



**21 November 2014**

## **PRIVATE PLACEMENT OF SHARES**

*This recommendation expresses what is regarded as generally accepted principles in the stock market for private placement of shares, convertibles and warrants in companies whose shares are admitted to trading on a regulated market or traded on the First North, Nordic MTF or AktieTorget trading platforms.*

The Companies Act contains regulations regarding the increase of share capital through new issues. Resolutions regarding new 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, shareholders have preferential rights to the new shares in principle 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 resolutions to approve board resolutions on such issues and resolutions to authorise the board to make such resolutions.

The preferential rights of the shareholders at a cash issue can be overridden by a provision in the issue resolution. Such a rule may contain the right for one or more shareholders or third persons to subscribe instead, or that the right to subscribe is restricted to a particular group, such as institutional investors. This is defined as a private placement. The issue resolution may also mean that no

preferential rights exist, and shareholders and third parties may participate in the issue on equal terms.

Any resolution 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. (This does not apply to share issues regulated by Chapter 16 of the Companies Act, which require a specially qualified majority.) The resolution may also be made by the Board, on condition that the resolution is subsequently approved by the shareholders' meeting or that prior authorisation has been granted by the shareholders' meeting. The corresponding requirement for a qualified majority applies in those cases. An authorisation to the board to resolve on a new share issue may impose restrictions or conditions for the Board's future issuance resolutions.

If an issue, whether decided upon by the shareholders' meeting or the board of directors, is intended to result in an unfair advantage for shareholders or other parties to the detriment of the company or another shareholder, the issue decision contravenes the general clause of the Companies Act.

The Companies Act provisions on the issue of shares apply where relevant to both private and public limited companies. The same rules apply for the issuance of warrants and convertibles.

From the perspective of the generally accepted principles in the stock market, cash issues are to be conducted primarily with preferential rights for the shareholders. On condition that it is permissible according to the Companies Act, i.e. it is objectively regarded as in the shareholders' interest to deviate from preferential rights, it is also normally acceptable with regard to generally accepted principles in the stock market that a cash issue deviates from the shareholders' preferential rights. Reasons for such a deviation may include that the issue runs the risk of not being fully subscribed, the costs of the process (including any underwriting), timing (including exposure to fluctuations in the

stock market) or a desire in the company's interest to bring one or more major shareholders into the company. It may also be the case that the issue is a financial instrument that has been found particularly suitable for a certain type of investor.

A new share issue that is aimed at one or more shareholders, or to a group which includes one or more shareholders, is in itself neither incompatible with the general clause nor with generally accepted principles on the stock market. Its compatibility depends on the circumstances of the particular case. Special attention should be paid to ensure that no unfair advantage to any shareholders occurs that is to the detriment of other shareholders.

If the board of directors proposes a new share issue to the shareholders' meeting, or makes such a resolution following authorisation from the shareholders' meeting, it is the board's responsibility, given the circumstances of each case, to suggest or resolve on the date of issuance 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 auction process, there is normally no reason to doubt that the price 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 is determined through a negotiation at arm's length between the company and the investor. 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.

In its press release on the board's proposal on or resolution concerning the share issue, the company is to inform the shareholders and the stock market in a detailed and clear manner about the reasons for deviating from the shareholders' preferential rights, as well as explaining how the issue price has been set or will

be determined and how the competitiveness of the share issue has been or will be ensured.

It is the responsibility of the Swedish Securities Council, (Aktiemarknadsnämnden), which along with the Swedish Corporate Governance Board is to promote generally accepted principles in the Swedish stock market, to issue statements on the interpretation and application of this recommendation in individual cases.

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This recommendation applies to issues announced on 1 January 2015 or later.