Notice regarding proposed amendments to the General Terms for Custody Accounts

In preparation for the implementation in Swedish law of the Shareholder Rights Directive II ("SRD II") on 3 September 2020, Nasdaq Clearing AB ("Nasdaq Clearing") will implement new operational and technical procedures to ensure compliance with the new requirements placed on ‘intermediaries’ under SRD II. To make sure that the agreements governing securities that Nasdaq Clearing holds (in the form of margin collateral, default fund contributions and, where applicable, loss sharing pool contributions) are aligned with the new legal requirements, updates and additions have been made in the following agreements:

1. General Terms For Collateral Custody Accounts
2. General Terms For Default Fund Custody Accounts
3. General Terms For Loss Sharing Custody Accounts

In addition, Nasdaq Clearing has taken this opportunity to make a few general updates and clarifications in the agreements.

Please find attached the updated agreements in mark-up against current versions, together with descriptions of the amendments below. In case your organisation would like to request consultation in respect of the proposed amendments, you must do so within five Business Days (by 29 June 2020) by emailing Ida Nordenström at ida.nordenstrom@nasdaq.com.

The proposed amendments will enter into force on 3 September 2020.

SRD II updates
In summary, the following amendments have been made to align with the SRD II requirements:
- Clause 5.5 has been updated to (i) clarify and detail Nasdaq Clearing’s duty to exercise and/or assist a shareholder (Account Holder) in its exercise of rights attaching to the Pledged Securities; and (ii) include a duty of Nasdaq Clearing to answer to or forwards messages, requests or instructions in respect of the Pledged Securities, each as required under applicable law.
- Clause 11.1 (ii) has been amended to add the types of persons Nasdaq Clearing may be required to communicate with under SRD II.
- Clause 12.5 has been amended to clarify Nasdaq Clearing’s obligation to act upon instructions etc. under SRD II.
- Clause 13.2 (vi) has been amended in respect of force majeure events, the purpose of which is to capture a situation where e.g. SWIFT has broken down.
- Clause 16.2 (v) has been added to give Nasdaq Clearing a right to share information in respect of Pledged Securities and their owners as necessary to other intermediaries, CSD and issuers etc. as required under applicable law.

General updates
The following general updates have been made in the agreements:
- ‘Nasdaq OMX’ has been replaced with the current legal name of ‘Nasdaq Clearing’ throughout the agreement.
- The following definitions have been clarified (i) ‘Cash Amounts’ (ii) ‘CSD’, (iii) ‘Securities Account’, and (iv) ‘Sub-custodian’ (note that these are merely amendments to clarify the current set-up, i.e. no de facto changes have been made).
- Clause 4.4 has been amended to (i) clarify the segregation level at the Securities Account level, and (ii) remove the notification of material changes to the investment policy. As per the current arrangement, a summary of Nasdaq Clearing’s up to date investment policy is published on Nasdaq Clearing’s website.
- Clause 5.5 has been amended to clarify that payments deriving from Pledged Securities will be deemed Cash Amounts, in line with other provisions in the agreement.
- Clause 17.3 has been amended to align the procedure for amending the general terms with how rule amendments are made generally under the clearing rules.