Feedback to consultation on Nasdaq First North Growth Market Rulebook

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SUMMARY

Nasdaq wishes to thank all those who took time to respond to the consultation on the Nasdaq First North Growth Market Rulebook ("Rulebook"). In total, 30 responses were received from a range of different market participants, including listed companies, legal and financial advisors, auditors and branch organizations. There were many helpful and well-considered thoughts in the responses received.

A brief summary of the main input received is set out below. Nasdaq has considered all input received and potential improvements that can be made to the Rulebook.
CHAPTER 2 - CHANGES

Rule 2.1.4 - Provide the Exchange with immediate access to all information

Respondents have expressed objection to the removal of the requirement to provide the Certified Advisor with immediate access to all information from the Issuer as is deemed necessary for an assessment of the Issuer’s fulfillment of the Admission Requirement.

Nasdaq would like to clarify that the Issuer’s obligation to provide the Exchange and the Certified Advisor with necessary information is set out in the new Chapter 6 Surveillance actions and Issuer’s obligation to provide information to the Exchange and the Certified Advisor. The Issuer’s obligation to inform the Certified Advisor about the Issuer and its business and to provide all necessary information is set out in section 6.1.2.

As the Issuer’s obligation to provide the Exchange with all necessary information is set out 6.1.1, Nasdaq has decided to delete section 2.1.4 in the Rulebook.

Rule 2.3.1 - Fairness opinion

The consultation draft wrongfully referred to a Fairness opinion. Nasdaq has deleted this reference.

Rule 2.3.6 - Revision of working capital

Several respondents have expressed concern that the requirement to be able to show sufficient working capital for at least twelve months would put a stricter requirement on companies listing on First North Compared to those listing on the Main Market, where companies that are profitable do not need to demonstrate sufficient working capital.

Nasdaq considers the First North Market to be open to younger, smaller, companies compared to those listing on the regulated market. The requirement for all companies, regardless of profitability, to be able to demonstrate sufficient working capital aims to safeguard those investing in such companies. We believe it is important to the investor protection and to the general confidence in the Nasdaq First North that all Issuers have in place working capital for the coming 12 months at the point of the admission to trading. Nasdaq will therefore proceed with implementing this stricter working capital requirement on First North compared to the Main Market.

However, to align the formulation of the requirement on working capital in the Rulebook with equivalent requirement in the Nasdaq Nordic main market Rulebook for Issuers of Shares, Nasdaq will amend provision
2.3.6 a) so that the requirement to demonstrate sufficient working capital applies for the issuer’s planned business for at least 12 months from first day of trading.

Several respondents have expressed concern that the requirement to be able to show sufficient working capital on an ongoing basis (2.3.6 (b)) would put a stricter requirement on companies listing on First North Compared to those listing on the Main Market. Nasdaq does not agree with this point of view since it is in fact a requirement for issuers on both the Main Market and First North to have sufficient working capital on an ongoing basis, otherwise the issuer’s shares can receive observation status, for example. However, since rule 6.3.1(g) provides the Exchange the possibility to impose observation status in case of “material adverse uncertainty in respect of the issuer’s financial position”, it has been decided to remove the proposed rule 2.3.6 (b).

Several respondents have also expressed the need to clarify the concept of sufficient working capital and also pointed to the resemblance of rules on working capital provided in the Commission Delegated Prospectus Regulation 2019/980 as complemented by the ESMA Guidelines. In order to clarify the concept of sufficient working capital Nasdaq will amend the guidance text with a reference to ESMA’s Guidelines 04/03/2021 stating that an issuer shall demonstrate that it is able to access cash and other available liquid resources in order to meet its liabilities as they fall due. The guidance text will further clarify that the requirement can be fulfilled through capital raised in connection with the listing.

**Rule 2.3.7 - Business operations**

Respondents have expressed that implementing a requirement for Issuers to be able to demonstrate ongoing business operations for at least twelve months could make it more difficult to take restructuring measures before listing, for example putting in place a new holding company for listing.

Nasdaq would like to clarify that the requirement aims to ensure that a sufficient operating history exist to enable investors to adequately evaluate and assess the issuer and to make a well-founded investment decision. Nasdaq has clarified in a revised version of rule 2.3.7 that it is the business operations that should have a history of at least twelve months, not the issuer itself. Hence, the revised guidance text reads: *At the time of admission to trading, the business of the Issuer must have been conducted for at least twelve months.*

**Rule 2.3.8 - The Issuer’s organization**

In regard to 2.3.8 b and c, several respondents have expressed concern that a strict three-month requirement for members of the Board and the management will risk having companies not making complementary board elections prior to listing, but shortly thereafter, thereby circumventing the requirement.
Questions have also been raised by respondents on how to interpret the requirement for members of the Board and the management to participate in production of at least one annual or other financial report issued by the Issuer.

Nasdaq has decided to change the original provision 2.3.8 c) into guidance text to rule 2.3.8. b) and added that the requirement is fulfilled if this applies to the majority of the members and the Board and the management.

In regard to 2.3.8 e, several respondents have pointed out that only in unusual circumstances should it be permitted that the CEO is not employed by the Issuer.

While it is normal from, for example, a Swedish company law perspective for a CEO to be employed, there are a number of foreign issuers who list on First North which are incorporated in jurisdictions where, for a range of reasons including tax considerations, CEOs may not be employed but rather engaged in other ways such as on a consultancy basis. Nasdaq does not see it as the role of the exchange to force companies into specific employment setups. Rather, when it comes to a CEO, Nasdaq sees it as essential that a company have such a person in place and that the person in question be sufficiently engaged in the role to ensure that the company has the leadership it needs. From experience, we see that this can be achieved without necessarily requiring that the CEO be employed by the company. Hence, no change has been made to this rule in light of comments received.

**Rule 2.3.9 - Capacity for providing information to the market**

The final version of rule 2.3.9 is re-ordered and simplified compared to the version that was subject to consultation. This re-ordering has been done in an effort to make the rule requirements clearer and also to give a more logical structure to rule 2.3.9. In the final version, rules (a) and (b) are concerned with financial reporting, while rules (c) and (d) are concerned with the issuer’s information provision to the market.

In regard to 2.3.9 a, the requirement in the consultation draft for “adequate procedures, controls and systems” is replaced with a requirement for “organization and staff to manage financial reporting”. It is intended that this new wording makes it more clear to issuer’s what is expected of them when applying for admission to trading. Some respondents had asked for clarification as to whether and when the Issuer is required to inform and contact the Certified Advisor in regard to financial information and market communication. No clarification has been added in this regard since this question is already addressed in the separate rules relating to issuers’ interactions with Certified Advisers in Chapter 6.

In regard to 2.3.9 b, which was 2.3.9 c in the consultation draft, several respondents had expressed that the requirement to publish the financial report might be inconsistent with not disseminating the report to the market. Respondents also asked for clarification of the concept of “one financial report”. Nasdaq clarifies that a financial report can be an annual report, half-yearly or quarterly report, and sees this as the natural
interpretation of the wording “financial report” in the rule. Further, it is the preparation of such a report that is required, not publication or dissemination, a fact which has been clarified in the final draft.

**Rule 2.4 – Subscription and option rights / Other Financial Instruments**

For clarification purposes and codification of existing practice Nasdaq has decided to make additional revisions to section 2.4 on the application for trading in subscription and option rights. This change clarifies and aligns Nasdaq’s treatment of listing of subscription and option rights in each of the countries in which the rulebook applies.

**CHAPTER 3 - CHANGES**

**Rule 3.2 - Content of Company Description vs SME Growth Prospectus**

In the consultation draft, Nasdaq made certain changes to the requirement of the content of the Company Description in provision 3.2. At the same time Nasdaq asked to receive views from the market as to whether Nasdaq’s specific requirements for Company Descriptions should be removed in favor of a reference to the content of a SME Growth Prospectus, i.e. where a company is underneath the prospectus thresholds and is therefore to prepare a Company Description, the content of that Company Description should be the same as a SME Growth Prospectus.

Nasdaq concludes that several respondents support the proposal to align the content of the Company Description that of a Growth Prospectus, while other respondents are hesitant.

One reason for hesitation is that it would be adversary to the objects and the purpose of the Prospectus Regulation to require a Growth Prospectus regardless of the issuer being below the prospectus threshold.

Nasdaq would like to clarify that Nasdaq would still require the issuer to prepare a company description, the content of such company description would simply mirror that of a Growth Prospectus, and not go beyond what is required in a Growth Prospectus. The Financial Supervisory Authorities would in such case not be involved in the review process.

Another reason for hesitation is the risk that Nasdaq's interpretation of information requirements could differ from the FSA’s interpretation of the requirements under the Prospectus Regulation, which could in turn lead to uncertainties and discrepancies in how certain information requirements are interpreted and applied in a company description vis-à-vis an SME Growth Prospectus.
Nasdaq would like to clarify that the same risk already exists with a company description which content is heavily inspired by prospectus requirements. The Nordic FSAs already interpret prospectus requirements somewhat differently between themselves so adding Nasdaq to the picture does not confuse things more. Rather, it allows issuers to plan around a clear set of legislative requirements. Further, Nasdaq will of course seek to follow local FSA interpretations of SME Growth Prospectus rules when reviewing content of company descriptions.

Due to the comments received within the external consultation, Nasdaq will withdraw the proposed changes to provision 3.2 and make a careful review as to whether the requirements for the content of a Growth Prospectus bring additional other requirements that are not required to be included in the Nasdaq’s Company Description, which could lead to the Company Description being a broader document than the current Company Description in practice.

CHAPTER 4 - CHANGES

Rule 4.2.4 - Share Based Incentive programs
Respondents have expressed that the current explanatory note with the description of a typical share-based incentive program is considered to be more clear and precise than the new proposed explanatory note. Therefore, Nasdaq has decided to go back to the current wording of the provision and explanatory note and to delete the proposed amendment.

Rule 4.2.6 - Decisions regarding admission to trading and removal from trading
Respondents have expressed that Nasdaq should specify when the company will be required to disclose having applied for admission to trading. Further, respondents have commented that they find it unclear if the proposed rule to disclose information regarding the application of admitting financial instruments to trading is intended to also apply to unlisted companies initiating an application. As of now most companies disclose the intention to admit their first financial instruments to trading at the time of receiving a conditional approval from Nasdaq.

Nasdaq would like to clarify that the obligation to disclose an application for admission to trading connects to the point in time when, subject to local interpretation, the rulebook becomes applicable according to item 1.1.1 of the rulebook.
**Rule 4.2.7 - Disclosure considered necessary to provide fair and orderly trading**

A comment was made on the scope of the rule on disclosures considered necessary to provide fair and orderly trading. The purpose of the rule is to make it possible for Nasdaq to require the Issuer to disclose necessary information under certain circumstances. Thus, this is not a disclosure requirement for the issuer unless the Exchange has assessed that the issuer shall disclose certain information.

The rule does not apply to situation where the issuer consider it important to inform investors about a specific event when that information does not constitute inside information or is subject to another disclosure obligation. The issuer shall make a concrete and specific assessment in every case of possible inside information, which can mean that the issuer’s guidelines or thresholds for disclosure can be set aside to comply with the disclosure requirements.

In some cases the issuer may find it difficult to communicate certain events that the issuer deem to be important, but not important enough to constitute inside information. If the issuer assess that there is a need for communication with the market about information that is not subject to a disclosure obligation such non-regulatory information shall be published via non-regulatory distribution channels. That also applies even if the issuer, based on known preferences from stakeholders, would have preferred to reach a broader group of recipients by disclosing it as regulatory news.

**Rule 4.3 - Annual financial report and accounting principles**

One respondent have commented that the requirement to include a direct link to the page on the Issuer’s website where the annual financial report is available is stricter then for companies listed on Nasdaq Nordic Main Market. Furthermore, the respondents have expressed that there are no legal requirements for a company listed on First North to disclose the audit annual report, other than to keep it available at the company prior to AGM.

Nasdaq would like to clarify that according to applicable SME Growth Market regulation, Nasdaq is required to, on its website, make available either the issuers’ half-yearly and annual reports or a link to the Issuer’s website where such reports are available.

Nasdaq has chosen to meet this requirement by requiring that the issuer discloses its half-yearly and annual report through a press release, and that such a press release includes a link to the report on the issuer’s website. As the press release must be made available on Nasdaq’s website, the link in the press release is also deemed to be available on our website. Thereby, Nasdaq meets the latter of the above alternative requirements.
Rule 4.5 - Company calendar

Some respondents have pointed out, that the requirement for all dates to remain in the calendar throughout the year should either be clarified or removed.

Nasdaq considers it important that it throughout the year is possible to see when the issuer disclosed its reports and if the issuer did not in fact disclose the reports on the announced dates.

This is partly a codification of existing practice. The issuer is not required to disclose the company calendar in a company announcement, unless the changes refer to a date within the following two weeks. In that case the issuer shall disclose a company announcement. The issuer’s website is the only source of an updated financial calendar (changes may have been made since it was included in a financial report if it even was).

Rule 4.6 - Website

Respondents have expressed that it would be helpful if Nasdaq would clarify what should be interpreted within the concept "its own website" as there is a very wide range of technical, administrative and data/content related services that issuers can use. Nasdaq enforces certain uses of such services whereas it would be valuable for issuers to know where lines are drawn. It would otherwise seem natural that issuers can choose its balance between in-house operations and acquired services, between storage on its own infrastructure and hosted services. It is not self-evident that a web site or a specific section of a web site becomes more robust and resilient if operated by the issuer itself than if it leveraged upon third party tools.

Issuers are required to make all disclosed information available for 5 years and in some cases 10 years depending on the type of information and applicable regulation on its website. This requirement can be found in both legislation and in the Exchange’s rules. There are no definition or firm guidelines for what it means that disclosed information shall be available “on the issuers website”. It is the expectation that issuers make available all announcements with regulatory information as well as all attached documents or hyperlinked documents. It is expected that there are separate links to each announcement and each document directly from the issuers website. Depending on the setup it can be acceptable that those links lead to a location outside of the issuers website, for instance on the distribution service provider’s website (but not the Exchange’s website). However it is always the issuer’s responsibility that it is possible to access the announcements and documents. The issuer can also use cloud-services for storage, but it is not acceptable to link to file-sharing.
Other Comments

Market Abuse Regulation

A number of respondents have expressed that they would appreciate a clarification in the Rulebook regarding the specific time/step in the admission process at which Nasdaq considers that an issuer has submitted the necessary documents for the exchange to begin its review of whether the listing requirements are met, whereby the Market Abuse Regulation (“MAR”) is to be applied, and how it relates to rule 2.2.4 in the Stockholm Supplement.

Nasdaq would like to clarify that it is up to the companies and their advisors to assess when MAR applies. Nasdaq does not have the mandate to interpret or publish guidance regarding legislation. Furthermore, the interpretation of the point in time at which MAR shall begin to apply in a listing process varies between the Financial Services Authorities and courts of the four jurisdictions in which the First North Rulebook applies. Hence, no additional rules or guidance have been added in this regard.

Certified Advisors

Nasdaq has not made any revisions to Chapter 5 regarding the Certified Advisers. These rules will be revised within the upcoming revision this fall.