

**Nasdaq CSD SE**

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**RULES OF PROCEDURE OF THE USER COMMITTEE OF THE ESTONIAN  
SETTLEMENT SYSTEM**

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Effective Date: 18.09.2017

## **1. INTRODUCTION**

1.1 These rules of procedure (the "**Rules**") of the user committee of the Estonian Settlement System (the "**User Committee**") have been adopted by the Supervisory Council (the "**Board**") of Nasdaq CSD SE (the "**Depository**"). These Rules define tasks and duties, as well as the work procedure for the User Committee. The governance arrangements of the User Committee set out herein shall be publicly available on webpage of the Depository.

## **2. THE MANDATE OF THE USER COMMITTEE**

2.1 The User Committee shall have advisory role vis-à-vis the Board.

2.2 The User Committee shall advise the Board on:

- (i) key arrangements that have impact on its members;
- (ii) the criteria for admission of issuers or participants in the Estonian Settlement System;
- (iii) the service level of Depository; and
- (vi) other matters which, in the reasonable view of the User Committee, may have impact on its members.

2.3 The User Committee shall have the right to submit a non-binding opinion to the Board containing detailed reasons regarding the pricing structures of Depository or any other issue which the User Committee considers important and having impact on its members.

2.4 The User Committee shall review audit findings together with Depository as provided for under Article 28 of Regulation (EU) No 909/2014 (the "**CSDR**") and subject to Section 7 below, where:

- (i) such findings relate to the mandate of the User Committee determined herein, in particular on key arrangements that impact the users of the Depository, including the criteria for accepting issuers or participants to the Estonian Settlement System;
- (ii) findings may impact the level of provision of services by the Depository, including ensuring business continuity.

2.5 In case the Board decides not to follow the advice of the User Committee provided under Clauses 2.2-2.3 above, the User Committee may inform the Financial Services Authority of any areas in which it considers that the advice of the User Committee has not been followed.

2.6 The User Committee shall report directly to the Board.

2.7 The User Committee is independent from any direct influence by the Depository.

2.8 The Board may provide a request to the User Committee to provide its advice and/or opinion regarding any activities and/or decisions of the Depository. In such case the User Committee shall provide its advice and/or opinion to the Board within 30 business days following receipt of respective request. In such case the advice and/or opinion of the User Committee are not binding over the Depository.

### **3. GOVERNANCE ARRANGEMENTS OF THE USER COMMITTEE**

3.1 The User Committee shall comprise of representatives of the Issuers and representatives (the "**Representatives**") of the Participants of the Estonian Settlement System as and if appointed by groups of users ("**Group(s) of Users**") listed in 3.2 - 3.3.

3.2 The User Committee is open for appointments of Representatives by the following groups of Issuers:

- (i) 1 (*one*) Representative of Issuers of securities admitted to trading by Nasdaq Tallinn;
- (ii) 1 (*one*) Representative of Estonian public limited companies (*aktsiaselts*) and private limited companies (*osajuhing*) not covered by point (i); and
- (iii) 1 (*one*) Representative of units of investment funds not covered by point (i).

3.3 The User Committee is open for appointment of 1 (*one*) Representative by the Account Operators of the Estonian Settlement System.

3.4 Representatives shall select the chairman of the User Committee (the "**Chairman**") by the majority of votes at the first ordinary meeting of the User Committee for a term that expires at the respective meeting **24 months** following the appointment. Each Representative shall have one vote.

3.5 Meetings of the User Committee should be regular (*at least four times per year*). At the first ordinary meeting of the User Committee, the Representatives agree on the schedule of meetings. Other regular meetings will be convened by the Chairman. Each Representative may request the Chairman to convene a meeting of the User Committee earlier than the scheduled meeting and the Chairman has to convene the meeting within **20** business days after receipt of the respective request.

3.6 The Chairman shall:

- (i) arrange and organise the work of the User Committee;
- (ii) maintain and administer the list of members (*i.e. Representatives*) of the User Committee;
- (iii) convene meetings of the User Committee and draw up their agendas;

- (iv) chair the meetings of the User Committee;
- (v) inform the User Committee about proposals and positions of the Depository, if any;
- (vi) select the secretary of the meeting of the User Committee;
- (vii) provide advice or non-binding opinions of the User Committee to the Board according to Clauses 2.2 and 2.3 above;
- (viii) represent the User Committee against the Depository, external independent experts, competent authorities or any other third party;
- (ix) invite the Depository, external independent experts or competent authorities to the meeting of the User Committee, if it is agreed between the Representatives or requested by any Representative;
- (x) have the right to resign at any time by giving advance notice of 20 calendar days to the Depository.

3.7 The Representative entered to the list of members of the User Committee shall have the right to:

- (i) attend the meetings of the User Committee and vote on matters proposed to the meeting;
- (ii) be informed about the items of the agenda, draft decisions and other documentation related thereto;
- (iii) propose additional items to the agenda of the meeting of the User Committee;
- (iv) express opinion in the meeting of the User Committee on any issue of the agenda;
- (v) request the Chairman to convene the meeting of the User Committee;
- (vi) provide advice or non-binding opinions to the User Committee which could be served to the Board on behalf of the User Committee;
- (vii) suggest inviting the Depository, external independent experts or competent Financial Services Authorities to the meeting of the User Committee;
- (viii) represent the interest of particular Group of Users of the Depository in the meeting of the User Committee;
- (ix) resign at any time upon serving on the Chairman a 20 (twenty) calendar days advance written notice.

3.8 Representatives (including the Chairman) shall have the following duties:

- (i) to act honestly and reasonably with respect to other Representatives and Groups of Users whose interest they have been appointed to represent at the User Committee and against the Depository;
- (ii) to avoid conflicts as determined in Section 7 below and to inform the User Committee about the occurrence of any conflicts of interest;
- (iii) to participate in the meetings of the User Committee in person.

3.9 In case the Chairman or any Representative resigns from office, the resigned person shall be substituted by a new Representative appointed in accordance with Section 5 below. After a new Representative is appointed instead of the resigned Chairman, the Representatives select the new Chairman by the majority of votes at the next ordinary meeting of the User Committee.

3.10 Each Issuer or Participant of the Depository Group of Users has the right to provide advice or opinion on issues which they consider to be key issues having impact for them to the Representative appointed by the respective Group of Users and such Representative has an obligation to inform the User Committee about the advice or opinions so received.

#### **4. OPERATING PROCEDURES OF THE USER COMMITTEE**

4.1 Meetings of the User Committee may be held at premises of the Estonian branch of the Depository, if it is agreed by the User Committee. Meetings may also be held by using telephone, video conference or similar facilities by means of which all persons participating in the meeting can hear each other. Such participation in a meeting will constitute presence in person at such meeting.

4.2 The Chairman shall determine the time and venue of the meetings of the User Committee and provide the agenda and related materials for the meeting for the Representatives not later than 5 (five) business days before the meeting by (i) fax, e-mail or other similar means of communication which enable to convey the text of the notification or (ii) by delivering documents in printed format by mail or courier. Where practicable, documents and other materials (documents and/or respective draft documents, explanatory notes, draft decisions submitted to the User Committee for consideration etc.) related to the issues on the agenda shall be submitted together with the notice or at any other time prior to the meeting of the User Committee.

4.3 Each Representative may propose additional items to the agenda of the meeting of the User Committee by serving on the Chairman a written notice to that effect at least 2 (two) business days prior to the meeting. Where practicable, together with the notice, such Representatives shall present to the Chairman documents and other materials related to the proposed items. In such cases, the Chairman shall circulate the supplemented agenda to all Representatives as soon as possible.

4.4 During the meeting of the User Committee, the Representatives may decide on the agenda, date, time and venue of the next meeting. In such case, separate notices on the convening of the meeting shall not be required, except when not all Representatives were present.

4.5 The User Committee meeting shall have the quorum if at least one-half of the total number of Representatives are present. Participants who voted in writing in advance shall be deemed to have participated in the meeting of the

User Committee.

- 4.6 Resolutions of the User Committee shall be adopted by a simple majority of the votes cast. In the event of a tied vote, the Chairman shall have the casting vote. Resolutions at the User Committee shall be considered to be adopted when the "in favour" votes exceed the "against" votes. Each Representative (including the Chairman) can vote in writing "in favour" or "against" or abstain from voting.
- 4.7 The voting of the User Committee is public. The vote may be secret at the request of any Representative.
- 4.8 Representatives may vote in advance without participating in the meeting of the User Committee. In such case, Representatives have to provide in writing their votes regarding the known items of the agenda to the Chairman before the scheduled meeting. However, if any Representative did not participate in the meeting of the User Committee, the resolutions in respect of new or amended items of the agenda shall be deemed adopted and valid only provided that (i) as soon as practical after such meeting the Representatives who did not participate in the meeting are provided with a copy of the minutes of the meeting of the User Committee and (ii) such Representatives do not provide their objections regarding such resolutions within 3 (three) business days from receipt of the minutes.
- 4.9 Representatives shall have no right to authorise other persons to participate and vote on his or her behalf during the meeting of the User Committee or to sign the resolution of the User Committee.
- 4.10 The meetings of the User Committee shall be recorded in minutes. The minutes shall be drafted by the secretary and attested by the Chairman and at least one Representative.
- 4.11 The minutes of the meeting of the User Committee shall specify: the Representatives attending the meeting, date and place of the meeting, items on the agenda, discussed items, decisions adopted and the number of the Representatives who voted "in favour" or "against" each of items on the agenda or abstained from voting. If the Representatives decide so, person delivering a speech and his or her proposals may be indicated in the minutes.
- 4.12 Agendas, minutes, resolutions, draft decisions and any other documents have to be prepared in English language.
- 4.13 The minutes shall contain all decisions made by the User Committee. In the minutes it shall be specifically recorded when a discussion concerns an important matter or principle, when a dissenting opinion is presented or when Representatives refrain from participating in a decision due to a conflict of interest.

- 4.14 The secretary shall ensure that the minutes of each meeting of the User Committee within 1 (one) week are attested and submitted to the User Committee. Further, the minutes shall be provided to the Representatives and the Depository. These minutes may be supplemented by the Chairman, where appropriate.
- 4.15 When the User Committee adopts decision to provide an advice or a non-binding opinion to the Board as determined in Clauses 2.2 and 2.3 above, the Chairman provides such advice or non-binding opinion to the Board within 10 business days. All further communication regarding the provided advice or non-binding opinion with the Board is carried out through the Chairman. The Chairman has to ensure that the User Committee is informed about any communication with the Board.
- 4.16 The User Committee may engage in joint meetings ("**Joint UC Meetings**"), discussions and consultations with user committees of other securities settlement systems of the Depository. Such Joint UC Meetings, discussions and consultation shall be used in particular where issue or matter is of cross-market impact to multiple securities settlement systems of the Depository, and where conflicting or different positions of individual user committees would be likely to compromise the ability of the Depository to follow the user committees' advice. Procedural rules regarding decision making by the Joint UC Meetings shall be agreed between the user committees participating in the Joint UC Meetings.

## **5. APPOINTMENT PROCESS AND THE ELIGIBILITY CRITERIA OF THE REPRESENTATIVES**

- 5.1 Groups of Users listed in 3.2 and 3.3 shall arrange their appointments as agreed within the particular Group of Users and notify (the "**Appointment Notification**") such appointment(s) to the Depository. Appointments shall be for 24 months term, unless otherwise specified in the Appointment Notification ("**regular term**").
- 5.2 Each Group of Users shall seek to appoint a Representative who is of sufficiently good repute and has adequate expertise in financial services and matters of the competence of the User Committee relevant for the respective Group of Users. The Board may reject an appointment of the Representative only if the appointed person does not satisfy the criteria set forth above, or if other material reasons exist which in the reasonable opinion of the Board justify the rejection of the Representative.
- 5.3 The Appointment Notification shall provide identity, contact details and *curriculum vitae* of the appointed Representative, and the list of Issuers or Participants, belonging to the respective Group of Users supporting the appointment.
- 5.4 The appointment with highest number of supporting Issuers or Participants shall prevail in case the Depository has received more than one Appointment

Notification from the same Group of Users.

- 5.5 The Representative may be recalled any time prior to expiration of regular term by the Issuers or Participants that supported the appointment.

The Representative shall also be recalled prior to expiration of the regular term if the Depository is provided a new Appointment Notification with the higher number of Issuers or Participants within the same Group of Users supporting the new Representative.

- 5.6 The number of tenures of the Representatives shall not be limited. The authority of the Representative shall enter into effect as of the moment of entering the name of the Representative to the list of User Committee members. The Representative shall discharge his or her duties for the regular term or until the appointment of a new Representative by the relevant Group of Users.

- 5.7 In case the respective Group of Users rejects or waves the right to appoint their Representative, the total number of the members belonging to the User Committee shall be reduced accordingly until the respective Group of Users provides the Depository with the Appointment Notification.

## **6. DISQUALIFICATION**

- 6.1 The Representatives shall assess all matters independently based on relevant laws and regulations as well as any rules applicable at the Depository.

- 6.2 The Representatives shall inform the User Committee of any circumstances that might cause disqualification of any Representative. Any Representative shall be disqualified from participating in the handling of a certain issue if he or she otherwise reasonably is expected to have a conflicting interest relating to the decision. It is up to the other Representatives to decide if the Representatives can participate in the handling of the matter or not.

## **7. CONFLICT OF INTEREST**

- 7.1 The advice or non-binding opinion of the User Committee shall be independent from any direct influence by the Depository, including the Board.

- 7.2 Each Representative shall disclose potential conflicts of interest in any matters discussed in the User Committee.

- 7.3 Where the Chairman determines that the Representative has an actual or potential conflict of interest on a particular matter that Representative shall not be allowed to vote on that matter.

- 7.4 Each time before disclosing audit finding to the User Committee pursuant to Clause 2.4 above, the Board takes into account potential conflicts of interest



between the Representatives and the Depository. In case the Board determines possible conflicts of interest between the Representatives and the Depository, the Board has the right not to disclose audit findings to the Representatives who have conflicts of interest with the Depository. The User Committee should ensure that the Representatives who have conflicts of interest with the Depository would not be acknowledged with such audit findings. When majority of Representatives have conflicts of interest with the Depository, relevant audit findings may not be disclosed.

7.5 Representatives that are settlement internalisers shall not be provided with information that could place them in a competitive advantage or that otherwise may constitute a conflict of interests with the Depository.

## **8. CONFIDENTIALITY**

8.1 The Representatives shall be bound by confidentiality duty as provided by Regulation (EU) No 909/2014.<sup>1</sup>

8.2 Any external independent expert invited to attend the meeting of the User Committee shall sign a confidentiality agreement where they undertake, subject to regulatory requirements, not to disclose the matters discussed in the User Committee or the advice and/or non-binding opinions provided to the Board or any other related information.

## **9. MISCELLANEOUS PROVISIONS**

9.1 Each Representative shall be responsible for the costs associated with its participation in the User Committee and shall not be entitled to demand or receive any fee or compensation from the Depository for such participation.

9.2 The Chairman shall promptly, in writing, inform the competent Financial Services Authority of any decision in which the Depository decides not to follow the advice or non-binding opinion of the User Committee.

9.3 These Rules may be amended by the resolution of the Board:

- (i) when changes are required in the reasonable opinion of the Board to facilitate the orderly functioning of the User Committee; or
- (ii) when the Board has received amendment request supported by  $\frac{3}{4}$  of total number of votes of Representatives.

9.4 The first meeting of the User Committee will be convened by the Depository within **40 business days** following Depository's reauthorisation under the CSDR and the receipt of the first Appointment Notification.

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<sup>1</sup> Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012