

## Unofficial office translation

To consultation parties as shown on the enclosed list,

### **Consultation on changes to the Continuing Obligations in relation to periodic financial reporting by companies listed on Oslo Børs and Oslo Axess**

This letter sets out proposed changes to the Oslo Børs rules for issuers of shares listed on Oslo Børs or Oslo Axess (the Continuing Obligations) which are now being sent out for consultation. The consultation proposals apply to changes to the current rules on interim financial reporting by issuers of shares.

The proposal is being sent out for consultation to issuers with shares listed on Oslo Børs or Oslo Axess, member firms and other interested parties. We ask that all responses to the consultation are sent to [consultation.financialreporting@oslobors.no](mailto:consultation.financialreporting@oslobors.no) by 15 August 2016.

After taking into account the comments received, a new version of the Continuing Obligations will be produced and distributed. The new rules are expected to enter into force at the same time as the changes to the Securities Trading Act and the Securities Trading Regulations, which are expected to enter into force on 1 January 2017.

The first section of the consultation document provides a short overview of the proposed changes to the Continuing Obligations. The second section sets out the background to the proposals for changes in further detail, while in the third section the considerations of Oslo Børs are described in more detail. The fourth section sets out concrete proposals for new regulations in the Continuing Obligations.

Questions or comments can be directed to Lars Jacob Braarud or Linn Cathrin Slettedal in the Listing Department.

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## 1 Summary of the solutions proposed

As a result of proposed changes to the provisions of the Securities Trading Act in relation to periodic financial reporting by issuers of shares listed on a regulated market, Oslo Børs needs to make changes to the provisions on quarterly reporting contained in the Continuing Obligations.

Current legislation requires issuers of shares listed on Oslo Børs or Oslo Axess to prepare annual and half-yearly reports as well as quarterly reports for each of the four quarters of the year. In response to changes in the Transparency Directive, the Securities Law Committee (*Nw: verdipapirlovutvalget*) has proposed that the Securities Trading Act should only impose a requirement for annual and half-yearly reports. However, this does not prevent Oslo Børs from maintaining a requirement for quarterly reporting in the rules for issuers.

As a result of its own detailed evaluation and conversations with issuers and market participants, Oslo Børs is of the view that there should no longer be formal requirements for issuers with shares listed on Oslo Børs or Oslo Axess to publish quarterly reports, but that quarterly reporting should be the subject of a clear recommendation in the Oslo Børs Code of Practice for IR. This would mean that companies with shares listed on Oslo Axess or Oslo Børs would only be subject to formal requirements for annual and half-yearly reporting. Companies would of course be free to publish more frequent financial reports than required by the minimum requirements. Oslo Børs does not propose the introduction of any specific requirements regarding reporting formats or publication deadlines in relation to financial reports published on a voluntary basis.

If the consultation reveals that the market wants reporting to be mandatory, it is proposed as an alternative solution that there should continue to be a requirement for companies with shares listed on Oslo Børs for which Norway is the home state to publish quarterly reports for the first and third quarters of the year in accordance with IAS 34. For this solution, it is proposed that the current reporting deadline of two months should continue to apply. In addition, it is proposed that the current requirement for companies with shares listed on Oslo Axess to produce quarterly reports should be removed entirely. The current requirement for separate reporting of the fourth quarter would no longer apply.

## 2 Background to the proposed changes

### 2.1 Current legislation

The current requirements in Norwegian legislation for quarterly reporting derive from Section 5-6, last paragraph, of the Securities Trading Act, which authorises the Ministry of Finance to determine requirements for additional interim reporting by issuing regulations. Pursuant to this provision, Section 5-5 of the Securities Trading Regulations introduced a requirement whereby issuers of shares must produce quarterly reports in accordance with IAS 34 for the first quarter, second quarter (included in the half-yearly report), third quarter, and fourth quarter of the year. In the case of stock exchange listed companies, the equivalent requirement is included in the Continuing Obligations, section 4.2, fourth paragraph, which refers to the requirement stipulated in the Securities Trading Regulations.

## 2.2 The Amending Directive

In connection with the implementation of the EU's revised regulatory framework for securities, and in particular Directive 2013/50/EU of the European Parliament and of the Council (the "**Amending Directive**"), changes to the provisions in the Transparency Directive on periodic financial reporting have been approved. The Amending Directive came into force in the EU on 26 November 2013, with an implementation deadline of 26 November 2015.

One of the objectives of the EU Commission in its revision of the regulatory framework for securities has been to make the requirements imposed on small and medium-sized enterprises ("**SME Issuers**") more proportionate, and the revised provisions are intended to help improve SME Issuers' access to the capital markets. One of the decisions made pursuant to this objective was that member states' national legislation would as a general rule no longer be allowed to contain requirements for issuers of shares listed on a regulated market to publish periodic financial information more frequently than in annual and half-yearly reports, cf. new Article 3, Item 1. This change is in principle a fully harmonised rule, but it is nonetheless the case that stricter requirements for periodic financial reporting can be imposed if certain specific conditions are satisfied, and as part of this consideration must be given to whether such requirements would represent an unreasonable financial burden for companies and whether the additional information required would be proportionate to the factors that contribute to investment decisions by investors.

In addition to the amended rules on the frequency of financial reporting, the Amending Directive also provides for an extension of the deadline for publishing half-yearly reports from two months after the end of the reporting period to three months. However, Member States are permitted to impose stricter requirements in their national legislation.

The new rules on financial reporting will not affect the right of Member States to require issuers that are financial institutions to publish additional periodic financial information. Similarly, the requirement for full harmonisation does not prevent a regulated market from requiring issuers to publish additional periodic financial information in all or some of the segments of that market.

## 2.3 Implementation of the Amending Directive into Norwegian law

It is anticipated that the Amending Directive will be implemented into Norwegian law at the earliest with effect from January 2017. A provisional report by the Securities Law Committee was published on 1 February 2016 which explained the proposed changes to the Securities Trading Act and the Securities Trading Regulations in relation to periodic financial reporting. The Securities Law Committee's first Official Norwegian Report in respect of the new legislation which deals with flagging of large shareholdings and periodic reporting ("Endringer i verdipapirhandelloven – flagging og periodisk rapportering" - NOU 2016:2) (hereinafter "**NOU**") was circulated for consultation on 2 March 2016. The NOU and related documentation is available (in Norwegian) at: <https://www.regjeringen.no/no/aktuelt/horing--nou-2016-2/id2477815/>

The Securities Law Committee proposes in the NOU that the requirement for quarterly reporting by issuers of shares listed on a regulated market should be discontinued. The Committee also considered whether quarterly reporting should be a continuing requirement solely for large companies or for

companies in specific segments/industries, but found that it was difficult to make such requirements consistent with the Amending Directive and considered that it was not appropriate to introduce such a requirement at the current time. However, the Committee did note that finance companies, banks and insurance companies are subject to separate regulations issued pursuant to the Norwegian Accounting Act that will serve to retain the requirement for quarterly reporting by such issuers.

The Securities Law Committee has also proposed that legislation should not impose any particular requirements for the content or publication deadline for quarterly reports that issuers publish on a voluntary basis or as a result of a marketplace's rules for issuers. One of the reasons for this is that a requirement for voluntary reporting to be carried out in accordance with IAS 34 or equivalent accounting principles appears relatively onerous when the obligation to produce such quarterly reports is being abolished.

With regard to the reporting deadline for half-yearly reports, the Securities Law Committee has proposed that the deadline of two months contained in the Securities Trading Act should continue.

In order to ensure that the option of being able to introduce a requirement for quarterly reporting subject to the conditions set by the Amending Directive is maintained, the Securities Law Committee has proposed replacing the current legal basis in Section 5-6, final paragraph, of the Securities Trading Act with a provision permitting the introduction of rules requiring additional interim reporting subject to the conditions set by the Transparency Directive.

If the final decision taken is that the requirements relating to quarterly reporting are to be removed from Norwegian legislation, it will be up to Oslo Børs to assess whether the Issuer Rules should continue to require companies with shares listed on Oslo Børs and Oslo Axess to produce quarterly reports, and in addition to stipulate the content requirements, deadlines etc. that should apply to any such reporting.

#### **2.4 Implementation of the Amending Directive in other member states and requirements set by the issuer rules of other European stock exchanges**

It is Oslo Børs' understanding that different rules will apply to the publication of periodic financial information by companies listed on the Nordic region's regulated marketplaces:

- NASDAQ Stockholm is to continue its previous reporting requirement for primary listed companies, which is that for the first and third quarters such companies must report either in accordance with IAS 34 or by using Nasdaq Stockholm's own template according to a comply-or-explain principle.<sup>1</sup> There will also be a requirement to produce a year-end report in accordance with IAS 34, which will have to be published within two months of the end of the accounting year.
- NASDAQ Copenhagen has decided not to introduce requirements in excess of the minimum requirements relating to annual and half-yearly reporting set out in the Amending Directive. There will, however, be a separate recommendation on quarterly reporting in the Danish Recommendations on Corporate Governance.

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<sup>1</sup> See the "Guidance for preparing interim management statements": [http://www.nasdaqomx.com/digitalAssets/100/100995\\_guidelines-for-preparing-interim-management-statements---20160101---mark-up.pdf](http://www.nasdaqomx.com/digitalAssets/100/100995_guidelines-for-preparing-interim-management-statements---20160101---mark-up.pdf)

- As in Denmark, the Helsinki Stock Exchange has decided not to introduce rules that go beyond the minimum requirements set out in the Amending Directive. Furthermore, the Helsinki Stock Exchange will not make any recommendation or equivalent regarding quarterly reporting.

Oslo Børs' understanding is that different rules will apply to periodic financial reporting by companies listed on other marketplaces in Europe as well:

- Great Britain was one of the first countries to remove the requirement to produce quarterly reports, and issuers listed on a regulated market are no longer required to produce any form of report for the first and third quarters.
- Euronext France has indicated that listed companies are not required to publish quarterly reports.
- Pursuant to the available regulations, issuers with shares admitted to trading in the prime standard segment of Deutsche Boerse have a duty to produce 'quarterly statements' for the first and third quarters. These reports have to be produced following specific rules set out in the issuer rules.
- In Italy, companies are currently legally required to publish annual and half-yearly reports as well reports for the first and third quarters. Consob (the Italian authority responsible for regulating the Italian financial markets) is now considering whether the requirement to publish quarterly reports should be removed in its entirety or whether it should be removed only for SME companies.
- The Luxembourg Stock Exchange has rules pursuant to which issuers that have existed for less than three years have to produce interim management statements until they have existed for three years, while it seems likely that the Vienna Stock Exchange will require issuers in its prime market segment to produce quarterly reports for the first and third quarters (in accordance with IAS 34).

### **3 Assessment of whether Oslo Børs should continue the requirement for issuers of shares to produce quarterly reports**

#### **3.1 Relevant considerations**

When assessing whether Oslo Børs should continue the requirement for issuers of shares listed on Oslo Axess and Oslo Børs to produce quarterly reports, one area that it was relevant to assess was the considerations underlying the Transparency Directive's new, reduced requirements. It was accordingly relevant to consider whether a potential requirement for companies to provide additional periodic financial information would be deemed to represent an unreasonable financial burden, particularly for small and medium-sized issuers; and whether the content of any additional financial information that was required would be reasonably proportionate to the factors that contribute to investors' investment decisions. It was also important to ensure that rules are not introduced that would ultimately weaken the marketplace's competitive position, while at the same time this has to be weighed against the consideration that investors and other parties that use the marketplace need to be given sufficient and relevant information.

In the Norwegian market quarterly reporting is a well-established practice for which there is much demand from investors. Oslo Børs' own figures show that trading in listed shares increases during the

periods around companies' quarterly reports. Better liquidity is a factor that has to be seen as positive for investors, issuer companies and the marketplace. The figures may also be taken to indicate that quarterly reports are an important factor in investors' investment decisions.

It seems clear to Oslo Børs that quarterly reporting contributes to important and up-to-date information being published such that investors are given the opportunity to arrive at a fair view of the pricing of an issuer's shares. In addition, frequent periodic reporting may help to avoid the risk of differences between market participants in the information known about an issuer and thus to reduce the risk of anyone trading on inside information. These are fundamental considerations that ensure the functioning and integrity of the market.

According to the proposed way in which the new provisions of the Amending Directive are to be implemented into Norwegian law, there could potentially be up to eight months between the dates when a company reports financial information to the market. Oslo Børs is of the view that this may contribute to uncertainty and speculation in the market. Issuers have a duty, however, to publish inside information due to other securities legislation provisions, including as a consequence of their continuing duty of disclosure and the requirements to produce prospectuses. Furthermore, the duty to disclose large shareholdings and to notify transactions in the company's own shares will also ensure investors receive relevant information about issuers. When passing the Amending Directive, the EU Commission found that such provisions were sufficient to ensure investor protection. In its assessment of how to implement the Directive into Norwegian law, the Securities Law Committee pointed out that removing the requirement for quarterly reporting could increase the risk of selective information dissemination by companies and of trading based on inside information. At the same time, the Securities Law Committee has pointed out that investors will continue to receive information from companies without quarterly reports being published, although information on individual events can be difficult to relate to the broader context in a way that provides the same sort of overview of a company as periodic reporting.

When preparing the Amending Directive, the EU Commission particularly emphasised two factors that indicate that the general requirement for quarterly reports should cease to apply. The first was that quarterly reporting places a significant administrative burden on issuer companies, particularly smaller companies with limited resources. Such requirements therefore contribute to smaller issuers finding it more difficult to access the capital markets. The second factor highlighted was that the requirement for quarterly reports is deemed to increase the danger of issuer companies' executive management being driven by short-term considerations rather than focusing on longer-term and more important strategic decisions.

Producing quarterly reports generally requires the use of significant resources by issuer companies. However, it is estimated that the majority of issuers will in any case report on a quarterly basis in order to provide information to the market regardless of whether or not such a requirement exists in the regulations, on which see section 3.2 below. Furthermore, there are many issuers that are required by their borrowing obligations to produce quarterly reports in accordance with IAS 34. The majority of issuers also have comprehensive requirements for financial information to be reported internally. It must also be expected that a number of major investors will attach much weight to whether companies report on a quarterly basis when making their investment decisions.

The Securities Law Committee makes the point in the NOU that it would be beneficial to reduce the costs of listing on a regulated market in Norway, see NOU page 19. If Oslo Børs does decide to continue the

current requirement for quarterly reporting for listed companies, this will not contribute to reducing these costs.

Consideration has also been given to whether continuing the current requirement for quarterly reporting would weaken the competitiveness of the Oslo Børs marketplace in the event that Oslo Børs imposes rules that differ from those applied by other comparable European marketplaces. As detailed in section 2.4 above, other regulated markets have adopted a variety of solutions in respect of the requirement for public disclosure of financial information. It seems that very few markets intend to retain a requirement for quarterly reporting in accordance with international accounting standards (IAS 34). However, it is apparent that a number of marketplaces intend to impose some form of requirement for reporting on the first and third quarter of the year, particularly for issuers on the main list.

In relation to the interests of SME issuers seen in isolation, Oslo Børs wishes to draw particular attention to the availability of Merkur Market for the admission to trading of smaller issuers, noting that the continuing obligations for this marketplace do not include any requirements for quarterly reporting. However, Merkur Market differs from the Oslo Børs and Oslo Axess marketplaces in that it is not a regulated market. Also, Oslo Axess is particularly well suited for smaller companies since the Listing Rules involve lower thresholds for market capitalisation and period of incorporation than is the case for a listing on the Oslo Børs marketplace. In Oslo Børs' experience many companies typically elect for initial listing on Oslo Axess before choosing at a later date to transfer their listing to the Oslo Børs marketplace, for example as a result of growth. Since Oslo Axess is seen as a marketplace that is very suitable for smaller and medium-size companies, it is particularly appropriate to discontinue the requirement for additional quarterly reporting for issuers in this marketplace.

### **3.2 Information on the work carried out by Oslo Børs**

Oslo Børs has sought to identify solutions that balance the interests of issuers in relation to reporting requirements and the interests of investors in having access to information. Work on this issue included evaluating a requirement for a limited quarterly reporting by issuers listed on the Oslo Børs marketplace. Such limited reporting was suggested to include a statement on profit and loss and balance sheet information, together with such other information and accounting notes that might be considered to be of material significance for evaluating the company's financial position.

The proposal for a limited quarterly report was discussed with various market participants and a number of issuers with listings on the Oslo Børs/Oslo Axess marketplaces. The majority of these parties were of the view that such a limited quarterly report would not represent any material cost saving since the main part of the work involved is the preparation and reconciliation of the financial accounts. They considered that the additional information provided in notes to the accounts involves less work. In addition, most companies said that they wish to continue to report in the same way as at present since this is what the market is expecting, and the majority also said that they would in any case prepare quarterly accounts and reports for internal purposes.

Since the response from major market participants and issuers provided little support for the proposal to introduce a limited quarterly report, Oslo Børs decided not to progress this alternative any further.

## 4 Conclusion and the proposal circulated for consultation

Oslo Børs takes the view that it is important to maintain the functioning and integrity of the marketplace, and a regulatory framework that ensures that investors and other users have access to sufficient and relevant information from issuers is an important part of this objective. There needs to be a balance, however, between investors' need for information and the burden that providing information represents for issuers.

### 4.1 Recommendation on quarterly reporting

Oslo Børs proposes that no reporting requirements should be imposed in addition to the minimum legal requirement pursuant to the Transparency Directive. Both the EU Commission and the Norwegian Securities Law Committee have concluded that the interests of investors will be safeguarded to a satisfactory extent through the current reporting obligations to which issuers are subject, including the reporting of inside information and other information disclosure requirements.

Oslo Børs is of the opinion that this solution will ensure that the Oslo Børs marketplace does not impose stricter reporting requirements than other marketplaces, particularly the other Nordic marketplaces.

However, Oslo Børs will include a clear recommendation in the Oslo Børs Code of Practice for IR to the effect that issuers of shares are encouraged to publish quarterly reports in accordance with IAS 34 for the first and third quarters as a supplement to the mandatory half-yearly and annual reports. This would encourage issuers to consider their position on quarterly reporting, with the possibility of publishing a well-reasoned explanation if they decide that the additional voluntary reporting is not necessary. Oslo Børs is of the opinion that an equivalent recommendation should also be included in the Norwegian Code of Practice for Corporate Governance, and will recommend this to the Norwegian Corporate Governance Board. Oslo Børs envisages that the recommendation mentioned above should also apply to issuers listed on Oslo Axess.

The recommendation will be that issuers should prepare reports in accordance with IAS 34, which is an international standard that stipulates the minimum requirements for the content of interim reports, including a recommended publication deadline of 60 days after the end of the accounting period in question. However, issuers will be free to make their own decisions on whether to comply with this standard for the content and the reporting deadlines of additional reports. For example, it may be the case for some issuers that it is relevant to inform the market of metrics other than the figures required in a quarterly report. This might include reports on sales or customer numbers. A regulatory framework that does not impose mandatory additional quarterly reporting will give issuers the opportunity to elect to report other financial/non-financial metrics that they consider relevant for investors.

In the event that an issuer publishes a report that has not been prepared in accordance with the stipulated accounting standards, the report must make it clear that it is not an interim report prepared in accordance with accounting standards in order to ensure that there is no uncertainty over the type of information that the report includes, cf. comments by the Securities Law Committee in NOU Section 3.2.3.3.

Oslo Børs is of the view that a requirement should be added to the Continuing Obligations in order to stipulate that if a voluntary quarterly report is produced it must be publicly disclosed in accordance with Section 5.1 of the Continuing Obligations at the latest concurrently with public disclosure by any other means. This is required to ensure there is uniformity to the information known in the market.

Oslo Børs also wishes to make it clear that issuers will be required to include information on any voluntary interim reports in their financial calendars.

#### **4.2 Alternative requirement for IAS 34 reporting for the first and third quarters**

Oslo Børs is aware that there are differing opinions among market participants on the question of whether the Issuer Rules should continue to require quarterly reporting. If the responses received to the consultation demonstrate that a solution which is restricted to recommending that quarterly reports are prepared and published is not supported by the majority of market participants, Oslo Børs will instead take steps to impose a requirement for issuers of shares listed on Oslo Børs to publish quarterly IAS 34 reports for the first and third quarters.

A decision by Oslo Børs to maintain a requirement for quarterly reporting as part of the Continuing Obligations would ensure that issuer companies provide comprehensive periodic information to the market independently of the rules on the disclosure of inside information and other reporting requirements. This alternative would also reduce the risk of insider trading since a requirement for quarterly reporting for the first and third quarters would reduce the length of time between financial reports.

Oslo Børs notes that the Norwegian market has a long tradition of quarterly interim reporting, and the issuers that Oslo Børs has contacted seem to want to continue to report on a quarterly basis - regardless of whether this is a formal requirement as part of the Continuing Obligations. Oslo Børs is therefore of the view that such a requirement would not as a matter of fact represent a significant burden for the majority of issuers listed on Oslo Børs.

It is proposed that if such a requirement is introduced, it would apply to all issuers of shares listed on Oslo Børs for which Norway is the home state.

Oslo Børs proposes that in the case of Oslo Axess additional quarterly reporting should only be subject to a recommendation, regardless of whether such additional quarterly reporting is made a requirement for the Oslo Børs marketplace. Oslo Børs is of the view that this will help to facilitate access to listing for smaller companies in accordance with the objectives of the Amending Directive.

The requirement to publish a quarterly report for the fourth quarter has previously been the subject of a great deal of discontent among issuers, particularly in the case of third country issuers that are not subject to an equivalent requirement in their own country's legislation. Oslo Børs will accordingly propose that this requirement should be discontinued in its entirety, and that this should be the case even if Oslo Børs ultimately adopts a solution that requires interim reporting in excess of the minimum legal requirement.



Best regards,  
OSLO BØRS ASA

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### **Consultation parties**

Issuers of shares and equity certificates on Oslo Børs and Oslo Axess

Member firms of Oslo Børs

ABG Sundal Collier

Advokatfirmaet Grette

Advokatfirmaet Haavind

Advokatfirmaet Schjødt

Advokatfirmaet Selmer

Advokatfirmaet Thommessen

Advokatfirmaet Wiersholm

Advokatforeningen

AksjeNorge

Aksjonærforeningen

Alfred Berg Kapitalforvaltning

Arctic Fund Management

Arctic Securities

Argentum

Arntzen de Besche Advokatfirma

Bugge, Arentz-Hansen & Rasmussen

Carnegie

Carnegie Kapitalforvaltning

Carnegie Securities

Clarksons Platou Securities

CLP

Danske Bank Markets

Danske Capital

Deloitte

Den Norske revisorforeningen

DNB Asset Management

DNB Markets

Eika kapitalforvaltning

EY

Fearnley Securities

Ferncliff TIH

Finans Norge

Finansdepartementet

Finanstilsynet

Folketrygdfondet

Fondsfinans Kapitalforvaltning

Fondsforvaltning AS

Handelsbanken Kapitalforvaltning

Handelsbanken Markets

Hitec Vision

Holberg Fondsforvaltning

KLP Kapitalforvaltning

Kluge Advokatfirma

KPMG

Kvale Advokatfirma  
MP Pensjon  
NHO  
Nordea Funds  
Nordea Markets  
Nordic Capital Management  
Norges Bank  
Norne Securities  
Norsk Institutt for styremedlemmer  
Norsk Regnskapsstiftelse  
Norsk Venturekapitalforening  
Norske Finansanalytikerers Forening  
Næringslivets Aksjemarkedsutvalg  
ODIN Forvaltning  
Pareto Forvaltning  
Pensjonskasseforeningen  
PWC  
SEB Markets  
Simonsen Vogt Wiig  
SKAGEN  
Sparebankforeningen  
Storebrand Asset Management  
Svenska Fondhandlarföreringen  
Swedbank Asset Management  
Swedbank Markets  
Verdipapirfondenes Forening  
Verdipapirforetakenes Forbund  
Verdipapirsentralen  
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