

7 July, 2023

## **RULES ON PRIVATE PLACEMENT OF SHARES**

*These rules express what in some respects are regarded as generally accepted principles in the stock market for private placement of shares, subscription rights and convertibles in Swedish companies whose shares are admitted to trading on a Swedish regulated market. They are also to be applied by Swedish companies whose shares are traded on the Nasdaq First North Growth Market, Nordic SME or Spotlight Stock Market trading platforms.*

### **Background**

The Swedish Companies Act (2005:551) contains regulations regarding the increase of share capital through new share issues. Decisions regarding new share issues – cash or non-cash issues – are made by the shareholders' meeting. A resolution may also be made by the board of directors on condition that it is approved retrospectively by the shareholders' meeting or prior authorisation has been granted by the shareholders' meeting.

For cash issues, Chapter 13 Section 1 of the Companies Act states that shareholders have preferential rights to the new shares in proportion to the number of shares they own.

Resolutions on cash issues with preferential rights for shareholders are made by simple majority of the votes cast at the shareholders' meeting unless otherwise stated in the company's articles of association. The same applies to shareholders' meeting resolutions to approve board decisions on such issues and resolutions authorising the board to make such decisions.

Chapter 13 Section 2 of the Companies Act states that the preferential rights of the shareholders in a cash issue can be overridden by a provision in the issue decision. Such a provision may give the right for one or more shareholders or third persons to subscribe instead or make the right to subscribe exclusive to a particular group, such as institutional investors. This is defined as a private placement. The issue decision may also mean that no preferential rights exist, and shareholders and third parties may participate in the issue on equal terms.

Any decision to issue which deviates from the shareholders' preferential rights requires a qualified majority, two-thirds of both the votes cast and the shares represented at the shareholders' meeting. The decision may also be made by the company board, on condition that the decision is subsequently approved by the shareholders' meeting or that prior authorisation has been granted by the shareholders' meeting. Prior authorisation by the shareholders' meeting may include restrictions or conditions regarding the board's future issue

decision. The corresponding requirement for a qualified majority applies in these cases. This does not apply to share issues regulated by Chapter 16 of the Companies Act, which require a nine tenths majority of both the votes cast and the shares represented at the shareholders' meeting and may not be decided upon by the company board with the support of prior authorisation by the shareholders' meeting.

In the event of a decision on a private placement of shares, the fourth paragraph of Chapter 13 Section 4 of the Swedish Companies Act states that the reasons for the deviation and the basis for the subscription price are to be stated in the proposal or an attachment to the proposal. If an issue, whether decided upon by the shareholders' meeting or the board of directors, is liable to result in undue advantage for any shareholders or other parties to the detriment of the company or any other shareholder, the issue decision is in breach of the general clause of the Companies Act. It is the board that is responsible for assessing what constitutes acceptable reasons for waiving the shareholders' preferential rights and the basis for the subscription price, and thus for ensuring that the issue does not contravene the general clause.

The Companies Act's provisions on the issue of shares apply where relevant to both private and public limited companies. The equivalent rules apply for the issue of subscription rights and convertibles.

### **Generally accepted principles**

From the perspective of generally accepted principles in the stock market, it is normally acceptable that a new issue deviates from the shareholders' preferential rights on condition that it is objectively regarded as in the shareholders' interest to deviate from preferential rights in the particular circumstances of the individual case. Examples of reasons for such a deviation are that the issue runs the risk of not being fully subscribed; the costs of the process, (including any underwriting); the timing of the issue, (including exposure to share price fluctuations in the stock market); that the issue is part of a transaction, such as an acquisition or a partnership agreement; or the desire to, in the company's interest, bring one or more new shareholders into the company, for instance as a basis for future capital acquisitions or the shareholders' interest in improving the liquidity of the share. It may also be the case that the issue is of a financial instrument that has been deemed particularly suitable for a certain type of investor. The fact that private placements of shares are normally more time and cost effective than preferential issues cannot in itself be considered an acceptable reason for deviating from preferential rights when it comes to generally accepted principles unless the time and cost saving is objectively significant enough for the company in the individual case. An issue that is directed to one or more existing shareholders, or to a group that includes one or more existing shareholders, is not in itself incompatible with generally accepted principles in the stock market. That depends on the circumstances of the individual case.

If the board of directors proposes a new share issue to the shareholders' meeting, or makes such a decision following authorisation by the shareholders' meeting, it is the board's responsibility, given the circumstances of each case, to suggest or decide on the date and

terms of the issue, including the issue price, in a way that ensures the issue's competitiveness. The market price of newly issued shares may differ from the market price of shares already issued. If, for example, an issue is aimed at institutional investors in the capital market and priced within the framework of an adequately designed and conducted book building process<sup>1</sup>, there is normally no reason to doubt that a price set in this way is the market price of the shares, whether it is lower or higher than the current stock market price of the company's shares. The same applies if the price determined through an arm's length negotiation between the company and the investor or through an independent valuation. Share prices for new issues that are set in such ways are normally acceptable from the perspective of generally accepted principles in the stock market. Particular attention should be paid to ensuring that no undue advantage for shareholders to the detriment of other shareholders arises, for example when only price indications from shareholders are used as a basis for determining the issue price or when shareholders receive a large allocation in the issue compared with new investors.

### **Information in connection with a decision on a private placement of shares and its outcome**

The company must clearly inform the shareholders and the stock market of the following in a press release regarding the board's proposal or decision regarding the issue:

- 1. The reasons for the deviation from the shareholders' preferential rights.* The reasons must be explained in such a way that the statement enables the shareholders and the market to assess the board's decisions on matters that it is obliged to consider according to the Companies Act and generally accepted principles in the stock market given the prevailing circumstances in the specific company. If, for example, the deviation is justified by reasons of time and cost efficiency, it should be clear from the press release why the time and cost savings, and where applicable the other reasons, justify deviation from the shareholders' preferential rights. If the issue is directed at certain specific investors, it must be stated why these particular investors are being granted the right to subscribe.
- 2. How the issue price has been determined or is to be determined and how a fair market price has been or is to be ensured.* If the issue price has been determined or is to be determined through a book building procedure or with the aid of an independent valuation, this must be stated in the press release. If it is stated in the press release that the issue price has been determined or is to be determined through some other procedure, e.g. through negotiation, it must also describe how a fair and reasonable market price has been ensured or is to be ensured in this specific case.

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<sup>1</sup> The requirement that the bidding procedure be adequately designed normally entails that it has been publicised, that it is possible for a large group of investors to register interest in participating in the issue, (e.g. qualified investors), and that the procedure involves enough participants to be able to determine a fair price.

In the press release regarding the outcome of an issue, it is to be stated who purchased the shares through the issue. In this respect, a distinction can be made between two principal cases:

- a. If the issue was conducted through a book building procedure, it is sufficient to state that the subscription occurred in accordance with that procedure and to which investor categories the share subscribers belong. If existing major shareholders have subscribed to a not insignificant share of the issue, these are to be named.
- b. If the issue is directed to certain pre-determined investors, it is to be stated who these are. If one or more specific existing shareholders are included in this group, the reasons for this are to be stated.

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It is the responsibility of the Swedish Securities Council, (Aktiemarknadsnämnden), which along with the Stock Market Self-Regulation Committee (Aktiemarknadens självregleringskommitté) is to promote generally accepted principles in the Swedish stock market, to issue statements and rulings on the interpretation and application of these rules. The rules are to be interpreted and applied in a manner consistent with their purpose. Any uncertainty regarding the meaning of a provision in an individual case should be resolved by contacting the Swedish Securities Council.

These rules are applicable to share issues announced on or after 1 September 2023.