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QUESTIONNAIRE ON DELISTING

Sweden

PART I. VOLUNTARY DELISTING

A delisting is deemed voluntary if it is initiated by the company or a shareholder.

1. Is voluntary delisting explicitly allowed by national laws or by jurisprudence?
Yes (X) No

Relevant provision:
Pursuant to Chapter 15 Section 11 Securities Market Act (2007:528, 'SMA') the stock exchange shall delist a financial instrument if the issuer files an application for delisting.[1] If it is appropriate from a public point of view, the delisting may however be postponed according to Chapter 15 Section 11 SMA (see also Q 2 and 6 below).

2. If the answer to 1. is yes, who decides so?
BoD(X) GA(X) Other

The board of directors ('BoD') is responsible for the company's organization and the management of the company's affairs.[2] The prevailing view in the Swedish doctrine is that a decision to delist a company may be taken by the BoD, but there is still some uncertainty, since there is no case law confirming the prevailing view and there are good arguments supporting the view that the decision should be taken by the general meeting of shareholders.[3] The BoD may however always refer the matter to the general meeting of shareholders.

[1] See also Nasdaq Mainmarket Rulebook for Issuers of Shares 15 August 2022 (the 'Nasdaq Rulebook'), Supplement D, Part G, s 28; Nasdaq First North Growth Market Rulebook as of 1 July 2023 (the 'First North Rulebook'), s 2.6; Nordic Growth Market's Exchange Rules 4 May 2020 (the 'NGM Mainmarket Rules'), s 3.3.1; Nordic Growth Market's Rules Nordic SME's 4 May 2020 (the 'NGM SME Rules'), s 3.3.1 and Spotlight's Regulations as of 1 December 2023 ('Spotlight's Regulations'), s 6.3.

[2] See Swedish Companies Act 2005 ('SCA'), ch 8 s 4.

[3] See for this question eg B Kristiansson, 'Avnotering efter ansökan av bolaget' (2006) No 3 *Nordisk Tidsskrift for Selskabsret* 32 et seq and U Båvestam and A Lindblad, 'Till frågan om bolagsstämman har en oskriven exklusiv kompetens – ävensom frågan om stämman i så fall har ensamrätt att besluta om avnotering' (2007/2008) No 1 *Juridisk Tidskrift* 224 et seq. They support the view that the decision may be taken by the BoD. S Krook and D Stattin are of another opinion, see S Krook, 'Avnotering av aktier registrerade på en börs eller annan marknadsplats – bolagsstämmo- eller styrelsefråga?' (2006/2007) No 4 *Juridisk Tidskrift* 854 et seq. and D Stattin, *Takeover - Offentliga uppköpserbjudanden på aktiemarknaden enligt svensk rätt*, 3rd edn (Stockholm, Norstedts Juridik, 2020) 176 et seq.

The Swedish Securities Council ('SSC'), a self-regulatory body which promotes good practice in the stock market through rulings, advice and information, has basically confirmed the prevailing view and stated that it is *normally* in line with good practice in the stock market that a decision to delist a company is taken by the BoD, but it has also stated that special circumstances may require that it must be taken by the general meeting of shareholders.[4] It has however stressed that whoever acquires shares in a listed company should do so under the assumption that there is a functioning market for the company's shares until the admission (listing) requirements[5] are no longer met. From the point of view of good practice in the stock market, the SSC has developed a very restrictive practice regarding applications for delisting if the admission requirements are still met. It has emphasized that the BoD must act in the interests of the company and of all of the shareholders (not just the majority) when taking such decision and stressed that if the admission requirements are still met, the reasons for the application must be of such strength that it can be considered justified to expose the other shareholders to the disadvantages of a delisting.[6] Otherwise the decision to apply for delisting contravenes good practice in the stock market, unless it has been adopted by the general meeting of shareholders with a majority consisting of all shareholders present at the general meeting and these represent at least nine tenth of the shares in the company.[7] Kristiansson has claimed that if the admission requirements are met the company's and the minority shareholders' interests for and against a delisting must be weighed against each other. The company may according to Kristiansson take measures that could affect the outcome of this assessment, such as for example offer listing at another market place.[8] The assessment may also be affected if the majority shareholder has previously submitted or intends to submit a public offer to acquire the minority shares[9], alternatively leaves a 'standing purchase order'. Whether the general meeting approved the delisting and with what majority the general meeting's decision was taken may according to Kristiansson also influence the outcome of the assessment.[10]

If however the company does not meet the admission requirements regarding spread, good practice does not require continued listing, not even on another list. After an appropriate grace period, delisting can take place.[11]

3. What is the quorum requirement for the delisting decision of the competent organ?

There are no special quorum requirements with respect to decisions to delist a company if the decision may be taken by the BoD. Consequently, the BoD may take the decision if more than half of the entire number of board members or the higher number stipulated in the articles of

[4] See eg AMN 1998:10, AMN 2002:17 and AMN 2010:15.
[5] See for example the requirements set out in Nasdaq Rulebook, s 2.2 and 2.4–2.15.
[6] See eg AMN 2004:29 and AMN 2014:33.
[7] See AMN 2016:21 and AMN 2019:03.
[8] See also AMN 2010:15 and AMN 2014:33.
[9] See however AMN 2010:15.
[10] See Kristiansson, 'Avnotering' (n 3) 32, 33. Kristiansson's statements were made before the ruling AMN 2016:21, where SSC established the special majority requirement. I assume that his statements are relevant only in those cases where the admission requirements are still met and there is no decision by the general meeting of shareholders with the special majority set forth in AMN 2016:21 and AMN 2019:03.
[11] See AMN 2019:15 och AMN 2019:36.

association are present at the meeting.[12] Regarding decisions taken by the general meeting of shareholders, please see Q 4 below.

4. What is the majority requirement for the delisting decision of the competent organ?

There are no special statutory rules governing majority requirement for decisions to delist a company. Consequently, the BoD may take the decision by a majority consisting of more than half of the votes cast, unless the articles of association provide for a special majority.[13] If the decision is taken by the general meeting of shareholders, the decision may be taken with simple majority.[14] This should apply at least if the admission requirements are not met, or if the reasons for the application is of such strength that it can be considered justified to expose the other shareholders to the disadvantages of a delisting.[15] As set forth under Q 2 above, the SSC has however stated that if the admission requirements are still met and there are no such reasons, the decision should, from the point of view of good practice in the stock market, be adopted by the general meeting of shareholders with a majority consisting of all shareholders present at the general meeting and these represent at least nine tenth of the shares in the company.[16]

5. Do (minority) shareholders have statutory veto rights as to a delisting decision?

Yes No (X)

6. Should delisting take place within a specific timeframe after the relevant decision? Is there a specific period of time after the decision in which the delisting should be completed?

Yes (X) No

There is no specific timeframe in which the request to the stock exchange to delist must be made.

The stock exchange must, as set forth above, delist a financial instrument if the issuer files an application for delisting. If it is appropriate from a public point of view, the delisting may however be postponed.[17] According to the Nasdaq Rulebook, the stock exchange normally requires four weeks of notice for the issuers shares to be removed from trading. However, the stock exchange may postpone the delisting up to six months if it is appropriate from a public

[12] See SCA, ch 8 s 21.
[13] See SCA, ch 8 s 22.
[14] See SCA, ch 7 s 40. As set forth in Q 2 above, it has however been claimed in the doctrine that a decision to delist a company must always be taken by the general meeting of shareholders with a majority consisting of all shareholders present at the general meeting and these represent at least nine tenth of the shares in the company. From a company law perspective the legal situation is somewhat unclear in this respect.
[15] See AMN 2014:33 and AMN 2004:29.
[16] See AMN 2016:21 and AMN 2019:03.
[17] See SMA, ch 15 s 11.

point of view, for example if there is an extensive trading in the issuers stocks on the relevant market and a large number of shareholders.[18]

In addition to the above, the time frame has been discussed by the SSC. It has stated that if the admission requirements are not met and delisting may take place, good practice in the stock market implies that a company should *apply for delisting* only after the market has been *informed of the delisting plans* and the shareholders have had a reasonable amount of time to sell their shares or otherwise act on the information. According to the SSC, the application for delisting should therefore be submitted no earlier than three months after the market has been informed of the delisting plans (provided that the admission requirements are still not met then).[19]

7. Should the delisting application give a full statement of reasons for the submission of such application?

Yes (X) No

Relevant provision:

There are no rules in the SMA or the stockmarket rules governing the statement of reasons for the delisting. Good practice in the stock market may however require the issuer to give a statement of the reasons for the application. If the admission requirements are met, the reasons for the application must be of such strength that it can be considered justified to expose the other shareholders to the disadvantages of a delisting, unless it has been adopted by the geneal meeting with the special majority requirement set forth under Q 2 above.[20]

8. Is it required that a competent authority approves the voluntary delisting?

Yes (X) No

If the answer to 8. is yes, who is the competent authority?

The competent authority is the market operator, see further Q 1 and 2 above.

If the answer to 8. is yes, does the competent authority has the competence to verify the reasons of delisting?

Yes No (X)

If the answer to 8. is yes, does the competent authority have any discretion? Can the competent authority impose additional terms for investor protection? Can the competent authority postpone the decision? If yes, do you know wether this discretion has been used in the past?

Yes No (X)

See however Q 6 above regarding postponement of the delisting etc.

[18] See Nasdaq Rulebook, Supplement D, Part G, s 28 and NGM Mainmarket Rules, s 3.3.1.
[19] See AMN 2019:36, AMN 2019:30 and AMN 2019:15. See however also AMN 2020:16.
[20] See further AMN 2004:29, AMN 2010:15 and AMN 2014:33.

9. In case of a voluntary delisting does the issuer have to make an offer to buy the shares of (dissenting) shareholders?

Yes No (X)

10. Are there any restrictions due to the principle of maintenance of the share capital?

Yes No (X)

11. Does a (majority) shareholder or a third person has the right to offer to buy the shares of (dissenting/all) shareholders and relieve the issuer?

Yes (X) No

Relevant provision:

There are no special rules regarding such offer, which are applicable in case of a delisting process, but a (majority) shareholder or a third person always has the right to, at any given time, make a tender offer regarding all or some shares issued by an issuer in accordance with the Takeover Bids Act (2006:451) and the takeover-rules of the relevant market place. The SSC has issued statements regarding delisting in relation to a takeover bid in e.g. AMN 2004:29, AMN 2006:02 and AMN 2010:15.

12. In case of a voluntary delisting does the issuer or a third person have the obligation to publish a prospectus / informational document?

Yes No (X)

Relevant provision:

There are no special rules regarding information in the SMA or the stock market rules in case of an application for delisting. The issuer must however of course consider and act in line with the Market Abuse Regulation and other disclosure rules.[21] In addition, good practice in the Swedish stock market may require information to be published before an application for delisting is made (see Q 6 above).

13. Is an exit opportunity available for shareholders in case of delisting?

Yes No (X)

The stock exchange may, as stated above, postpone the delisting in order to protect the interests of the investors and good practice in the Swedish stock market may require information to be published before an application for delisting is made (see further Q 6 above). The purpose behind this is to give the shareholders an appropriate time to sell their shares on the relevant market. Beyond this, there are no specific statutory exit rules for shareholders in case of delisting.

14. Is there any specific provision on downlisting? If not, is downlisting allowed, and how does it take place?

[21] See eg MAR, s 17, Nasdaq Rulebook, Part 3 and NGM Mainmarket Rules, s 4.

A downlisting occurs when the shares are no longer traded on a regulated market (as defined by Union law) but on an MTF.

Yes (X) No

Relevant provision:
There are no specific statutory rules regarding downlisting, but there are rulings from the SSC concerning downlisting to other markets than regulated markets or MTF.

In the ruling AMN 2010:15 (initiated at the request of the stock exchange), the SSC discussed, among other things, the question whether the BoD of a listed company could be considered to have fulfilled its obligation to act in the interests of all of the the shareholders when the BoD had, under specified conditions, requested the delisting of the company's shares. Among other things, the SSC claimed that, if the conditions exist for a functioning trading in the shares, the company should always work to ensure that such trading takes place on another market place with a developed regulatory framework to protect the shareholders. From the point of view of good practice on the stock market, the SSC considered it not sufficient that the company, if delisted from a stock exchange, acted so that trading in the company's shares would instead take place on a market where trading did not take place continuously, and where several regulations essential for the shareholders were not applied.

In the unpublished statement AMN 2012:17, the question was briefly whether a Swedish listed company could transer a large part of its operations to a subsidiary, domiciled in another country, distribute the shares in the subsidiary to its own shareholders and then list the company on a particular marketplace in the other country. In the light of the fact that the subsidiary represented a significant share of the listed company's value, the SSC considered that the transactions equalled a complete delisting of the company's shares. The SSC emphasized that the change of market place from a regulated market to [the proposed market] was detrimental for the shareholders. This applied with regard to both information about the share prices and the rules for the protection of shareholders and investors. Overall, the SSC ruled that listing on [the proposed market] could not be considered an acceptable alternative to trading on a stock exchange or a trading platform

15. Is there any specific provision on market migration (delisting from a regulated market and listing in another)?

Yes (X) No

Relevant provision:
There are no statutory rules governing market migration, but a few rulings from the SSC.[22]

In the rulings listed above the SSC dealt with issues related to domicil changes. The SSC normally considers that such changes are in line with good practice on the stock market, regardless of whether the change implies that the company moves its domicile from or to Sweden.[23] Domicile changes should however be approved by the general meeting of shareholders to be

[22] See AMN 2002:9, AMN 2002:17, AMN 2012:17, AMN 2014:34, AMN 2015:07 and AMN 2022:23. See also Q 2 above.
[23] See AMN 2014:34, which concerned a cross-border merger.

in line with good practice in the stock market.[24] A recent ruling concerned a case where the issuer did not intend to delist, but instead change its domicile to Finland through a cross-border merger where the issuer's shareholders would obtain shares in the Finnish acquiring company (as merger consideration). Since the issuer had exhaustively investigated the possibility of listing the shares in the Finnish acquiring company not only on Nasdaq Helsinki but also on Nasdaq Stockholm, but had come to the conclusion that this was not possible for account-keeping technical reasons, the SSC considered that it was not contrary to good practice in the stock market to apply to delist the shares from Nasdaq Stockholm.[25]

16. Is there any specific provision on voluntary delisting in case of increase of listing requirements by both the Law and Stock Exchange?

Yes No (X)

17. Are there different rules on delisting for national and foreign listed companies?

Yes (X) No

Relevant provision:

The provisions in the SCA is only applicable in relation to Swedish companies, ie, companies domiciled in Sweden. The stock exchange rules are however applicable in relation to all companies listed on the relevant stock market or MTF.[26] As regards the rulings of the SSC, it has formulated its mission as follows:

> Any action by a Swedish limited company that has issued shares admitted to trading on a regulated market in Sweden or which are traded on the Nasdaq First North, Nordic MTF or Spotlight Stock Market trading platforms, or any action by a shareholder in such a company which concerns or may be of relevance to a share in such a company, may be subject to assessment by the Swedish Securities Council. The same applies to foreign limited companies whose shares or depository receipts are admitted to trading on a regulated market in Sweden or traded on any of the above trading platforms, to the extent that the action is to be assessed according to Swedish regulations.[27]

In the ruling AMN 2020:27, which concerned delisting of a company domiciled in another Nordic country, but listed on Nasdaq Stockholm, the SSC stated:

> In accordance with the Swedish Securities Council's practice as it is expressed in i.a. AMN 2013:35, the Securities Council does not consider itself, from the point of view of good practice in the stock market, to be able to establish any requirements on such a decision [to apply for delisting] beyond what follows from the company legislation that the company must observe. From the point of view of good practice on the Swedish stock market, where the shares are subject to trading, the Securities Council only underlines the importance of the shareholders being informed about the planned transaction in a way that corresponds as closely as possible to how the information would have been provided if the corresponding transaction was

[24] See AMN 2002:17.
[25] See AMN 2022:23.
[26] See for example Nasdaq Rulebook, General Rules, s 1.1.1.
[27] See www.aktiemarknadsnamnden.se/about-the-swedish-securities-council/the-mission-of-the-swedish-securities-co__3664. See also AMN 2020:27.

> planned in a Swedish company, namely at least three months before the application for delisting. [My translation.]

18. Cold delisting is usually described as a transformation of a listed company resulting to its delisting, including especially the merger by absorption of a listed company by an unlisted company. What is defined as cold delisting in your legal order? Is there any specific provision on cold delisting?

The concept 'cold delisting' is not generally used under Swedish law, but a merger and a demerger between a company listed on a regulated market and a non-listed company is subject to a special majority requirement pursuant to Chapter 23 Section 17(3) and Chapter 24 Section 19(3) SCA (see further Q 19 below).

There are no other statutory rules governing cold delisting, but the SSC has issued a few rulings with respect to the sale of assets of a significant share of the business to a non-listed company and a spin-off of business.[28] AMN 2019:03 concerned a company listed on Nasdaq First North, an MTF, which intended to spin-off the business by distributing the shares in a subsidiary company. The SSC emphasized that the same requirements as in the case of a complete delisting of the company's shares should be applied. The fact that the distribution of the subsidiary shares would take place as part of a deal where the company de facto also transferred its seat on Nasdaq First North to another company did not affect that assessment. The SSC considered good practice in the stock market to require that the listed company (unless the distributed shares in the subsidiary was listed on another comparable market place) could complete the planned dividend without listing only on the condition that the company's shareholders decided to do so at a general meeting and the decision was supported by all present shareholders and these together represented at least nine tenths of all shares in the company and also that the shareholders was clearly informed of the majority requirement in the notice to the general meeting. The decision would according to the SSC otherwise be contrary to good practice on the stock market. The ruling was confirmed and considered to apply equally in AMN 2021:50, which also concerned a spin-off.

It should be noted that the majority requirements correspond with the special majority requirements for mergers and demergers with a non-listed company (see Q 19 below) and that they are so strict that it will normally be impossible to achieve them.

19. Does the merger of a listed company with a non-listed company lead to delisting? Is an exit opportunity available for shareholders? What are the relevant provisions? (please provide translations)

Yes (X) No

Relevant provision:

Chapter 23 Section 17(3) SCA stipulates that if one of the transferring companies in a merger is a public limited company and the acquiring company is a private limited company, the public limited company's decision on approval of the merger plan is valid only if it has been supported by all shareholders who are present at the general meeting and these together represent at least nine tenths of all shares in the company. The same applies if one of the transfer-

[28] See AMN 2019:03, AMN 2021:50, AMN 2022:04 and AMN 2022:06.

ring companies is a public limited company whose shares are admitted to trading on a regulated market or an equivalent market outside the European Economic Area if the merger consideration to be provided consists of shares that are not admitted to trading on such market. The full wording of Chapter 23 Section 17 SCA reads as follows:

> A decision by a general meeting to approve the merger plan shall be valid only where supported by shareholders holding not less than two-thirds of both the votes cast and the shares represented at the meeting.
>
> Where the company has several classes of shares, the provisions of the first paragraph shall also apply to each class of shares which is represented at the general meeting.
>
> Where any of the transferor companies is a public company and the transferee company is a private company, any decision of the public company regarding approval of the merger plan shall only be valid where it has been supported by all the shareholders who are present at the meeting and these together represent at least nine-tenths of all shares in the company. The foregoing shall apply where any of the transferor companies is a public company, the shares of which are admitted to trading on a regulated marketplace or a comparable marketplace outside of the European Economic Cooperation Area and the merger consideration is to be paid in shares which, at the time when the merger consideration is to be paid, are not admitted to trading on such a marketplace.
>
> In conjunction with a resolution regarding approval of the merger plan in the transferor company, shares which are held by the transferee company or by another company in the same group of companies as the transferee company shall not be taken into consideration. "Group of companies" in this context shall be equated with groups of companies of a comparable type. (SFS 2008:805).

Identical rules apply with respect to demergers pursuant to Chapter 24 Section 19(3) SCA.
It should be stressed that the special majority requirements are so strict that it will normally be impossible to achieve them and that they are naturally applicable even if the admission requirements are not met. It should also be noted that companies listed on an MTF are not governed by the provisions in Chapter 23 Section 17(3) and Chapter 24 Section 19(3) SCA, which means that they, from a company law perspective, can merge or demerge with a non-listed company subject to a decision by the general meeting of shareholders adopted with 2/3 majority. Good practice in the stock market could however require the special majority requirement set forth in Chapter 23 Section 17(3) and Chapter 24 Section 19(3) SCA.

It should be added that with respect to cross-border mergers and cross-border demergers, shareholders have, under certain conditions, a right to require redemption of their shares.[29] In addition, it should be noted that the special majority requirements described above apply with respect to cross-border mergers, but not with respect to cross-border demergers. With respect to cross-border demergers the normal 2/3 majority rule apply in all kinds of demergers, also if the "acquiring" company is a non-listed company.[30] There reasons for this discrepancy is not further outlined in the preparatory works. Since the shareholders have a right to redemption under certain conditions in relation to cross-border mergers, the special majority

[29] See SCA, ch 23 s 50-53 and ch 24 s 55–58.
[30] See SCA, ch 23 s 36 and ch 24 s 31.

requirement applicable in relation to cross-border mergers with a non-listed company seems to be very strict.

20. Does the successful completion of a mandatory bid give the right to delisting? If yes, are there any preconditions?

Yes (X) No

Relevant provision:

Chapter 22 Section 1 SCA regulates the right for a shareholder, who owns more than 90 per cent of the shares in a company, to redeem the shares of the minority on certain conditions set forth in Chapter 22 SCA. The SSC has issued statements on questions relating to a delisting in connection with public takeover offers in a number of rulings.[31] In fact, delistings are often connected with a takeover offer.

The Nasdaq Rulebook stipulates that

> [i]n case of a public takeover bid, the Exchange can accept two (2) weeks' notice for removal from trading, if the bidder holds 90% or more of the Shares in the Issuer, the trading is sporadic and the bidder has announced that it will initiate proceedings in respect of compulsory redemption.[32]

The SSC has stated that it is not in line with good practice in the stock market to 'threat' the shareholders with a delisting if successful completion is not achieved.[33]

21. Are there specific rules on delisting from an MTF?

Yes (X) No

Relevant provision:

See Section 19 above for cold delisting. The SSC statements on voluntary delisting apply also in relation to companies listed on an MTF. For voluntary delisting there are specific rules of the relevant market places, which are similar to the rules for shares listed on a regulated market. The Spotlight Stockmarket Regulation, Section 6.3, stipulates:

> The Company may apply to have its Shares delisted. The Marketplace will in each case determine on whether it is possible to approve the Company's application for delisting. In case of a granted application, the Marketplace will decide the final day for trading in the Shares. In the event of a delisting of a SPAC, deposited funds shall be returned to the investors.

The commentary to the rules refer to the rulings of SCC on voluntary delisting, especially AMN 2014:33, see further Q 2 above.

The First North Rulebook stipulates:

> 2.6.1 The Issuer may request that its Financial Instruments are removed from trading.
> 2.6.2 The Exchange will decide upon the request and the time for the removal.

[31] See eg AMN 2004:29, AMN 2006:02, AMN 2010:15, the unpublished statement AMN 2012:17 and AMN 2014:33

[32] See Supplement D, Part G, s 28. Similar rules apply according to eg the NGM Mainmarket Rules, s 3.3.1 and the Spotlight Stockmarket Regulation, s 6.3.

[33] See AMN 2004:29.

The NGM rules stipulates:

> A Company may apply for delisting of its Shares. The Exchange decides upon delisting and an appropriate date for delisting. The Exchange may reject an application for delisting in the event delisting is incompatible with best practices on the securities market.[34]

PART II. OBLIGATORY DELISTING

A delisting is deemed compulsory/obligatory, if it is initiated by a supervisory authority or a market operator without consent of the company.

22. What are the prerequisites for compulsory delisting by the competent national supervisory authority?

Compulsory delisting is regulated by Chapter 15 Section 11 SMA. According to the first paragraph a securities exchange *shall* (swe: *ska*) decide that a financial instrument shall be delisted, where the instrument does not fulfil the admission requirements which apply for admission to trading or where the issuer has seriously breached its obligations under SMA or other statutory act or at the request of the Swedish National Debt Office pursuant to Chapter 14, section 3(1) subsection 1 of the Resolution Act (2015:1016) or at the request of a foreign resolution authority pursuant to the national legislation implementing article 64(1)(c) of the Bank Recovery and Resolution Directive 2014/59/EU. If it is appropriate considering the public interest, delisting may however be postponed.

A securities exchange *may* in addition to the above delist a financial instrument where it is not likely that the delisting would cause significant damage to the investors or the functioning of the market.[35]

The issuer must be heard in respect of the information submitted in the matter by any third party, unless it is clearly unnecessary or where the delisting cannot be postponed.[36] Any decision regarding a delisting shall be published immediately and in addition the Swedish Financial Supervisory Authority must be notified of such decisions. The Authority shall thereafter notify other competent authorities in the EEA regarding the decision.[37]

Compulsory delisting is also regulated by the Nasdaq Rulebook, Supplement D, Part G, Section 29. Pursuant to Section 29 Nasdaq Stockholm may decide to delist the issuer's shares if:

> i. an application for bankruptcy, winding-up or equivalent motion has been filed by the Issuer or a third party to a court or other public authority; or
>
> ii. the Issuer does not fulfil all Admission Requirements, assuming that:
> a) the Issuer has not remedied the situation within a time decided by the Exchange, although under normal circumstances not longer than six (6) months;
> b) there are no other available means to remedy and restore the situation; and
> c) the non-fulfilment is deemed to be significant; or

[34] See the NGM Mainmarket Rules an the NGM SME Rules, s 3.3.1.
[35] See SMA, ch 15 s 11.
[36] See SMA, ch 15 s 11 (third para).
[37] See SMA, ch 15 s 11 a.

d) the Issuer has failed to pay any fee as set out under 2.1.4 when due.

Decisions to delist the shares pursuant to Section 29 (ii) must be taken by the Disciplinary board.[38]

The rules regarding obligatory delisting are similar (but not identical) for shares listed on Nordic Growth Market.[39]

For shares listed on an MTF there are special provisions in Chapter 11 Section 12 SMA. Chapter 11 Section 12(1) SMA stipulates that a trading facility that operates a trading platform *may* suspend trading in a financial instrument (trading suspension) or withdraw the instrument from trading, if the instrument does not meet the requirements for trading on the platform and it is not likely that the trading suspension or withdrawal would seriously harm the investors' interests or prevent the market from functioning properly.

An MTF may according to Chapter 11 Section 12(2) SMA suspend trading in a financial instrument or withdraw the instrument from trading also in cases other than those specified in the first paragraph, if it is not likely that the suspension of trading or the withdrawal would seriously harm the interests of investors or prevent the market from functioning properly.

If an MTF suspends trading in a financial instrument or withdraws the instrument from trading, the MTF must also suspend trading in financial derivative instruments attributable to that instrument or withdraw such derivative instruments from trading when necessary with regard to the purpose of the trading suspension or withdrawal.[40]

The MTF must publish decisions on trading suspensions or removal of financial instruments from trading and notify the Financial Supervisory Authority of such decisions.[41]

23. Which body has been designated as the competent authority, in particular regarding the power to require the removal of a financial instrument from trading pursuant to art. 69(2)(n) MiFID II?

The Swedish Financial Supervisory Authority is the supervisory authority. It has decided to suspend trading in a number of cases. As regards decisions with respect to obligatory delisting, see Q 22 above.

24. What are the rules of the market that can justify a compulsory delisting imposed by market (art. 52 of Directive 2014/65)?

See Q 22 above.

[38] See the Nasdaq Rulebook, Supplement D, Part G, s 30.
[39] See the NGM Mainmarket Rules and the NGM SME Rules, s 3.3.2.–3.3.5.
[40] See SMA, ch 11 s 12 (third para).
[41] See SMA, ch 11 s 12 (fourth para).

25. Have any of the voluntary or obligatory delisting requirements above changed materially since 2010 (e.g., due to a legal decision or amendment of the regulations)?

Yes, there have been some amendments with respect to the statutory rules and the stock exchange rules, and the SSC has also issued a few rulings, see eg the rulings referred to under Q 2 and 6 above.

PART III. GENERAL QUESTIONS (if not already answered)

26. How are dissenting shareholders protected in voluntary delisting?

As set forth above a stock exchange or MTF shall delist a company, if an issuer files an application for delisting. Dissenting shareholders are mainly protected by the grace period and by good practice in the Swedish stock market. As outlined in Q 2 above the SSC has adopted a very restrictive practice with respect to voluntary delisting if the admission requirements are still met.

27. What are the sanctions in case of a breach of the delisting rules?

Supplement D Part I Section 34 of Nasdaq Rulebook stipulates that the Disciplinary board can decide on delisting in the event that an issuer has failed to comply with legislation, other rules, the Nasdaq Rulebook or good practice on the stock market if the violation of said standards is serious. Otherwise, the sanction may stop at a stock market fine corresponding to not more than 15 times the annual fee paid by the Issuer to the stock exchange. In case of a less serious or excusable breach the stock exchange may instead issue a reprimand. The rules are similar for issuers listed on NGM Mainmarket.[42] Consequently, an issuer that in relation to a delisting process acts in a way that contravenes good practice in the stockmarket, may be subject to a fine and/or a delisting. In practice it is very rare that listed companies do not act in line with good practice in the stock market as developed by the SSC.

With respect to a delisting decision by a disciplinary board, anyone who is dissatisfied with such decision may bring an action against the stock exchange at the general courts within three months from the date of the decision.[43]

If a decision to merge with a non-listed company contravenes for example a provision in the SCA, a shareholder (and some other persons) may bring an action in court to have the decision overturned pursuant to Chapter 7 Sections 50–52 SCA. In addition, damages may be awarded under certain circumstances pursuant to Chapter 29 Section 1-3 SCA.

28. Is there a special duty of loyalty (for the board or, if applicable, the shareholders) imposing further restrictions in connection with a delisting?

There are rules protecting shareholders in the SCA, which could be applicable in relation to a decision to delist the company, for example in case of an abuse of power by the majority. Accordingly, Chapter 7 Section 47 SCA stipulates that the general meeting must not take decisions that give an undue advantage to a shareholder or a third party to the detriment of the company or a shareholder, and there is also, unless otherwise stipulated in the Articles of Association, a profit purpose in Chapter 3 Section 3 SCA, which, *nota bene*, binds all decision-

[42] See NGM Mainmarket Rules, s 11.
[43] See SMA, ch 26 s 4.

making bodies, also the general meeting. If a decision to delist a company has been taken by the general meeting and the decision contravenes for example Chapter 7 Section 47 SCA a shareholder (and some other persons) may bring an action in court to have the decision overturned pursuant to Chapter 7 Sections 50–52 SCA. In addition, damages may be awarded under certain circumstances pursuant to Chapter 29 Section 1-3 SCA. There is, apart from those rules, no established duty of loyalty for shareholders under Swedish law[44], even if there are some case law with respect to the abuse of rights which possibly could be invoked under certain circumstances.[45]

If the decision to delist has instead been taken by the BoD, the company (and indirectly the shareholders) are to some extent protected by the duty of loyalty and the profit purpose.[46] A breach of the duty of loyalty may entitle the company to damages according to Chapter 29 Section 1 SCA and it may also, under certain circumstances, consititute a criminal act according to Chapter 10 Section 5 Swedish Criminal Code. Individual shareholders are also protected by Chapter 8 Section 41 SCA, if the decision gives an undue advantage to a shareholder or a third party to the detriment of a company or a shareholder. A breach of that provision could, *inter alia*, entitle shareholders to damages pursuant to Chapter 29 Section 1 SCA.

It should be noted that the SSC, through its statements referred to under Q 2 above, especially, AMN 2004:29 and AMN 2014:33, has stated that the BoD, in connection with a voluntary delisting and a cold delisting[47], must act not only in the interest of the company (which the duty of loyalty normally implies), but also in the interest of all of the shareholders. This statements in connection with the statement that there is a presumption that whoever acquires shares in a listed company should do so under the assumption that there is a functioning market for the company's shares until the admission (listing) requirements are no longer met[48] could possible imply that the BoD, at least from the point of view of good practice in the stock market, has a limited duty of loyalty to the shareholders. The duty should imply that the BoD, when taking the decision to delist, must consider not only the interest of the company but also the shareholders' interest of a functioning market for the shares.

29. How are shareholders protected in obligatory delisting?

See Q 22, 26, and 28 above. There are restrictive rules governing the reasons for obligatory delisting and rules regarding provision of a grace period. The decision to delist must furthermore be taken by the Disciplinary board according to the Nasdaq Rulebook and the issuer must normally be heard in respect of the information submitted in the matter by any third party. Any decision regarding a delisting must be published immediately and in addition the Swedish Financial Supervisory Authority must be notified of such decisions.[49] For issuers listed on an MTF Chapter 11 Section 12 SMA applies.

[44] Shareholders in close corporation may however have a duty of loyalty due to their close co-operation.
[45] See eg NJA 1996, 389, NJA 1993, 188, NJA 2005, 608 and NJA 2014, 877.
[46] See eg J Östberg, *Styrelseledamöters lojalitetsplikt: särskilt om förbudet att utnyttja affärsmöjligheter* (Stockholm, Jure, 2016), 147 et seq.
[47] See eg AMN 2019:03 and AMN 2021:50.
[48] See AMN 2004:29 and AMN 2014:33.
[49] See ch 15 s 11 SMA and the Nasdaq Rulebook, Supplement D, Part G, s 29.

With respect to a delisting decision by a disciplinary board, anyone who is dissatisfied with such decision may, as set forth above, bring an action against the stock exchange at the general courts.[50]

30. Have shareholders successfully challenged delisting decisions in the past? If Yes, could you provide any names of cases?

No, as far as I have been able to find out there are no such cases.

31. How is the issuer protected in (obligatory) delisting?

See Q 22 and 27 above.

32. How does insolvency and restructuring of a listed company affects delisting? Specifically: a) Does the initiation of formal insolvency (liquidation) procedures automatically trigger mandatory delisting? b) Does the initiation of formal restructuring / reorganization procedures automatically trigger mandatory delisting? c) If the above scenarios do <u>not</u> automatically trigger mandatory delisting, what else are the implications? d) Please give empirical information (if available) on the treatment of insolvent listed firms by trading venues in your jurisdiction e) What are the relevant provisions (please provide translations)?

See Question 22 above.

33. Do relevant courts have the power to examine the delisting reasons on the merits?

There are no specific rules regarding examination of the delisting reasons on the merits, but pursuant to Chapter 26 Section 4 SMA anyone who is dissatisfied with a decision by a stock exchange to, inter alia, delist a financial instrument may bring an action against the stock exchange at the general courts within three months from the date of the decision. The scope of the provision is somewhat unclear and as far as I know no action has been initiated against a stock exchange pursuant to this provision.

34. What are the legal consequences of delisting: a) on shares, b) on shareholders, c) on the issuer?

a. The shares are no longer traded on a stock market, or trading facility, which means, inter alia, that they may not be subject to a public takeover offer. Furthermore, there is no established market for sale and no established price.

b. As emphasized by the SSC[51] a listing of shares on a stock market fulfils many functions for the shareholders, i. a. the provision of (i) a functioning trading and pricing of the company's shares, (ii) legal regulation of insider trading and other market abuse issues etc., (iii) adequate provision of information from the company to the shareholders and the market on an ongoing basis, (iv) legal rules and the stock exchange's rules with respect to takeovers, (v) the supervision of the marketplace by the Financial Supervisory Authority, (vi) the SSC's statements on,

[50] See ch 26 s 4 SMA.
[51] See AMN 2014:33.

among other things, incentive programs and related party transactions and (vii) the SCC as a "resource" for statements in individual cases. All of these functions are lost upon a delisting of the shares. Furthermore, certain rules in the SCA protecting shareholders, of which some are only applicable in relation to listed companies (for example with respect to approval of related party transactions in Chapter 16 a SCA), will not be applicable.

c. The rulings by the SSC are no longer relevant since the shares are not listed. Furthermore, the issuer must not comply with the rules in the SMA, the rules of the market place or the provisions set forth in the Swedish corporate governance code, nor with the regulation regarding disclosure of information and some other rules in SCA and the Annual Accounts Act which are applicaple only in relation to listed companies. Consequently, the issuer will have less rules to comply with, which should normally reduce its administrative costs.

35. Are there any statistical data on delisting in your Country? If yes, please provide further details. Are there any statistical data, or evidence, on downlisting in your Country? If yes, please provide further details. Are there any statistical data, or evidence, on delisting from an MTF in your Country? If yes, please provide further details.

As per 30 September 2022 thirteen companies was delisted from Nasdaq Stockholm in 2022. In 2021 thirteen companies was delisted from Nasdaq Stockholm and five from Nordic Growth Market Main Regulated. In 2020 the number was sixteen from Nasdaq Stockholm and seven from Nordic Growth Market Main Regulated.

Year	Voluntary delistings Nasdaq	Voluntary delistings First North	Obligatory delistings Nasdaq	Obligatory delistings First North*	Total
2007	8	4	1	1	14
2008	19	7	1	2	28
2009	11	3	1	1	16
2010	12	2	1	1	16
2011	9	6	1	1	17
2012	7	13	0	0	20
2013	7	4	1	0	12
2014	7	3	0	3	13
2015	7	8	0	2	17
2016	8	3	1	3	15
2017	3	5	2	2	12
2018	11	6	1	6	24
2019	8	4	1	5	18
2020	11	7	2	2	22
2021	11	10	0	1	23
2022	13	14	0	6 (5 bankrupt)	33

* This is based on my interpretation of statistics I have obtained from Nasdaq. There is some uncertainty regarding the interpretation of the reasons for delisting.

Most of the obligatory delistings have been due to bankruptcy or non-fulfilment of the listing requirements and a few due to breaches of applicable rules. Most of the voluntary delistings have been due to a takeover.

36. More specifically, how many cases of voluntary delisting and / or obligatory delisting by the competent national supervisory authority have there been since MiFID I entered into force in 2007? Please also provide the main reasons for mandatory delistings, if available.

There are no cases where the Financial Supervisory Authority has decided upon delisting of shares. As regards decisions to delist by the disciplinary boards, see Q 35 above.

37. Do you have something to add?

There are currently two regulated stockmarkets (stock exchanges) in Sweden, Nasdaq Stockholm and Nordic Growth Market Main Regulated Equity, and three MTF, Spotlight Stockmarket, Nasdaq First North and Nordic Growth Market Nordic SME. The statutory rules described above and the rulings of SSC are applicable to both stock exchanges and MTF, unless stated otherwise. As regards the rules of the relevant market place regarding delisting, I have however only referred to the rules of the stock exchanges, where relevant.

In sum, the statutory rules regarding voluntary delisting implies that a stock exchange may not refuse an application for delisting, but may postpone the delisting in order for the shareholders to be able to sell the shares. Restrictions with respect to delisting have instead been established by the SSC. If the admission requirements are still met, good practice in the stock market requires that the reasons for the application are of such strength that it can be considered justified to expose the other shareholders to the disadvantages of a delisting. Otherwise the decision to apply for delisting contravenes good practice in the stock market, unless it has been adopted by the general meeting of shareholders with a majority consisting of all shareholders present at the general meeting and these represent at least nine tenth of the shares in the company. The same special majority requirement applies according to Chapter 23 Section 17 SCA in relation to mergers with a non-listed company. It should normally be impossible to achieve this special majority requirement.

There are some inconsistencies with respect to delisting under Swedish law. First, cold-delisting by way of merger is regulated by law, whereas delisting by way of a voluntary application is (at least the restrictions) mainly regulated by good practice in the stock market. This has implications for, inter alia, the sanctions. Furthermore, it should be noted that a merger between a company listed on an MTF and a non-listed company is not covered by Chapter 23 Section 17 SCA, which is somewhat odd, considering that the SSC makes no difference between a company listed on a regulated market and a company listed on an MTF in this respect. Finally, there are some discrepancies with respect to the majority requirements for cross-border mergers and cross-border demergers resulting in a non-listed company.