

Aspects for US issuers considering an IPO / listing on Nasdaq in Sweden

Nasdaq

Nasdaq provides platforms for issuers at different stages of the company's growth journey. Nasdaq offers its services in the US, Nordics (Sweden, Finland, Denmark and Iceland) and the Baltics. Nasdaq Nordic supports growth companies through Nasdaq First North Growth Market, and enables them on their way to maturity via Nasdaq First North Premier Growth Market* to Nasdaq Stockholm (the main market).

*Nasdaq First North Premier Growth Market is a segment within the Nasdaq First North Growth Market. Companies included in this segment comply with higher disclosure, governance and accounting standards than those of Nasdaq First North Growth Market.



IPO / listing in Sweden

When planning an IPO on Nasdaq in Sweden some of the factors US issuers seek to benefit from are the access to funding and active trading by both an international and local investor base, the visibility to attract new business partners, and gaining increased credibility and reputation by being a Nasdaq listed company. Many companies benefit from numerous sector peers when listing on Nasdaq. Nasdaq entails a wide coverage of sectors, with particular strength within the different technology sectors.



Choice of jurisdiction for ListCo

It is now possible to do a primary listing of US legal entities on Nasdaq's Swedish markets. The decision whether to opt for listing a Swedish entity or a cross-border listing of a US entity (for example a Delaware company) usually depends on factors such as the existing corporate structure of the issuer, location of management and operations of the issuer and tax structure of the issuer group. Company and shareholder tax aspects are often key when structuring the deal and should be considered early on in the process. In brief and in general, there are no known tax issues relating to listing a US legal entity on Nasdaq.



Presence in Sweden

Nasdaq does not require a US issuer listed in Sweden to maintain presence in Sweden or to keep any original records there. However, it is required that the issuer has capacity to ensure information disclosure to the market during the stock exchange's opening hours. In addition, presence in Sweden could be beneficial to the issuer from a practical, commercial and an investor relations point of view.



Other Listing Requirements

Other applicable listing requirements include the free float requirement of 10% at Nasdaq First North Growth Market and 25% at Nasdaq First North Premier Growth Market and Nasdaq Stockholm (the main market). The complete list of Nasdaq requirements and the rulebooks are found here: <https://business.nasdaq.com/list/listing-options/European-Markets>.



Prospectus or Company Description

For a listing on Nasdaq First North Growth Market it is sufficient to prepare a so called "company description" if the aggregate amount offered in the IPO is less than EUR 2.5m or in case of a "direct listing". A company description is a lighter version of a prospectus.

If the offering of shares to the public is above EUR 2.5m in connection with the IPO, a prospectus approved by the Swedish FSA is required. The prospectus rules also provide optionality for different types of simplified prospectus alternatives for small and medium-sized enterprises (SMEs).

In addition to the prospectus or company description, a so called inclusion statement is required for US companies under Category 3 of Regulation S.



Corporate Governance

Issuers with financial instruments traded on Nasdaq in Sweden must comply with good practice on the Swedish securities market. A listing on Nasdaq First North Growth Market does not require the issuer to comply with the Swedish Code of Corporate Governance. However, if the issuer chooses to list on Nasdaq First North Premier Growth Market or Nasdaq Stockholm, the issuer must apply either the Swedish Corporate Governance Code or the local corporate governance code in the jurisdiction where it is incorporated.

The Board of Directors of the issuer needs to have adequate composition and independent representatives. In addition, all members of the Board and management need to have a general understanding of the stock market rules in order to be eligible for a listing. Such understanding can be acquired by attending a training seminar offered by Nasdaq, or an equivalent training. From a commercial point of view, it is normally advisable, but not a requirement, to engage one or two Swedish board members with Swedish listing experience.

At Nasdaq First North Growth Market (regardless of listing segment), the issuer must appoint a Certified Adviser which guides the issuer through the application process and makes sure the rules are fulfilled as long as the issuer is listed. It is the stock exchange that makes the formal listing decision on Nasdaq First North Growth Market (and Nasdaq First North Premier Growth Market). At Nasdaq Stockholm, a listing auditor is appointed for the listing process and conducts a thorough review of the issuer and provides a report to the listing committee of Nasdaq who makes the formal decision to approve the issuer for listing.



Legal and Tax Due Diligence

In connection with a Swedish IPO, financial and legal advisors are usually retained by the issuer and prior to the IPO, the legal advisor normally conducts a legal, and potentially tax (required on Nasdaq Stockholm), due diligence of the issuer, including an honesty and integrity review of the issuer's Board of Directors and management.

In case of an IPO on Nasdaq First North Growth Market (and Nasdaq First North Premier Growth Market), the Certified Adviser may request to see the outcome of the legal due diligence and in certain cases Nasdaq may require supplementary legal due diligence to investigate specific legal or regulatory issues deemed to be of material importance for the IPO.



General Disclosure and Reporting requirements

The EU Market Abuse Regulation (MAR) and relevant European Securities and Markets Authority (ESMA) guidelines, including its implementing measures, apply to all issuers listed on EU stock exchanges, including on Nasdaq's European markets.

Issuers listed on Nasdaq First North Growth Market are only required to disclose annual financial statements and interim reports on a half-year basis but may choose to disclose interim reports on a quarterly basis. Issuers listed on Nasdaq First North Premier Growth Market must disclose annual financial statements and interim reports/statements on a quarterly basis in accordance with IFRS, as on Nasdaq Stockholm.



Settlement Aspects

From a settlement and structure point of view, a foreign issuer will have Swedish depository receipts (SDRs) listed in Sweden. In this regard, a US issuer must appoint a trustee for purposes of having the SDRs listed in Sweden (with the SDRs also being affiliated with Euroclear Sweden (the Swedish CSD)). In case a Swedish entity is chosen as ListCo, the shares of the Swedish entity will be directly affiliated with Euroclear Sweden and the shares (rather than SDRs) will be subject to trading.



Recent Rule Changes to Allow US Issuers to List

Given the demand for US issuers wishing to list in Sweden, Baker McKenzie assisted Nasdaq in creating new rules and processes for Nasdaq Nordic and its members to allow for US issuers to list in Sweden in a way that remains compliant with US securities law. The rules came into effect on 1 June 2022. In particular, the changes permit offers and sales of shares outside the United States pursuant to Category 3 of Regulation S, while relying on private placement exemptions for appropriate offers and sales to qualified institutional buyers in the United States. Based on Baker McKenzie's unique knowledge of the new rules for US issuers and with IPO expertise both in Sweden and in the US, Baker McKenzie is particularly suited and delighted to assist US issuers considering a listing in Sweden (see contact details below).

Contacts

Baker McKenzie



Joakim Falkner
Partner, Stockholm
Head of Capital Markets EMEA
+46 733 63 22 30
joakim.falkner@bakermckenzie.com



Adam Farlow
Partner, London
Global Chair of Capital Markets
+44 20 7919 1514
adam.farlow@bakermckenzie.com

Nasdaq



Adam Kostyal
Head of Listings – EMEA
+46 8 405 7145
adam.kostyal@nasdaq.com

Nasdaq Nordic Listing Services
+46 8 405 6000
listings@nasdaq.com

The information in this guide is intended for general information only and not as legal advice for any specific purpose. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable listing standards, laws, rules, regulations or forms. Similarly, it does not address any aspects of non-Swedish law to which an issuer may be subject. Every issuer should consult its own advisers (including but not limited to legal and financial advisors).

©2022 Baker & McKenzie Advokatbyrå KB. All rights reserved. Baker & McKenzie Advokatbyrå KB is a member firm of Baker & McKenzie International, a global law firm with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner or equivalent in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.