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The Board of the Securities Market Association has on 30 September 2024 decided to issue the following recommendation on good securities market practice. The recommendation will be applied to directed share issues that are disclosed on or after 1 December 2024. The recommendation has been discussed by the Market Practice Board before its issue.

Directed share issues

A directed share issue is possible when the conditions of the Finnish Limited Liability Companies Act on directed share issues are met. From the perspective of good securities market practice, it is important that the justification for derogating from the preemptive subscription right of shareholders is disclosed transparently and comprehensively.

The press release(s) used to announce the proposal, decision or result of the directed share issue must, in addition to information required by the law and the rules of the marketplace, present at least the following information:

- ***The reason for derogating from the preemptive subscription right of shareholders.***

The facts and circumstances on which the board of directors bases its view on the serious financial reason referred to in the Limited Liability Companies Act must be described to the extent that allows shareholders and investors to assess the factors that influenced the board's decision based on the information presented.

If the reason for the derogating from the preemptive subscription right is the time and cost savings achieved by the directed share issue compared to a preemptive rights issue, the company must specifically justify why the time and cost savings are decisive in terms of the interest of the company and the common interest of all of its shareholders under the circumstances.

If the share issue is directed to certain predetermined individual investors, the company must justify why the shares are offered to these particular investors.

- ***A description of how the subscription price of shares is determined and how it is verified or will be verified that the subscription price is determined on market terms.***

If the subscription price is determined by means of book building or an independent appraiser, it is usually sufficient that this is mentioned. If the subscription price is determined in some other way, such as through negotiations, it is necessary to describe how the company has verified or will verify that the subscription price is based on market terms.

- ***Information about the parties that have subscribed for shares.***

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If the share issue is directed at certain predetermined individual investors, these investors must be named. If these investors include existing shareholders in the company, the justification for this must be provided.

If the directed share issue is executed by means of book building, it is sufficient that the company includes a mention that the subscriptions have been carried out by means of book building and provides a description of the investor groups subscribing to the shares. If a shareholder owning at least 10% of all shares of the company or of the votes afforded by all shares has subscribed at least 10% of the shares offered in the directed share issue in the book building procedure, the company must disclose the name of the shareholder.

If necessary, the Market Practice Board interprets the recommendation and may, in individual cases upon request, provide recommended decisions on the application of the recommendation or on good securities market practice.

Rationale for the recommendation

Scope and purpose of the recommendation

The recommendation is applied to directed share issues involving payment in which the subscription price of shares is paid in full in cash, with the exception of directed share issues in which shares are offered for subscription to the public (such as initial public offerings) or to the company's employees.

The recommendation is applied to Finnish limited liability companies whose shares are admitted to trading on a regulated market in Finland or, at the company's request or with the company's consent, admitted to trading on a multilateral trading facility in Finland.

Where applicable, the principles outlined in the recommendation may also be followed in other types of directed share issues, whether or not against payment, as well as in connection with the issue of option rights and other special rights referred to in chapter 10 of the Limited Liability Companies Act and in directed share issues by non-domestic issuers whose shares are admitted to trading on a regulated market in Finland or, at the company's request or with the company's consent, admitted to trading on a multilateral trading facility in Finland.

The purpose of the recommendation is to provide guidance and promote good securities market practice. The recommendation concerns the disclosure of information related to directed share issues, particularly with respect to the justification for the directed share issue and the determination of subscription price. The recommendation is intended to be followed as is and is not subject to the principle of 'comply or explain'. In addition to the recommendation, disclosures of information must take into account the requirements of the law and the rules of the marketplace.

In addition to the good securities market practice described in the recommendation, the rationale for the recommendation also discusses the content and application practice of provisions of the Limited Liability Companies Act. Conduct in accordance with the description given in the rationale for the recommendation does not, as such, guarantee

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that the directed share issue meets the requirements of the Limited Liability Companies Act. Companies must ensure that the requirements of the Limited Liability Companies Act for directed share issues are met in each individual case.

Announcing a directed share issue

Information related to a proposal or decision on a directed share issue is often inside information referred to in the Market Abuse Regulation ((EU) No 2014/596) and must be disclosed in accordance with the requirements of the regulation. When the information is not inside information, it must be disclosed in accordance with the rules of the marketplace.¹ The rules of the marketplace also describe the information to be disclosed in more detail. In some situations, the provisions of Chapter 8, Section 1(a) of the Securities Markets Act on the disclosure of material related party transactions may also apply.

To ensure shareholders' and investors' access to information, it is important that information about the directed share issue and its justification is made public in a comprehensive and clear manner. Such information referred to in this recommendation or required by the rules of the marketplace includes, among others, information on the justification for the derogation from the preemptive subscription right of shareholders, the purpose of the funds to be raised, the parties subscribing to the shares, the way the subscription price and final subscription price are determined, and other arrangements related to the share issue, such as lock-up agreements. The information must be disclosed to the extent that, on the basis of the information provided, shareholders and other investors can evaluate the factors that influenced the decision of the board of directors. However, the recommendation does not require the disclosure of information that is commercially sensitive to the company.

Depending on the circumstances, the information referred to in the recommendation may be made public in one or several press releases. For example, in the case of a share issue directed at individual subscribers, the terms of which are negotiated with the subscribers, it is often possible to disclose the information referred to in the recommendation with a single release. In contrast, when the subscriptions for the directed share issue are collected in a book building procedure, information about the directed share issue, the justification for derogating from the preemptive subscription right of shareholders and information that the subscription price of shares is determined by a book building procedure must be disclosed before the start of book building. At the end of the book building process and after the subscriptions have been approved, the information referred to in the recommendation about the subscribers to the shares must be disclosed.

It is not necessary to disclose the information referred to in the recommendation at the time when a proposal to grant the board of directors a general authorisation to decide on directed share issues is presented to the general meeting of shareholders. In this case, the information must be disclosed after the board of directors decides on an individual share issue. However, if the proposal to the general meeting to authorise the board to decide on a share issue concerns a specific share issue, the information

¹ Nasdaq Helsinki: Nordic Main Market Rulebook for Issuers of Shares, sections 3.4 and 3.7. and Nasdaq First North Growth Market Rulebook for Issuers of Shares, sections 4.2.2 and 4.2.5.

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referred to in the recommendation must be disclosed before the general meeting, where applicable.

Shareholders' preemptive subscription right and derogation

The starting point of Chapter 9, section 3 of the Limited Liability Companies Act is that shareholders have a preemptive right to new issued shares in the same proportion as they already own shares in the company. If the Company has different classes of shares, the preemptive right must be exercised by offering shares in all share classes in the proportion of the classes and by offering shares in each share class to shareholders pro rata in to their shareholdings in the respective share class. According to section 4 of the same chapter, a directed share issue may derogate from the preemptive subscription right of shareholders if the company has a serious financial reason to do so. Under the Limited Liability Companies Act, in evaluating whether the directed share issue is acceptable, particular attention must be given to the subscription price of the shares in relation to their fair price. The decision on a directed share issue or a decision to authorise the board of directors to decide on a directed share issue must be made by a qualified majority, as referred to in Chapter 5, section 27 of the same Act.

According to the rationale of the provision, raising the necessary capital for the company may require acquiring equity financing from non-stockholders. Directed share issues may be necessary in the financing of acquisitions or in connection with various executive and employee incentive schemes, for example. However, attempts to prevent changes in the proportions of ownership resulting from trading in shares or securing the majority ownership of a specific shareholder are never considered serious financial reasons.²

In corporate practice, serious financial reason is evaluated by means of an overall assessment. In addition to the situations described in the preparatory texts of the Limited Liability Companies Act, factors in favour of the existence of a serious financial reason may include:

- the risk that the preemptive subscription right of shareholders would be largely unexercised,
- the costs of organising the preemptive rights offering (including any subscription guarantee fee) would be substantial in relation to the size of the share issue,
- factors relating to the schedule for carrying out the preemptive rights offering and the management of related market risks,
- the fact that the share issue is an integral part of a larger agreement, such as an acquisition of cooperation agreement, or
- the goal of promoting the interest of the company and the common interest of all of its shareholders by expanding the company's ownership base, such as to meet future capital raising needs.

A directed share issue is usually faster and less costly to implement compared to a preemptive rights offering. However, from the point of view of good securities market

² Government proposal 109/2005, p. 102–103.

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practice, it is not sufficient that the matter is announced on a general level in the disclosure about the share issue. Instead, the company must justify why the saved time and costs are a decisive justification in terms of the interest of the company and the common interest of all of its shareholders under the circumstances.

Principle of equal treatment and directors' duty of care and loyalty

The general principles of Chapter 1 of the Limited Liability Companies Act, in particular the principle of equal treatment (Chapter 1, Section 7) and the duty of care and loyalty of directors (Chapter 1, Section 8) must be taken into account in decisions that concern directed share issues.

Among other things, the principle of equal treatment (Chapter 1, Section 7) prohibits conferring undue benefits to individual shareholders or other persons at the expense of other shareholders. In directed share issues, the requirement of serious financial reason emphasises the significance of the principle of equal treatment. It is necessary to assess on a case-by-case basis whether a directed share issue as a whole is in the common interest of the company's shareholders.³

The subscription price of a directed share issue is also of essential importance from the perspective of equal treatment, as an undervalued directed share issue generally confers benefits to the recipients of the shares at the expense of shareholders whose preemptive right is derogated from. The importance of the requirement of serious financial reason is emphasised the more the subscription price is below the fair price of the shares.⁴

The duty of care and loyalty of directors requires that the board of directors acts in the common interests of the company and all its shareholders in decisions related directed share issues. Acting in the interest of the company includes the duty to act in accordance with the company's purpose and therefore with loyalty to all shareholders.

In cases where there is a factual serious financial reason for a directed share issue for the overall interest of the company, a directed share issue is not, as such, generally contrary to the principle of equal treatment. In unclear situations, whether the proposed share issue violates the equal treatment of shareholders is ultimately determined based on an overall assessment. In these cases, the benefits and disadvantages to shareholders are assessed under company law from the perspective of which, mostly financial, consequences the decision has on them as shareholders.⁵

If the share issue is directed to certain predetermined individual investors, the recommendation requires the company to justify why the shares are being offered to these investors specifically. Successful execution of a directed share issue may in some circumstances require one or more of the company's major shareholders to also participate in the issue. In such situations, it is especially necessary to justify why the issue is also directed to specific existing shareholders.

³ Government proposal 109/2005, p. 102.

⁴ Government proposal 109/2005, p. 103.

⁵ See Supreme Court precedent KKO:2018:19, points 30–32.

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Subscription price in a directed share issue

Under the Limited Liability Companies Act, in evaluating whether the directed share issue is acceptable, particular attention must be given to the subscription price of the shares in relation to their fair price. The Securities Market Association notes that the quoted market price may not, in all situations, fully correspond to the fair price of the share. The subscription price of a directed share issue may be above or below the prevailing quoted market price due to factors including, but not limited to, the size and reasons for the share issue, the liquidity of the share, and market conditions. Any other agreements related to the share issue, such as a shareholder's pledge not to sell shares within a certain time from the share issue (lock-up period) may also affect the pricing of the share issue.

Transparency about how the subscription price of the directed share issue is determined and how it is verified or will be verified that the price is based on market terms supports shareholders' and investors' access to information and ability to assess whether the decision is in the company's interests. The need for transparency is emphasised if the subscription price clearly falls below the prevailing stock exchange rate.

A share issue can generally be considered to be executed on market terms when, for example, the subscription price of the directed share issue has been appropriately determined by means of a book building process for institutional investors.⁶ The same applies in cases where the subscription price is based on an independent valuation.

There are also other ways to verify that the subscription price has been determined on market terms. The board of directors may also consult advisers to help ensure that the subscription price is determined on market terms. Neither the law nor this recommendation requires that the board of directors use the services of an expert, but doing so may support the fulfilment of the board's duty of care and loyalty in cases where, for example, the subscription price is based on the price indicated by the shareholder, or when a significant portion of the issued shares are directed to a major shareholder of the company.

Assessment of good securities market practice in individual cases

The Market Practice Board of the Securities Market Association interprets the recommendation where necessary. Upon request, the Board may also issue recommended decisions on the application of the recommendation or on good securities market practice.

⁶ The book building process is generally considered to be organised appropriately when (i) it is publicly disclosed, (ii) a larger group of investors (for example, qualified investors within the meaning of the Prospectus Regulation (EU) 2017/1129) can indicate interest in participating in the share issue, and (iii) the process involves a sufficient number of participants for the price determination to be considered reliable.