an elaborate new regime of financial incentives to encourage whistleblowers to present information about securities law violations to the SEC.

Certain "non-legal" implications

In addition to complying with its express obligations under the securities laws, the company will have to adhere to certain rules similar to the obligations to which a Swedish listed company is already subject, but there are some requirements that deviate from the Swedish rules. For example, the US rules are stricter when it comes to dealing with analysts and others interested in the company's financial affairs. Also, indemnification of officers and directors and the availability of directors' and officers' liability insurance coverage will be of concern, particularly to outside directors.

The company's auditors will also be required to register with the Public Company Accounting Oversight Board, or PCAOB, to meet US standards of auditor independence, and to conduct audits of the FPI's financial statements in accordance with US (PCAOB) auditing standards, regardless of the body of accounting principles used to prepare the financial statements. All Big Four auditor firms are registered with the PCAOB.

Swedish aspects of conducting a dual listing on Nasdaq Stock Market

A Swedish company that conducts a dual listing on Nasdaq Stock Market will still remain subject to Swedish/EU laws, rules and regulations (including Swedish listing rules), as well as to the oversight of Swedish authorities. However, conducting a dual listing on Nasdaq Stock Market will also require the company to consider US standards and US stakeholders. As discussed above, this means that the US listing will add an additional layer of applicable rules and regulations with which the company must comply. These can be grouped into three general areas: corporate actions, disclosure requirements and corporate governance.

Corporate actions

As indicated above, a Swedish company listing its shares in the US will have to do so by means of ADRs. In order to get a sufficient free float for the ADRs to be traded on Nasdaq Stock Market (i.e. enough US investors holding ADRs to meet listing requirements and provide for a liquid trading of the instruments), the Swedish company will normally have to convene a general meeting of shareholders and obtain approval to issues new shares, typically by way of an authorization to the board of directors to maintain as much flexibility as possible on timing. The issued shares, in part or in full, will then become the underlying instrument that the ADRs represent.

The shareholder resolution will be structured as an authorization for the company's board of directors to resolve on the share issue. Such authorization is valid until the next annual general meeting so the timing of the resolution must be considered. In addition, a public offering in the US will likely be quite large relative to the company's existing share capital, which may require the adoption of amendments to the company's articles of association. The board resolution

to issue shares in connection with the US public offering will technically be a directed share issue, which will avoid triggering the shareholders' preferential rights.

Disclosure requirements

A Swedish listed company is required to adhere to the EU Market Abuse Regulation and other Swedish regulations applicable for a listed company, and the US listing process does not alter that obligation. Throughout the listing process, it is imperative to keep track of when inside information may arise and make sure that it is handled in accordance with applicable rules and requirements. Press releases disseminating inside information to the market will therefore need to be issued as required throughout the process.

Normally, the newly issued Swedish shares underlying the ADRs will technically be shares of the same class as the shares already traded on Nasdaq Stockholm. The newly issued shares will therefore be formally admitted to trading on Nasdaq Stockholm, but in practice no trading in these shares themselves will be conducted since trading will instead be conducted in the ADRs on Nasdaq Stock Market. The preparation of a Swedish prospectus, in Swedish, admitting the newly issued Swedish shares to trading on Nasdaq Stockholm is required if the issue (taken with all other issues over the preceding 12 months (provided that no prospectus has been prepared for such previous issues, if any)) is < 20% of the same share class already admitted to trading. Typically, the prospectus will be prepared in parallel with the overall US listing process and would align with the information included in the US registration statement. The prospectus will have to be published no later than the admission of the newly issued shares to Euroclear Sweden AB.

Corporate governance

Combining the Swedish/EU and the US framework will normally require updates to the company's corporate governance policies, articles of association and procedures and obligations relating to the disclosure of information to the market. It is advisable to update existing policies and avoid preparing parallel policies addressing the same type of matters. This work stream is normally subject to a close collaboration between the company's Swedish and US legal counsel.

As mentioned above, a US listed company is subject to a number of corporate governance requirements that may differ from those required in Sweden. There are specific US requirements regarding the audit and compensation committees, so the company should confirm its audit committee and compensation committee also meet these requirements or make relevant changes. The company must also meet the requirements of independent director oversight of executive compensation and the director nomination process (as discussed below); code of conduct; shareholder meetings, including proxy solicitation and quorum; review of related party transactions; and shareholder approval, including voting rights.

If the company has share based incentive plans in place, which is very common, it should be confirmed that these will also work from a US point of view.

It is common for US listed companies to provide indemnification for their officers and directors, and the availability of directors' and officers' liability insurance coverage will also be of concern, particularly to non-US directors.

Additional aspects of being a dual listed company

In addition to legal and regulatory aspects of a dual listing, the company must also balance cultural and market practice differences between Swedish/EU investors and US investors. For example:

- the Swedish corporate governance model and certain resolutions that are often passed at AGMs of Nasdaq Stockholm listed companies are sometimes not in line with US practice;
- the fact that trading takes place on two different venues with several hours' time difference will require additional planning for timing press releases and also increase the need for relevant representatives to be available and attend to questions that may arise. As a general rule, press releases must be issued to the market simultaneously, regardless of the time of day.
- the EU Market Abuse Regulation has a more strict regime around how and when inside information must be disclosed;
- there are different restrictions and practices applicable to the use of social media by a US listed company than those for a Swedish listed company; and
- considerations around the structuring of capital raisings since a dual listed company will have two potential trading venues depending on investor preference for either shares on Nasdaq Stockholm or ADRs traded on Nasdaq Stock Market.

Nomination committee

According to the Swedish Corporate Governance Code, a Swedish listed company must have a nomination committee. Such committee is either appointed directly by a shareholders meeting or pursuant to principles adopted at the shareholders meeting.

The process is different in the United States, where nominations to the board are made by the board itself, subject to some safeguards of independence. Under Nasdaq Stock Market rules, director nominees must be selected, or recommended for the board's selection, either by independent directors constituting a majority of the board's independent directors, or by a nomination committee comprised solely of independent directors.



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Appendix

In order to list a primary equity security on the Nasdaq Global Market, the listing must have:

- A bid price of at least US\$4 per share/ADR.
- At least 1.1 million unrestricted publicly held shares.
- At least 400 holders of 100 or more shares, with at least 50% of them holding unrestricted securities with a market value of at least US\$2,500.

Additionally, the company must meet at least one of the following four standards:

- *Income.* The company must have:
 - Annual pre-tax income of at least US\$1 million in the most recently completed fiscal year or in two of the three most recently completed fiscal years.
 - Stockholders' equity of at least US\$15 million.
 - Unrestricted publicly held shares with a market value of at least US\$8 million.
 - At least three registered and active market makers.
- *Equity.* The company must have:
 - Stockholders' equity of at least US\$30 million.
 - At least a two-year operating history.
 - Unrestricted publicly held shares with a market value of at least US\$18 million.
 - At least three registered and active market makers.
- *Market value.* The company must have:
 - Listed securities with a market value of at least US\$75 million.
 - Unrestricted publicly held shares with market value of at least US\$20 million.
 - At least four registered and active market makers.
- *Total assets/total revenue.* The company must have:
 - Total assets and total revenue of at least US\$75 million each for the most recently completed fiscal year or for two of the three most recently completed fiscal years.

- Unrestricted publicly held shares with a market value of at least US\$20 million.
- At least four registered and active market makers.

Other requirements apply to the listing of preferred stock, secondary classes of common stock and rights and warrants.

Continued listing requirements. Nasdaq has the same continued listing standards for its Global Market and its Global Select Market. In order to continue to list primary equity securities on either market, the company must maintain a minimum bid price of US\$1 per share and at least 400 total holders.

Additionally, the company must meet at least one of the following three standards:

- *Equity standard.* The company must maintain:
 - Stockholders' equity of at least US\$10 million.
 - At least 750,000 publicly held shares.
 - Publicly held shares with a market value of at least US\$5 million.
 - At least two registered and active market makers.
- *Market value standard.* The company must have:
 - Listed securities with a market value of at least US\$50 million.
 - At least 1.1 million publicly held shares.
 - Publicly held shares with a market value of at least US\$15 million.
 - At least four registered and active market makers.
- *Total assets/total revenue standard.* The company must have:
 - Total assets and total revenue of at least US\$50 million each for the most recently completed fiscal year or two of three of most recently completed fiscal years.
 - At least 1.1 million publicly held shares.
 - Publicly held shares with a market value of at least US\$15 million.

- At least four registered and active market makers.

In order to continue to list a preferred or secondary class of stock, alternate standards apply.

Nasdaq Global Select Market

In order to be listed on the Global Select Market, a company must meet the listing requirements for the Global Market (outlined above), as well as certain additional requirements outlined below.

Ownership requirements. In order to list a primary equity security on the Global Select Market, the company's securities should have at least one of the following:

- At least 550 total holders and average monthly trading volume over the past 12 months of at least 1.1 million shares.
- At least 2,200 total holders.
- A minimum of 450 holders of 100 or more shares, with at least 50% of them holding unrestricted securities with a market value of at least US\$2,500.

Market value requirement. In addition, there must be at least 1.25 million unrestricted publicly held shares, which must have either:

- A market value of at least US\$110 million.
- A market value of at least US\$100 million if the company has stockholders' equity of at least US\$110 million.

In the case of a company listing in connection with an IPO or a company that is affiliated with (or is a spin-off from) another company listed on the Global Select Market, the security must have a market value of at least US\$45 million. For a company that is registered with the SEC as a closed-end management investment company, the security must have a market value of at least US\$70 million.

Financial requirement. Furthermore, the company must have a minimum bid price of US\$4 per share and meet one of the following four sets of criteria:

- Aggregate pre-tax income from continuing operations of at least US\$11 million over the prior three fiscal years, positive income from continuing operations before income taxes in each of the prior three fiscal years and at least US\$2.2 million in income from continuing operations before income taxes in each of the two most recent fiscal years.
- Aggregate cash flows of at least US\$27.5 million over the prior three fiscal years, positive cash flows in each of the prior three fiscal years, average market capitalization of at least US\$550 million over the prior 12 months and total revenue of at least US\$110 million in the previous fiscal year.
- Average market capitalization of at least US\$850 million over the prior 12 months and total revenue of at least US\$90 million in the previous fiscal year.
- Market capitalization of at least US\$160 million, total assets of at least US\$80 million for the most recently completed fiscal year and stockholders' equity of at least US\$55 million.

A company may list any additional security (for example, other classes of common stock, preferred stock or warrants) on the Global Select Market if that security qualifies for listing on the Global Market and the company's primary security is listed on and is qualified for listing on the Global Select Market.

Continued listing requirements. The criteria for a listed security to remain listed on the Nasdaq Global Select Market are the same as for the Nasdaq Global Select Market, and are discussed above.

Nasdaq Capital Market

In order to list a primary equity security on the Nasdaq Capital Market, the security must have:

- At least 1 million unrestricted publicly held shares.

- At least 300 holders of 100 or more shares, with at least 50% of them holding unrestricted securities with a market value of at least US\$2,500.
- At least three registered and active market makers.

If the proposed listing is for American Depositary Receipts (ADRs), then at least 400,000 ADRs must be issued. Additionally, the security and company must meet one of the following three standards:

- *Equity.* The company must have:
 - A minimum bid price of US\$4 per share or, alternatively, a closing price of US\$3 per share if the company has (i) average annual revenues of US\$6 million for three years, (ii) net tangible assets of US\$5 million or (iii) net tangible assets of US\$2 million and a three- year operating history.
 - Stockholder's equity of at least US\$5 million.
 - Unrestricted publicly held shares with a market value of at least US\$15 million.
 - A two-year operating history.
- *Market value of listed securities.* The listed securities must have:
 - A minimum bid price of US\$4 per share or, alternatively, a closing price of US\$2 per share if the company has (i) average annual revenues of US\$6 million for three years, (ii) net tangible assets of US\$5 million or (iii) net tangible assets of US\$2 million and a three- year operating history.
 - A market value of at least US\$50 million.
 - Stockholders' equity of at least US\$4 million.
 - Unrestricted publicly held shares with a market value of at least US\$15 million.
- *Net income.* The company must have:
 - A minimum bid price of US\$4 per share or, alternatively, a closing price of US\$3 per share if the company has (i) average annual revenues of US\$6 million for three years, (ii) net tangible assets of US\$5 million or (iii) net tangible assets of US\$2 million and a three- year operating history.

- Net income of US\$750,000 from continuing operations in the most recent completed fiscal year or in two of the three most recent completed fiscal years.
- Stockholders' equity of at least US\$4 million.
- Unrestricted publicly held shares with a market value of at least US\$5 million.

In order to list other classes of common stock on the Nasdaq Capital Market, those other classes must meet the foregoing requirements. However, if the company already has a primary equity security listed on the capital market, the other class may meet a reduced set of requirements.

Continued listing requirements. In order to continue to list on the Capital Market, the company must maintain:

- At least two registered and active market makers.
- A minimum bid price of at least US\$1 per share.
- At least 300 public holders.
- At least 500,000 publicly held shares with a market value of at least US\$1 million.
- At least one of the following:
 - Stockholders' equity of at least US\$2.5 million.
 - Market value of listed securities of at least US\$35 million.
 - Net income of at least US\$500,000 from continuing operations in the most recent completed fiscal year or in two of the three most recent completed fiscal years.

In order to continue to list additional classes of stock, a reduced set of requirements must be met.

Continued Listing - Other Criteria

Nasdaq may remove a company's listing for, among other things, violations of its listing agreement with the exchange, loss of its SEC registration for the listed securities, certain insolvency situations, failure to maintain a properly constituted audit committee and similar circumstances. Companies that fail to make their required SEC filings typically lose their listing in short order.