



## **Nordic regulations on the Nordic Exchange**

An important question that has arisen with the announcement of the combination of OMX and NASDAQ is whether this will lead to the obligation for the Nordic Exchange, its members and listed companies to follow US regulations. It's a fair question and one that the OMX board and management has carefully analyzed and considered with the announcement of the combination on 25 May. OMX would not have taken this course unless we were fully convinced that the combination with NASDAQ would not lead to the obligation of the Nordic Exchange, its members or listed companies to follow US regulations against their will.

It is important to remember the motivation behind the combination with NASDAQ, which is to create opportunities for the Nordic Exchange and increase visibility for the listed companies and therefore increase trading in these companies. Increased trading will help to increase the value of the companies and thus contribute to the region's growth. At the same time, the combination with NASDAQ will give members more possibilities for trading, in more liquid products. The combination with NASDAQ makes it possible for OMX to continue to be the most price competitive marketplace, which NASDAQ is and always has been in the US. All of this is naturally good for the Nordic Exchange's members and listed companies. The proposed combination is a forward looking move to create opportunity on a financial market that is all the more global.

Won't these opportunities also mean that US regulations become applicable in the Nordic region?

The issue of the applicability of US regulations to Europe is not new. In connection with the NYSE Euronext merger, the SEC provided an opinion (see <http://www.sec.gov/news/press/2006/2006-96.htm>). The SEC states that the ongoing globalization of the financial markets is a phenomenon that has the potential to benefit investors. It also maintains that a foreign, non-American exchange could integrate with an American exchange without falling under the SEC's jurisdiction, nor should the listed companies or trading on the foreign, non-American exchange fall under the SEC's purview. On the other hand, listed companies and brokerage firms would fall under SEC jurisdiction should they choose to list or become members on an American exchange. This is nevertheless an active and free choice.



The SEC further states that the American Sarbanes Oxley legislation would not be applied to companies listed on a foreign, non-American exchange. In connection with that, we want to point out what OMX and NASDAQ have maintained about the integration of the Nordic Exchange, namely that the individual countries' exchange licenses will be upheld. In Sweden, Denmark, Iceland, Finland and the Baltic States, there will remain a legal entity in each respective country with the license to operate the exchange in that country. The structure of the Nordic Exchange will also remain after the combination with NASDAQ and therefore the ability for regulators and authorities to govern and supervise the licenses.

In negotiations about the combination with NASDAQ, OMX has held discussions with the SEC to get assurances that the SEC has not changed the position it made public in June 2006. In these discussions with OMX, the SEC has confirmed its position. It is worth noting the development of the SEC over the past five to ten years. The SEC has gone from a relatively introverted and indifferent view on globalization and the development of financial markets to more constructive measures that promote globalization. Specifically as a consequence of this, the regulations in Europe and the US have started to converge in recent years. At the same time, the development in Europe has been towards more regulation initiated from the EU level and less from the individual markets.

NYSE and Euronext have adopted for their part, regardless of the SEC, a board structure that could step in and take over the exchange operations in the case that for example US legislation substantially and negatively affects the Euronext exchange operations. Why hasn't OMX and NASDAQ presented a similar structure? There are a number of reasons that OMX and NASDAQ have chosen not to do this, the most important being that the NYSE Euronext board structure was devised primarily to assuage political demands and not for solving a real risk. It should be noted that no US regulations have been applied to Euronext members or listed companies as a consequence of the NYSE and Euronext merger.

When NASDAQ made a bid for the London Stock Exchange, the issue of the applicability of US regulations to the London exchange was also raised. No suggestion was made to adopt the same structure as in the NYSE and Euronext merger. The reason for this was that the risk for US regulatory applicability in Great Britain was seen as non-existent at the time. However, not knowing what the future might hold, a new law was instituted, the "Investment Exchange and Clearing Houses ACT 2006." In brief, with this law, the English supervisory authority was given broader influence. In the case that the London exchange foresaw considerably more consequential regulations on its marketplace, the English supervisory authority would have the possibility to veto



the regulation. Great Britain chose to institute a law for that case in the unforeseen future that the London Stock Exchange should over-regulate its marketplace. The likelihood for over-regulation of the financial markets in Europe and the US is deemed to be very low given the ongoing convergence, a convergence that is being driven by, among other things, the introduction of Reg NMS in the US and MiFID in Europe. Reg NMS and MiFID both have the overriding aim of increasing competition on financial markets and protecting investors. NASDAQ had nothing against the institution of the new law in Great Britain in that situation. The Swedish State can theoretically choose to adopt a similar law, even if most see this as unnecessary – given the globalization of financial markets.

Above, we have taken a close look at US legislation concerning the financial industry. But what about the broader US regulatory framework? Will this affect the Nordic Exchange, its members and listed companies with the combination with NASDAQ? The OMX board and management has also analyzed this issue very carefully, with the support of US expertise in the area. It is OMX's conclusion that the combination with NASDAQ will not result in any increased risk that members and companies listed on the Nordic Exchange would be subject to American lawsuits and processes, such as "class action suits." This assumes naturally that members or listed companies are not also members or publicly listed on an American exchange. Nor will the combination with NASDAQ have any implications as to the type of sanctioning we see in the US today, for example the Patriots Act, OFAC and ISA laws. Simply put, these laws are a means for sanctioning certain countries such as Cuba, North Korea, Syria etc.

Given all the points we have gone through in this article, OMX has concluded that the combination with NASDAQ will mean only advantages for the Nordic financial market and will not result in any increased applicability of US legislation.

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