

19/05/2020

DECISION

JM AB
via the Chairman of the Board of Directors
169 82 Stockholm

FI Ref. 19-527
Notification No. 1



Finansinspektionen
Box 7821
SE-103 97 Stockholm
[Brunnsgatan 3]
Tel +46 8 408 980 00
Fax +46 8 24 13 35
finansinspektionen@fi.se
www.fi.se

Caution and order of correction

Finansinspektionen's decision (to be announced 20 May 2020 at 8:00 a.m.)

1. Finansinspektionen issues JM AB (publ) (CIN 556045-2103) a caution.

(Chapter 25, section 22 of the Securities Market Act [2007:528])

2. Finansinspektionen issues JM AB (publ) an order to correct the company's future financial statements such that tenant-owners associations are consolidated during the production phase in accordance with IFRS 10 Consolidated Financial Statements. The correction shall be implemented no later than in the company's half-yearly report for 2020.

(Chapter 25, section 18 of the Securities Market Act [2007:528])

To appeal the decision, see *Appendix 1*.

Summary

Finansinspektionen has investigated whether JM AB (publ) has followed the provisions set out in Article 4 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (the IAS Regulation) with regard to the issue of the company's accounting of property development through tenant-owners associations in the consolidated financial statements for 2017.

The investigation shows that the company's consolidated financial statements for 2017 do not fulfil the requirements set out in IFRS 10 Consolidated Financial Statements and that the company therefore has been non-compliant with Article 4 of the IAS Regulation. The company's consolidated financial statements for 2017 have thus not been prepared in accordance with the

regulations that apply to the issuer (Chapter 16, section 8 of the Securities Market Act [2007:528]).

The deficiencies in the company's consolidated financial statements have been of such a nature that Finansinspektionen assesses there to be grounds on which to intervene against the company. Finansinspektionen makes the assessment that the intervention shall take the form of a caution and an order to correct future financial statements so that the tenant-owners associations are consolidated in accordance with IFRS 10. Finansinspektionen has no reason to believe that the non-compliance identified in the investigation will be repeated and there are therefore no grounds on which to issue a fine in conjunction with the order of correction.

1 Background

1.1 The company's operations

JM AB (publ) (JM or the company) is a Swedish firm that develops and builds residential properties and residential areas. JM conducts business in Sweden, Norway and Finland.

JM AB is parent company in a group that consists of approximately 50 companies. Consolidated net sales for 2017 were SEK 17,275 million. Profit for the same year amounted to SEK 2,259 million, and the balance sheet total for 31 December 2017 was SEK 16,947 million. The average number of employees in the group in 2017 was 2,538, of which 448 were in JM's foreign companies.¹

JM's shares are admitted to trading on Nasdaq Stockholm. The company's market capitalisation was SEK 13 billion at the end of 2017.²

1.2 The matter

At the end of 2019, new legislation for financial reporting supervision entered into force. In accordance with this legislation, Finansinspektionen has delegated to the Board for Swedish Financial Reporting Supervision the assignment of monitoring the regular financial information of listed firms. Prior to this, the stock exchanges Nasdaq Stockholm Aktiebolag (Nasdaq) and Nordic Growth Market NGM Aktiebolag were primarily responsible for the day-to-day monitoring of periodic financial information (financial reporting supervision) published by issuers whose securities were admitted to trading on a regulated market operated by the stock exchange. Finansinspektionen is the central competent authority in accordance with the Transparency Directive³

¹ JM's annual report and consolidated financial statements from 2017.

² JM's annual report and consolidated financial statements from 2017.

³ Directive 2004/109/EC of the European Parliament and of the Council of 15 December on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

and has supervised the monitoring of financial information carried out by the stock exchanges. This matter was initiated by Nasdaq in 2018 and therefore follows the older framework for financial reporting supervision.

Finansinspektionen opened an investigation in January 2019 into whether JM AB (publ), as one of several construction companies, has followed the provisions set out in Article 4 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (the IAS Regulation) with regard to the matter of the company's accounting of property development through tenant-owners associations in the consolidated financial statements for 2017. The investigation was based on the material gathered by Nasdaq in 2018 when reviewing the same matter and supplementary information and material that Finansinspektionen obtained from the company, the company's website, and the information portal Infotorg.

On 3 June 2019, Finansinspektionen sent a verification letter to the company presenting the authority's observations and preliminary assessments. The company responded to the verification letter on 27 June 2019.

Finansinspektionen thereafter requested additional information and clarifications. On 4 July 2019, Finansinspektionen held a meeting with the company. The discussion at the meeting revolved around the response to the verification letter, and Finansinspektionen informed the company about the continued processing of the matter.

JM was notified on 26 November 2019 that the matter had been submitted for a sanction assessment. On 28 January 2020, Finansinspektionen sent a request for statement to the company. The company was thus given the opportunity to submit a statement regarding Finansinspektionen's observations, preliminary assessments, and considerations to intervene against the company.

JM submitted a statement to Finansinspektionen on 25 February 2020 and supplements to this statement in the form of expert opinions on 2 March 2020.

In this statement, JM primarily asserts the following.

The interim boards of directors of tenant-owners associations are independent. The members of the board of directors are appointed by a party that is independent of JM, and the interim board of directors has the substantive rights that follow from the assignment and liabilities that every board member in an economic association has. The board of directors makes its decisions independently and directs the activities that the tenant-owners association needs to implement during the production phase. The interim board's tasks, according to JM, are important from the perspective of the tenant-owners association and its future members. The objective is to form a housing cooperative association that functions for its members in terms of both housing and finances. The objective is not to create profitability in a traditional sense, and the activities are not directly relevant for JM's returns.

JM further asserts that the assessment of financial reporting matters must start with the company's actual business model and the facts and circumstances that apply as a result of this model. The association's independence is a fundamental component in JM's industry-unique business model that has applied for decades. JM does not have power over the tenant-owners association according to paragraph 7a of IFRS⁴ 10 and thus does not control the association. JM therefore does not need to consolidate the association. Nasdaq has also never objected to JM's financial reporting.

In its statement, JM also presents its views on the applicability of several of the paragraphs of IFRS 10 that Finansinspektionen refers to and these views are discussed below. Finansinspektionen also returns later in its assessment to the company's other objections.

2 Applicable provisions

According to Article 4 of the IAS Regulation, firms governed by the law of a Member State shall prepare their consolidated accounts in conformity with the international accounting standards adopted in accordance with the procedure laid down in Article 6(2). The requirements apply on the condition that their securities on the balance sheet date are listed on a regulated market of any Member State within the meaning of Article 1(13) of Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field. It is thereby mandatory for firms with securities admitted to trading on a regulated market to apply the international accounting standards adopted by the European Commission in accordance with the IAS Regulation.

The provisions that regulate whether an entity shall consolidate another entity, in other words if the other entity is to be included in the consolidated financial statements, are set out in the international financial reporting standard IFRS 10. An entity (the parent) shall consolidate another entity if the parent controls the other entity (paragraph 2 of IFRS 10).

Paragraph 7 of IFRS 10 clarifies that an investor only controls an investee if the investor has

- a) power over the investee (see paragraphs 10–14),
- b) exposure, or rights, to variable returns from its involvement with the investee (see paragraphs 15 and 16), and
- c) the ability to use its power over the investee to affect the amount of the investor's returns (see paragraphs 17 and 18).

⁴ International Financial Reporting Standards.

The obligation for an issuer to publish its annual report and, where applicable, consolidated financial statements is set out in Chapter 16, section 4 of the Securities Market Act (2007:528). Publication shall occur as quickly as possible and no later than four months following the end of each financial year. Chapter 16, section 8 of the Securities Market Act states that, for issuers with a registered office in Sweden, there are provisions regarding annual reports, consolidated financial statements, and interim reports in the Annual Accounts Act (1995:1554), Annual Accounts at Credit Institutions and Securities Companies Act (1995:1559) and Annual Accounts at Insurance Undertakings Act (1995:1560). In addition, the IAS Regulation applies to consolidated financial statements.

Finansinspektionen describes in more detail in *Appendix 2* the provisions the authority applies when assessing the matter. Section 5 presents applicable provisions regarding intervention.

3 Points of departure

The description below is based on Finansinspektionen's observations during its investigation.

The matter of whether tenant-owners associations are to be consolidated is relevant during the so-called production phase, i.e. during the period that in simplified terms can be described as the time from when the association is formed until the tenant-owners have become members in the tenant-owners association, occupied the apartments, and replaced the board that was elected when the association was formed. JM does not consolidate tenant-owners associations associated with JM's projects during the production phase.

Normally, tenant-owned units are reserved by JM and prospective buyers entering into a reservation contract already before the tenant-owners association has been formed. The reservations continue on an ongoing basis. JM normally does not start production until a certain percentage of the apartments have been reserved through signed reservation contracts.

The typical example of its reservation contract that JM provided to Finansinspektionen specifies which apartment has been reserved and the preliminary annual fee, downpayment, and tenure fee that must be paid to the tenant-owners association. There is a reservation fee linked to the contract. The terms and conditions state that if the buyer were to not sign the preliminary or tenure contract for a reason other than those specified in the reservation contract, only part of the reservation fee will be repaid. The other part is an administration fee. If the annual fee specified in the preliminary or tenure contract is more than ten per cent higher than the amount in the reservation contract, or if the downpayment or the tenure fee increases, the buyer can choose not to sign the preliminary or tenure contract without needing to pay the administration fee.

At a certain point during JM's project development, JM establishes contact with an independent party which in turn forms a tenant-owners association. It is then to the newly formed tenant-owners association that JM submits its offer for the sale of land and execution of the construction contract. The association does not conduct a tender process and does not take the initiative to ask different parties to develop or build the residential properties.

JM and the newly formed tenant-owners association simultaneously enter into a purchasing contract (agreement on the sale of land) and a turnkey contract at the start of production. The contracts are conditional on one another since they refer to the same project. The boards of directors of the tenant-owners associations evaluate JM's offer and resolve to enter into an agreement with JM for the production and provision of a turnkey residential property.

4 Finansinspektionen's assessment

The matter Finansinspektionen will assess is whether JM can be considered to control the tenant-owners associations during the production phase in the meaning of paragraph 7 of IFRS 10. If such control exists, the tenant-owners associations must be consolidated in JM's consolidated financial statements.

4.1 JM's power over tenant-owners associations

An express criterion for control according to paragraph 7a of IFRS 10 is that an investor has power over the investee. This paragraph also refers to paragraphs 10–14 of IFRS 10. Given what is to be considered in the assessment of whether JM has power over the tenant-owners associations, Finansinspektionen has broken down the assessment into following parts.

4.1.1 Interim board of directors' composition and role

When it comes to the assessment of power over an investee, a determining factor according to IFRS 10 is whether the investor has existing rights that give it the current ability to direct the relevant activities. When power does not arise from, for example, voting rights but derives from other grounds, consideration may need to be given to other factors (cf. paragraph 11 of IFRS 10).

The matter of whether an interim board of directors can be considered to be independent is not a determining factor for the assessment of whether it has existing rights. An independent board of directors may be lacking control if it, for example, does not have *substantive rights* (paragraph B22 of IFRS 10) and therefore does not have power to direct the *relevant activities* (see section 4.1.3 below).

According to JM's interpretation, the matter of independence is central for the analysis of IFRS 10. An independent board of directors strongly presumes, according to the company, that the board members, and not JM, has power over the tenant-owners association. According to the association's by-laws, the

majority of the members of the board of directors during the entire production phase must be appointed by a party other than JM. Representatives for this party are by law registered as beneficial owners of the tenant-owners associations in question. The company does not have any right to appoint or remove the tenant-owners association's board members, and the company is never represented in the boards. According to JM, the members of the interim board of directors must be independent and have relevant experience and skills for the housing market to have confidence in the company. JM submits to the association a bid for the provision of a turnkey property. The bid is evaluated by the independent board members and an agreement is entered into only if the board of directors considers the terms and conditions of the contract to be competitive and to the benefit of the association. The terms and conditions of the contract reflect traditional terms and conditions in almost all property development. According to the company, the fees for the interim boards of directors, which are part of the administrative costs JM is responsible for according to the turnkey contract, are negligible in this context. The first fee to the board members is paid immediately after the board has accepted the bid from JM and prepared a cost calculation. JM, in addition to considering the board independent, considers the interim board of directors to direct the tenant-owners association's relevant activities. Furthermore, JM asserts that Finansinspektionen must show in its analysis that boards of directors of the tenant-owners associations are not independent in relation to JM and that the boards of directors do not have so-called substantive rights.

Finansinspektionen does not share JM's interpretation. The matter of independence, as mentioned above, is not a deciding factor in this context, but Finansinspektionen would still like to point out the following to respond in more detail to JM's objections. Finansinspektionen does not question the description of JM's business model, through which an independent party appoints the board members of the tenant-owners associations. However, this does not mean that the board members are independent in relation to JM. Finansinspektionen has reviewed the board members' total number of assignments from two associations' interim board of directors for JM projects. In both of these interim boards of directors, all of the regular board members also held other board assignments in JM projects. At least half of each of the board members' current assignments consisted of board assignments in JM projects. For the board member who had the most current assignments, 23 out of 42 assignments in tenant-owners associations were for JM projects. The corresponding figure for the member with the smallest number of current assignments was five, but all five of these assignments were in ongoing JM projects. Even though this is only a sample, and there has not been any deeper follow-up analysis, this indicates that the members of the interim boards of directors have a large amount of business activities that are linked to JM. These members can therefore not be considered independent in relation to the

company (see point 4.4 of the Swedish Code of Corporate Governance⁵). The circumstance that JM has a strong market position does not affect this assessment. Neither does the fact that several board members have said that they are not financially dependent on their involvement with the tenant-owners associations.

Noteworthy in this context in particular is that the board members receive remuneration from JM. This remuneration is in itself a form of dependence particularly if the remuneration – from the perspective of the member – is not insignificant (also refer here to point 4.4 of the Swedish Code of Corporate Governance). The fact that the board fees are negligible in relation to the total price of the turnkey contract is unimportant in this assessment. Finansinspektionen, based on the above, makes the assessment that the interim boards of directors are not independent in relation to JM in the way that JM has asserted.

It can also be mentioned once again that the matter of independence is not of significance by itself for the assessment of whether JM has control. As mentioned above, according to IFRS 10 it is important to determine which party has substantive rights and thus can direct the relevant activities. The relevant activities are the activities that significantly impact the investee's returns (paragraph 10 of IFRS 10), or in other words here the activities that significantly impact the returns JM receives from its residential projects.

When assessing whether power arises from a right, paragraph B26 of IFRS 10 also states that an assessment is needed of whether this right is a protective right. An investor that holds only a protective right cannot have power or prevent another party from having power over an investee (paragraph B27 of IFRS 10). Protective rights relate to fundamental changes to the activities of an investee or are only applicable in exceptional circumstances (paragraph B26 of IFRS 10, also paragraph B28).

In this case, it is the tenant-owners association's interim board of directors that enters into the agreements (purchase and turnkey contracts) with JM. The interim board of directors is entitled to not accept JM's offer. For example, the interim board of directors could consider JM's bid to mean entering into purchase and turnkey contracts that are not in the interests of the association (cf. Chapter 7, section 4 of the Economic Associations Act [2018:672]). The most important decisions in the design of the building and the land, however, have already been made by JM when the agreements with the tenant-owners association are concluded. There is also no tender process during which the interim board of directors evaluates different bids.

⁵ The rules for corporate governance that must be applied by all companies whose shares or certificates of deposit are traded on a regulated market in Sweden. The Code supplements legislation and other rules by establishing a standard for good corporate governance.

JM presents the argument that the board's evaluation of the bid and the eventual entering into of an agreement with JM is the most central decision made by the board of directors, and that this is the single most important relevant activity during a tenant-owners association's production phase. Finansinspektionen makes the assessment, however, that, when the tenant-owners association is formed, it is both in practice and in reality already decided that the association will enter into an agreement with JM in order for it to be possible for JM's project to be implemented. It is thus clear that the interim board of directors does not have a mandate to direct, for example, what each tenant-owned apartment will cost or what the annual fees will be. JM determines what levels are appropriate already before the tenant-owners association receives an offer from JM. These levels then serve as the basis for the offer that JM submits to the tenant-owners association and the terms that the company specifies in its reservation contracts. The interim board of directors has nothing to gain from driving down the price proposed by JM, assuming that the price can be considered to be in the interest of the association.

Finansinspektionen takes the position that this shows that the interim board of directors' right to sign an agreement is not a substantive right (see in particular paragraph B23 of IFRS 10 and further down in this section). The authorisation that gives the interim board of directors the right to not accept JM's offer is instead only a protective right within the meaning of IFRS. This means that it only focuses on fundamental changes to the activities of the investee (see paragraph B26 of IFRS 10, where protective rights are described) and cannot prevent another party from having power over an investee.

In addition to entering the agreements with JM, the board of a tenant-owners association is responsible for the association's affairs in general. Finansinspektionen would like to point out in this context that the tasks for the interim board in a tenant-owners association are different from the tasks of a board that runs a commercial company. In the latter case, one of the tasks of the board of directors is to make the correct strategic decisions and conduct business as well as possible. Normally, different business opportunities are weighed against one another. The Board members are evaluated by how they succeed with these tasks. An important task for the interim board of directors is to monitor that the property developer is fulfilling the agreed commitments. If the interim board does not take responsibility for the tenant-owners association's affairs, the board is potentially liable for damages. As a result, the interim board, for example, should not accept if something in the construction of the residential property is already in advance considered to be wrong or inappropriate or the financing is inappropriate. It is Finansinspektionen's position that it is obvious that the interim board does not make any strategic decisions for the project. Finansinspektionen makes the assessment that the interim board of directors, therefore, does not have any substantive rights in the meaning used here.

JM takes the position, on the other hand, that the interim board does have substantive rights. JM states that the interim board signs on behalf of the tenant-owners association and nothing prevents the board from exercising its legislative decision-making and signatory right. It is correct that these rights formally fall to the interim board of directors. Paragraph B23 of IFRS 10, however, states that all facts and circumstances must be considered to determine if a right is substantive and lists a number of factors that must be considered. The list is not exhaustive. Given the overall assessment that must be conducted, Finansinspektionen does not consider the formal right of the nature described here to be sufficient to constitute a substantive right in the meaning that applies under IFRS. The party in question must also be able to decisively influence the agreements that are entered into. Finansinspektionen does not consider the interim board of directors to have the option of exercising this type of influence.

In summary, Finansinspektionen makes the assessment that the interim board of directors does not have substantive rights and therefore cannot direct the relevant activities. Relevant activities are described in more detail in section 4.1.3.

4.1.2 Purpose and design of a tenant-owners association

According to paragraph 5 of IFRS 10, an investor, regardless of the nature of its involvement with an entity (the investee), shall determine whether it is a parent by assessing whether it controls the investee. Power over another entity can be obtained from not only voting rights but also from one or more contractual arrangements (paragraph 11 of IFRS 10). To determine if the rights of an investor are sufficient to give it power over the investee in the latter case, according to paragraph B17 of IFRS 10, the investor shall consider the purpose and design of the investee as well as the requirements set out in paragraphs B51–B54 together with paragraphs B18–B20 of IFRS 10. It is therefore necessary to assess the purpose and design of the tenant-owners associations.

When the investor assesses whether it has power over an investee, it shall consider the investee's purpose and design in order to identify the relevant activities, how decisions about the relevant activities are made, who has the current ability to direct those activities, and who receives returns from those activities (paragraph B5 of IFRS 10).

The Tenant-Ownership Act (1991:614) requires a tenant-owners association to enter into the tenure contract or the preliminary and tenure contracts (Chapter 4, sections 2 and 5 and Chapter 5, section 1 of the Tenant-Ownership Act). When developing tenant-owned units, a tenant-owners association is required in order to be able to sell the tenant-owned units.

It is at JM's initiative that the tenant-owners association is formed, even if an independent party from JM then appoints the members of the board of directors. The association's interim board of directors then enters into

agreements with JM for the delivery of a turnkey and fully occupied property. As presented above, the most important decisions in the design of the building and the land, however, have already been made by JM when the agreements are concluded. The tenant-owners association does not carry out a tender process prior to entering into an agreement with JM. It is Finansinspektionen's opinion that the purpose of the tenant-owner association during the production phase is to acquire certain land from JM, allow JM to construct a residential property, and grant tenure to the tenant-owned apartments. The overall purpose, in other words, is to make it possible to carry out the residential housing project in question, and it is for this purpose that JM initiates the formation of the tenant-owners association. Finansinspektionen takes the position that it is possible to view the tenant-owners association as a legal vehicle for JM's activities.

An assessment of the investee's purpose and design must also include consideration of

- the risks to which the investee was designed to be exposed,
- the risks the investee was designed to pass on to the parties involved with it, and
- whether the investor is exposed to some or all of those risks (paragraph B8 of IFRS 10).

What is done in this part, in other words, is a risk assessment. The tenant-owners association basically does not report any income or expenses during the production phase, which means that it does not take on any profitability risk during this period. Finansinspektionen makes the assessment that JM, and not the tenant-owners association, takes on significant risks during the production phase. Because the turnkey contract has a fixed price, JM bears the risk that costs will be higher than expected and also receives the benefits if the costs are lower than expected. JM furthermore is responsible for all costs for operation and maintenance of the tenant-owner association's properties and administration up until the day the final inspection is approved. If the final inspection is conducted later than what was planned when the agreement was entered into, JM may bear additional costs. In addition, JM is responsible for the first sale of each tenant-owned unit, which means that JM bears the risk of higher sales costs than expected.

JM guarantees that all apartments will be occupied within a certain period of time and that the company will buy the unsold apartments at a certain point in time. Finansinspektionen takes the position that this means that JM, until binding contracts are signed with future tenant-owners, bears the risk that the market prices for the tenant-owned units will change during the production phase. It is thereafter the future tenant-owners who bear this risk. The tenant-owners association is not affected by a change in the prices of tenant-owned

units during the production phase. However, the association's long-term borrowings, which at the end of the production phase replace the construction loans, can be affected since the security the association is to provide in the form of mortgage deeds can have a lower value if the market value falls. Given this information, Finansinspektionen takes the position that it is JM, and not the tenant-owners associations, that takes on significant risk during the production phase.

JM presents the argument on the other hand that both JM's and the tenant-owners associations' risks reflect customary business risks and contract terms and conditions within property development. In this context, however, it is important to emphasise that in other property development the buyer is normally a commercial firm that has already existed and also conducts other activities. These firms, unlike the tenant-owners associations, are not initiated by JM in order for the company to carry out its own activities. The other activities of these firms are also not directed by JM. Therefore, JM cannot be considered to have power over these firms, even if the turnkey contracts can be designed in the same way as in property development through tenant-owners associations (refer to paragraph B13 of IFRS 10). Finansinspektionen takes the position, in other words, that JM directs all activities of the tenant-owners associations during the production phase, which is a large and crucial difference compared to the conditions in the commercial firms that enter into corresponding turnkey contracts with JM.

4.1.3 Relevant activities and who directs them

As mentioned earlier, an investor has power over an investee when the investor has existing rights that allow it to direct the relevant activities (paragraph 10 of IFRS 10). The relevant activities are the activities that significantly impact the investee's returns.

As mentioned earlier, paragraph B5 of IFRS 10 states that the investee's purpose and design must be considered in order to identify the relevant activities. As presented above, Finansinspektionen notes that JM initiates the formation of a tenant-owners association in order to be able to carry out a residential project in accordance with the plans JM has for the project. The relevant activities – in other words the activities that significantly impact JM's returns after the company has initiated the formation of a tenant-owners association (the investee) – are to build tenant-owned units on land purchased for this purpose and to identify persons who are willing to buy the tenant-owned units at an appropriate price.

Finansinspektionen takes the position that signing purchasing and turnkey contracts settles part of the design of the investee. The contracts govern, for example, the risk distribution between the parties. As mentioned above in section 4.1.1, Finansinspektionen takes the position that it has already been decided when the association is formed that the association will enter into contracts with JM so the company's project can be carried out and the interim

board's right to enter into agreements is therefore a protective right. Entering into the agreements, therefore, cannot be considered the most important and dominant relevant activity in the tenant-owners association, which is what JM asserts.

Finansinspektionen makes the assessment that the relevant activities it has identified are carried out by JM. These activities have a significant impact on the returns that JM receives from its residential projects.

In its assessment, Finansinspektionen has used as its point of departure paragraph B52 of IFRS 10, which states that when contractual arrangements involve activities that are closely related to the investee, these activities are, in substance, an integral part of the investee's overall activities, even though they may occur outside the legal boundaries of the investee. Finansinspektionen considers the turnkey contract to be closely related to the tenant-owners association's activities during the production phase. The construction and services that are linked to the contract therefore are an integral part of the tenant-owners association's overall activities even though these activities take place outside of the tenant-owners association's legal boundaries. The association's purpose during the production phase is to obtain a property. The association also has the purpose at the end of the production phase to have tenured the tenant-owned apartments in the association's property.

In contrast to Finansinspektionen, JM takes the position that paragraph B52 of IFRS 10 is not applicable in the assessment since it applies to contractual arrangements such as call and put rights. Finansinspektionen does not agree with this interpretation. The reference to call and put rights are only examples of different types of contractual arrangements.⁶

When assessing who has power over the tenant-owners associations, Finansinspektionen takes the position in this case that it is relevant to consider the following factors:

- who directs the property's design and construction and sets the price of the property and the tenant-owned units.
- who makes the strategic decisions that are important for the sale of the tenant-owned units, and who is ultimately responsible for ensuring that the tenant-owned units are sold.

The property's design, construction and pricing

According to JM, the execution of the construction project is not a relevant activity; instead, JM refers to satisfying the performance obligation the company undertakes in respect of the tenant-owner association.

⁶ The English version of the standard uses the following wording: "In addition, an investor shall consider contractual arrangements such as call rights, put rights [...]".

Finansinspektionen makes the assessment, however, that the construction and services linked to the contract are an integral part of the tenant-owner association's overall activities even if they take place outside of the tenant-owner association's legal boundaries. This is because the turnkey contract is closely related to the tenant-owners association's activities (paragraph B52 of IFRS 10).

JM states that it is the company itself that develops the property and takes the initiative to the transaction and the formation of the tenant-owners association. JM prepares a bid for the newly formed tenant-owners association that includes the price. The company also confirms that the tenant-owners association does not carry out a tender process.

According to Finansinspektionen, the interim board's right to not accept the bid is, as presented above, a protective right. The price in the bid to the tenant-owners association is linked to the price of the tenant-owned units according to the reservation contracts. Since the first reservation contracts are normally signed by JM and the future tenant-owners already before the tenant-owners association is formed, this means that the interim board cannot influence the price stated in the reservation contracts. The price stated in the reservation contracts is dependent on the price that JM pays for the project's land, the choice of materials and the design of the tenant-owned units, JM's desired margin, and the annual fee and the price of the tenant-owned units that JM considers to be reasonable given current market conditions.

Finansinspektionen, in this respect, received example marketing material with floor layouts and detailed room descriptions that are prepared by JM already before the formation of the tenant-owners association that then acquired the property in question.

JM objects to this description and states that factors such as the cost of the land and the desired margin do not affect the price in the reservation contracts; rather, this price is solely influenced by the estimated market value. Finansinspektionen agrees that the estimated market value influences the price since it must be considered reasonable. According to Finansinspektionen, however, there must be a range for what can be considered a reasonable price since no two residential areas are identical. Furthermore, it is common practice for firms to have targets for the desired profitability and the risks that they are willing to take and to use these targets to design their business transactions.

It is the interim board that later signs the preliminary and tenure contracts with the future tenant-owners, but Finansinspektionen makes the assessment that the interim board's possibilities for directing the price and the design of the property are greatly limited by the decisions JM has already made. Finansinspektionen therefore considers it to be JM that directs the property's design and pricing.

Since the construction assignment is a turnkey assignment, it is Finansinspektionen's opinion that JM decides on everything that is not

regulated in detail in the turnkey contract. According to the turnkey contract, JM is also entitled to carry out changes in the project and the construction that do not impair the building's function and/or the content in the tenant-owners association's financial plan. Finansinspektionen thus makes the assessment that it is JM that directs the construction of the building, a position to which JM has not objected. JM does object, however, to the assertion that the company directing the construction influences the investee's returns. Finansinspektionen does not agree with this opinion. It is obvious that JM's returns from the company's involvement with the tenant-owners association are significantly impacted by how JM directs the construction.

Given what has been stated above, Finansinspektionen takes the position that the act of constructing the building is a relevant activity (paragraph 10 of IFRS 10) and that it is JM that directs this activity. What is considered returns from the tenant-owners association cannot be limited to profit/loss effects that arise in the association but must also include effects that arise in JM if they are closely related to the tenant-owners association's activities (paragraphs B52 and B57 of IFRS 10, see also section 4.2 below on variable returns).

Marketing and sales of tenant-owned units

Finansinspektionen furthermore makes the assessment that it is JM that makes the strategic decisions that are crucial for the activities consisting of marketing and selling tenant-owned units. This assessment is based on JM directing the pricing of the tenant-owned units, the level of the preliminary initial annual fees (that are specified in the reservation contracts), and the design of the marketing material and choice of marketing channels. Furthermore, it is JM that is ultimately responsible for ensuring that the tenant-owned units are sold by undertaking to buy the tenant-owned units that have not been tenured at a given point in time.

JM does not share this assessment but rather asserts that it is the tenant-owners association's board of directors that is responsible for and thus actually directs the sales. Finansinspektionen agrees with JM that the interim board has a responsibility for the sales, but given what has been presented above, the authority takes the position that it is JM that directs the sales. Finansinspektionen considers JM's returns from the involvement with the tenant-owners associations to be significantly impacted by the various decisions JM makes that are important for the sales process, thus making sales a relevant activity.

JM states in objection to this position that the signing of a reservation contract does not constitute a sale; it is only to assess the commercial viability of the project. Finansinspektionen makes the assessment, though, that signing a reservation contract must be considered a step in the sales process, in part given that the administration fee that the person signing the contract must pay if the contract is not fulfilled and that JM in this way binds the person who

signed the contract to fulfil the agreement. The fact that this amount is small in relation to the total price paid for the tenant-owned unit does not change Finansinspektionen's position. In this context, it can also be noted that JM states in the Report of the Directors in its annual report and consolidated financial statements for 2017 what the percentage of sold and reserved apartments is in relation to production. It states there that the total percentage of sold and reserved apartments normally lies within the range of 60–65 per cent. The publication of such a key performance indicator in the Report of the Directors shows that JM considers the number of reserved units to be of importance for the assessment of the sales level.

The work carried out by the real estate agent, and the interim board's evaluation of the creditworthiness and other conditions when assessing if the buyer can be accepted as a member of the association, is not a relevant activity since this is not an activity that significantly impacts the investee's returns. Finansinspektionen's assessment is that activities of this type can rather be classed as pre-determined activities and decisions that are administrative in nature. For example, Finansinspektionen considers denying a person membership due to a record of non-payment to be a routine decision.

Finansinspektionen, in other words, considers the activities that consist of marketing the tenant-owned units and finding buyers to be relevant activities in the assessment. As presented above, Finansinspektionen considers this type of activity to be directed by JM.

Summary

In summary, Finansinspektionen makes the assessment that it was JM that directed the relevant activities in the tenant-owners associations during the production phase in 2017. Finansinspektionen takes the position that the activities directed by JM due to the contracts JM entered into to pursue property development through tenant-owners associations are an integral part of the association's overall activities (paragraph B52 of IFRS 10). As mentioned above, JM states that the tenant-owners association does not have significant interests in the activities between the signing of the contracts and the transfer of the property. Finansinspektionen considers this to support its position that, in this examination, the interim board does not direct any relevant activities.

4.1.4 Rights that give power

To determine if an investor has sufficient rights to give it power over the investee, paragraphs B18–B20 of IFRS 10 must also be considered (paragraph B17 of IFRS 10). All factors and indicators that are stated in these paragraphs do not need to be met, but rather an overall assessment must be conducted where each factor and indicator is of importance (paragraphs 8 and B21 of IFRS 10).

JM asserts in this part that paragraphs B18–B20 of IFRS 10 do not need to be considered since at the beginning of paragraph B18 it states that the paragraphs must only be considered in circumstances where it may be difficult to determine whether an investor’s rights are sufficient to give it power over the investee. According to Finansinspektionen, however, the introduction to paragraph B18 must not be read in isolation but rather be understood in its context. The English version of paragraph B17 of IFRS 10, which according to Finansinspektionen is more clearly worded than the Swedish version, states the following:

“When voting rights cannot have a significant effect on an investee’s returns, such as when voting rights relate to administrative tasks only and contractual arrangements determine the direction of the relevant activities, the investor needs to assess those contractual agreements in order to determine whether it has rights sufficient to give it power over the investee. To determine whether an investor has rights sufficient to give it power, the investor shall consider [...] together with paragraphs B18–B20”.⁷

The circumstances in this case are in line with that set out in paragraph B17 of IFRS 10. Finansinspektionen takes the position that this means that paragraphs B18–B20 of IFRS 10 shall be taken into consideration.

JM also states that paragraphs B18–B20 of IFRS 10 use as their point of departure a structured firm with external investors. Since there are no profit-maximizing external investors of this type in tenant-owners associations, the company considers it to be difficult to see how the paragraphs are applicable in this case. Finansinspektionen would like to clarify in this context that IFRS does not require an investee to have profit-maximizing owners; instead, what is key is if the investor has power over the investee and receives returns from its involvement with the investee. The returns can be of such a nature that they arise in the investing firm as a result of the investor doing business with the investee (see section 4.2 below for more on this).

JM also objects in point of fact to Finansinspektionen’s assessment that JM’s rights are sufficient to give the company power over the tenant-owners association. Finansinspektionen agrees that JM cannot give the tenant-owners association outright instructions to enter into the agreements in question. However, the authority considers it to be clear that the interim board is expected to enter into the agreements. Paragraph B18b of IFRS 10 does not require that the investor has a contractual right to direct the investee to enter an agreement. The provision states that it is sufficient for the investor to be able to veto any changes to significant transactions for the benefit of the investor. The association has been initiated by JM so that the project in question can be carried out in accordance with JM’s plans. The members of the interim board of directors have no interest of their own in influencing the price, assuming that it falls within what can be considered reasonable, and the members are paid

⁷ The Swedish translation is presented in Appendix 2.

their first board fee after the bid from JM has been accepted and the cost calculation prepared.

As described above, Finansinspektionen considers the interim board's right to reject a bid to not be a substantive right but rather a protective right on behalf of the future tenant-owners (paragraph B27 of IFRS 10). Finansinspektionen also notes that JM is not obligated to accept any proposed changes to the bid but rather can opt to initiate a new tenant-owners association with a new board of directors to push its project through, which is comparable to being able to exercise a veto.

As described above, paragraph B18b of IFRS 10 focuses on "significant transactions for the benefit of the investor". JM has asserted that the paragraph does not refer to customary commercial agreements for the delivery of products or services since such agreements are only entered into if both parties consider them to be beneficial. Finansinspektionen does not agree with JM, but rather takes the position that it is JM that can earn a profit on the project, which means that JM gets returns from its involvement with the tenant-owners association. The returns that JM receives reasonably mean that JM receives the benefit of a significant transaction in the meaning of paragraph B18b of IFRS 10.

When assessing whether an investor has power, consideration must also be given to indicators that suggest that the investor has a special relationship with the investee (paragraph B19 of IFRS 10). Finansinspektionen makes the assessment, in contrast to JM, that JM has a special relationship with the tenant-owners association, which indicates power. For example, JM guarantees the tenant-owners association's debts. These guarantee commitments normally constitute a very large percentage of the tenant-owners associations' granted construction loans (70 per cent), even if they are partial and temporary, and they are provided only during the production phase. Finansinspektionen also makes the assessment that JM's brand is important for the tenant-owners association. According to Finansinspektionen, the tenant-owners association's dependence on JM for production, etc. must be viewed as a type of special dependence that cannot be equated to the dependence a customer normally has on a supplier. JM's delivery is crucial for the purpose of all of the tenant-owners association's activities during the production phase.

Finansinspektionen also makes the assessment that the tenant-owners association's activities during the production phase are conducted on behalf of JM (paragraph B19c of IFRS 10) since the purpose of the association's activities during this period is to enable the sale of the residential units JM has decided to build. JM initiates the formation of the tenant-owners association to build residential units on some land that JM sells to the tenant-owners association. The tenant-owners association is not asking JM to submit a bid to build on the association's land or site leasehold right.

When the investor's exposure, or rights, to returns from its involvement with the investee is disproportionately greater than its voting or other similar rights, this is an additional indication of power (paragraph B19d of IFRS 10).

Finansinspektionen makes the assessment that this is the case for JM and the tenant-owners associations based on the information presented above regarding the purpose and design of the tenant-owners associations and the information presented below in section 4.2 regarding variable returns.

4.1.5 Summary

In summary, Finansinspektionen makes the assessment that JM, when developing property through tenant-owners associations in 2017, had rights that are sufficient to give it power over the tenant-owners associations (paragraph B51 of IFRS 10). The assessment is based on the interim board's composition and role and the tenant-owners associations' purpose and design combined with the contract terms and conditions in the purchase and turnkey contracts. Finansinspektionen's assessment is that the condition in paragraph 7a of IFRS 10 is thereby met.

4.2 Variable returns

According to paragraph 7b of IFRS 10, an investor, in order to have control over an investee, must have exposure, or rights, to variable returns from its involvement with the investee. When assessing whether the investor has exposure, or rights, to variable returns from its involvement with the tenant-owners associations, paragraphs B55–B57 of IFRS 10 provide guidance. When the investor assesses whether the returns from an investee are variable and how variable those returns are, the assessment must be based on the substance of the arrangement and regardless of the legal form of the returns. The investor's variable returns can be only positive, only negative or both positive and negative (paragraph B56 of IFRS 10).

JM takes the position that the company has no exposure to variable returns from its involvement with the tenant-owners associations. The company asserts that the variation in its costs does not mean that there are variable returns. JM states that the costs the company has for fulfilling its commitments in accordance with the agreement with the tenant-owners association is a function of its ability to execute the content of the agreement in an efficient manner. JM furthermore states that this applies to basically all commercial agreements between customers and suppliers and that the circumstance that JM's costs can vary therefore is not of importance for this assessment.

Finansinspektionen would like to state here that the circumstance that some terms and conditions or occurrences are present in many types of contracts does not constitute grounds for disregarding something that IFRS has identified as relevant for the assessment. Paragraph B57 of IFRS 10 states that returns can include dividends, remuneration for servicing an investee's assets and liabilities, tax benefits, and returns that are not available to other interest

holders. The examples in this paragraph show that it is not only the effects that arise in the investee that are of interest but also effects that can arise in the investor. This is also expressly stated in IASB's⁸ considerations underlying IFRS 10.⁹

According to Finansinspektionen, this means that the returns JM receives from assignments the company carries out on behalf of the tenant-owners association (turnkey) are included in the term "returns" that is used, for example, in paragraphs 7b and 10 of IFRS 10. JM has initiated the tenant-owners association to be able to carry out its residential housing project. According to Finansinspektionen, JM has variable returns from its involvement with the housing project since JM's income is fixed and the costs can vary. The costs can vary based on how efficient the company is during the building process but also on, for example, which marketing measures JM takes.

JM takes the position that paragraph 57 of IFRS 10 clearly states that returns consist of the remuneration the investor receives, not the margin or the costs. Finansinspektionen interprets this paragraph differently. Paragraph B57 contains a list of examples of different types of returns, and this list is not exhaustive. One of the examples is also "fees and exposure to loss from providing credit or liquidity support". This example contains both an income-based component (fees) and an earnings-based offsetting component. Furthermore, paragraph 15 of IFRS 10 clearly states that the returns can be only positive, only negative or both positive and negative.

As presented above in section 4.1.2, Finansinspektionen considers JM during 2017 to have developed property through the tenant-owners association in such a way that the company, and not the tenant-owners associations, took significant risk during the production phase. It can also be noted that JM has needed to fulfil the guarantee that goes into effect if not all of the apartments are sold within a certain period of time. Furthermore, the number of unsold apartments on 31 December 2018 had increased compared to the same date in 2017. JM's returns are thus impacted by the various risks and benefits that arise from the contracts with the tenant-owners associations.

In summary, it is Finansinspektionen's assessment that JM had exposure in 2017 to variable returns from its involvement with the tenant-owners associations and that the condition set out in paragraph 7b of IFRS 10 is met.

4.3 Link between power and returns

According to paragraph 7c of IFRS 10, an investor, to have power over an investee, must have the ability to use its power over the investee to affect its returns.

⁸ International Accounting Standards Board.

⁹ See Basis for conclusions on IFRS 10, paragraph BC80.

Finansinspektionen takes the position that JM can use its power over the tenant-owners associations to affect the returns that JM can obtain from its involvement with the associations. Finansinspektionen bases this on the agreements JM has entered into with the tenant-owners associations and that the interim board does not have a significant impact on the content of the agreements (see sections 4.1.1. and 4.1.3 above).

Finansinspektionen makes the assessment that JM's actions direct the returns that JM can receive from its involvement with the tenant-owners associations. It is JM that, by executing the turnkey contract efficiently, can affect the returns it receives from its involvement with the associations. JM can also direct the returns through the pricing of the turnkey contract and, for example, through its sales initiatives (see section 4.2 above).

Additional circumstances indicating that JM has the ability to affect the returns are that JM administrates the negotiation with the banks and the associations thus receive beneficial credit terms. Construction loans and interest on these loans are carried by JM until the day the final inspection is approved and thus impacts the company's profit. JM also has the ability to affect the returns through the guarantee commitments, which largely are issued to reduce the cost of issuing the mortgage deed. The guarantees are a significant amount in relationship to JM's balance sheet total – almost 50 per cent on 31 December 2017. JM's returns are impacted by JM choosing to enter into guarantees and through its choice of the guarantee amount.

In summary, Finansinspektionen makes the assessment that JM could use its power over the tenant-owners associations in 2017 to affect its returns and that the condition in paragraph 7c of IFRS 10 is thus fulfilled.

4.4. Summary regarding consolidation

As presented above, Finansinspektionen makes the assessment that all requirements in paragraph 7 of IFRS 10 are met. This means that tenant-owners associations during the year to which the investigation refers, 2017, should have been consolidated during the production phase. JM has thus not complied with IFRS 10 in its consolidated financial statements for 2017.

5 Consideration of intervention

5.1 The company's position

JM states that the company has not violated any accounting rules and that there are therefore no grounds for an intervention. The matter refers in any case to what is obviously an excusable error, states the company.

JM furthermore points to Nasdaq having accepted JM's accounting assessment in this matter over a long period of time. Auditors have repeatedly reviewed JM's assessments in this respect and every time submitted unmodified

auditor's reports. The matter is also open to interpretation, and the principle-based financial reporting framework IFRS by definition allows several reasonable and thereby possible interpretations, states the company. The interpretations must be set against the actual circumstances in the individual company, asserts JM. The company states that its assessments are always made with the support of qualified advice. The assessments have been updated on an ongoing basis given the available knowledge and in dialogue with Nasdaq. The company also highlights that the information was also sufficiently addressed through supplemental disclosures in accordance with Nasdaq's instructions. JM takes the position that Nasdaq's measures were sufficient.

JM furthermore asserts that it cannot be ordered to take corrective action for something that is impossible for the company to achieve. The tenant-owners associations are required to maintain accounting records and must prepare an annual report. JM points out that it does not have a right to receive information about or insight into a tenant-owners association's accounts on an ongoing basis or as needed. A tenant-owners association's annual report must be presented and published in accordance with specific provisions in the Annual Account Act. The deadline for when a tenant-owners association is to present its annual report is different from the deadline for when JM must submit its interim reports and annual report. The company states that there is no legal possibility for it to obtain, at the right time, access to the information required to consolidate the current tenant-owners associations in its consolidated financial statements.

If JM is ordered in a final decision to take corrective action, the company will do so to the greatest extent possible. It is therefore obviously unnecessary to combine an order of correction with a fine.

5.2 Assessment of the non-compliance and choice of intervention

5.2.1 JM has been in violation of Article 4 of the IAS Regulation

Paragraph 5 of IAS¹⁰ 8 (Accounting Policies, Changes in Accounting Estimates and Errors) states that "omissions or misstatements of reported items are material if they could, individually or collectively, influence the economic decisions that users make on the basis of the financial statements". The materiality depends on the size and nature of the omission or the misstatement given the circumstances at hand. The size or nature of the item, or a combination of both, could be the determining factor.

Paragraph 41 of IAS 8 states that *material errors* are to be viewed as *non-compliance* with IFRS. Immaterial errors made to achieve a particular presentation of an entity's financial position, financial performance or cash flows are also to be viewed as non-compliance with the regulatory framework.

¹⁰ International Accounting Standards.

JM's annual report and consolidated financial statements for 2017 state as per 31 December 2017 that the company had provided guarantees totalling SEK 8,180 million for the benefit of tenant-owners associations. However, there is no information about the extent to which the guarantees correspond to utilised construction loans in the tenant-owners associations in question. The information about ongoing projects in JM's annual report and consolidated financial statements for 2017 show that a significant portion of the guarantees correspond to utilised construction loans. These liabilities would have been included in the Group's liabilities if the tenant-owners associations had been consolidated. This information can be compared to the Group's balance sheet total of SEK 16,947 million, equity of SEK 6,043 million, and profit for the year of SEK 2,259 million. There is no information about how much a consolidation of the tenant-owners associations would have affected equity. Based on this information, Finansinspektionen takes the position that the matter constitutes a material error, which means JM is non-compliant with IFRS 10. Finansinspektionen's investigation thus shows that JM has been in violation of Article 4 of the IAS Regulation.

5.2.2. Non-compliance justifies a caution

A direct consequence of JM's non-compliance with the accounting rules is that the company's annual report and consolidated financial statements for 2017, which the company was obligated to disclose pursuant to Chapter 16, section 4 of the Securities Market Act, were not prepared in accordance with the regulations that apply to the issuer (see Chapter 16, section 8 of the Securities Market Act). Given such non-compliance, Finansinspektionen, according to Chapter 25, section 22 of the Securities Market Act, is to issue a caution. A caution must not be issued if the non-compliance is negligible or excusable or if a stock exchange or regulated market in another country within the EEA takes sufficient measures against the issuer.

JM's non-compliance with IFRS 10 in its consolidated financial statements for 2017 constitutes a material error. A consolidation would have a major impact on certain items in the consolidated financial statements and key performance indicators. Given this, Finansinspektionen takes the position that the non-compliance cannot be considered negligible.

JM's comments about the accounting principles being approved previously by Nasdaq and the company's auditors do not mean that the non-compliance can be considered excusable. JM is responsible for following applicable regulations. According to Finansinspektionen's assessment, the principles and the requirements of IFRS 10 provide sufficient grounds on which to assess what is a correct application of the provisions. Finansinspektionen thus takes the position that an alternative interpretation like the one that JM has made is not possible.

JM also states that the company has submitted supplemental disclosures in accordance with Nasdaq's instructions. Nasdaq concluded its review of the

company's annual report and consolidated financial statements for 2017 by issuing the company criticism and ordering a correction with retroactive application in the 2018 annual report and consolidated financial statements. In its final letter, Nasdaq noted that the company had chosen not to consolidate the tenant-owners associations and that the grounds on which the company had made the assessment that it did not control the associations was not sufficiently clear. Nasdaq also noted that there was no clear account of the facts and circumstances that led to the assessment. The formulation of the final letter has allowed some room for the company to interpret Nasdaq's document to mean the company does not need to consolidate the tenant-owners associations given that the company makes the assessment it does not control the tenant-owners associations and the company discloses clear information about the grounds on which the company has made this assessment. It is also noted that the company has chosen to interpret the final letter in this way since the tenant-owners associations have not been consolidated. Nasdaq has not taken any measure because of this. Given this background, JM has not already been subject to a sufficient measure.

Finansinspektionen therefore makes the assessment that there are grounds on which to issue JM a caution.

5.2.3 Caution without an administrative fine

If an issuer has been issued a caution, Finansinspektionen, in accordance with Chapter 25, section 23 of the Securities Market Act, may decide that the issuer shall pay an administrative fine. The administrative fine must be determined in accordance with Chapter 25, section 19, second paragraph of the Securities Market Act. According to the wording of Chapter 25, section 20 of the Securities Market Act that was in effect up to and including 31 December 2018, Finansinspektionen was only able to decide on an administrative fine if the party upon which Finansinspektionen intended to levy the fine had been informed within six months of the occurrence of non-compliance that the authority was considering an administrative fine.

The legislative amendment to Chapter 25, section 20 of the Securities Market Act that entered into force on 1 January 2019 removed the above-mentioned limitation for such non-compliance as in this matter. According to the transition provision, however, older provisions shall apply for monitoring regular financial information that was published prior to the entry into force of the amendment. JM published its annual report and consolidated financial statements for 2017 on 14 March 2018. This means that the provision's previous wording must apply in this case. Since Finansinspektionen has not informed JM within six months from when the non-compliance took place that the matter is being considered for an administrative fine, Finansinspektionen in this case is prevented from deciding on an administrative fine.

5.2.4 Order of correction

According to Chapter 25, section 18, point 2 of the Securities Market Act, Finansinspektionen may issue an order of correction if the issuer has published information that is incomplete or contains material misstatements. A decision on a caution does not prevent Finansinspektionen from also ordering the issuer to make a correction. It is up to the authority in each individual case to assess if this is an appropriate measure (Bill 2006/07:26 p. 237).

Companies subject to the IAS Regulation must apply IAS 8. Finansinspektionen makes the assessment that a correction must occur in future financial statements in accordance with paragraphs 41–43 of IAS 8 and that the disclosures required under paragraph 49 of IAS 8 must be provided. Finansinspektionen's order entails that the company must correct future financial statements in such a way that the tenant-owners associations are consolidated during the production phase in accordance with IFRS 10 as if this principle had always applied. It is incumbent upon the company to assess at exactly which point in time the production phase ends. Finansinspektionen has only provided a simplified description of the production phase. Finansinspektionen makes the assessment that it is reasonable for the correction to be implemented no later than in the half-yearly report for 2020.

Finansinspektionen makes the assessment that JM in practice has the possibility of receiving information from the tenant-owners associations to the extent required to consolidate the associations in question into its consolidated financial statements.

Finansinspektionen will follow up on the implementation of the measures as part of its supervision.

5.2.5 Order without a fine

Chapter 25, section 29 of the Securities Market Act states that Finansinspektionen may combine an order with a fine. Given that the company has stated that it intends to follow a final decision and that there otherwise are no grounds to believe that non-compliance will be repeated, there are no grounds on which to combine the order with a fine.

FINANSINSPEKTIONEN

Sven-Erik Österberg
Chairman of the Board of Directors

Marie Eiderbrant
Senior Legal Counsellor
Counsellor

Emma Lampe
Legal

The decision in this matter was made by the Board of Directors of Finansinspektionen (Sven-Erik Österberg, Chair, Maria Bredberg Pettersson, Peter Englund, Astri Muren, Stefan Nyström, Mats Walberg, Charlotte Zackari and Erik Thedéen, Director General) following a presentation by Senior Legal Counsellor Marie Eiderbrant and Legal Counsellor Emma Lampe. Chief Legal Counsel Eric Leijonram, Executive Director Malin Omberg, Department Director Maria Samuelsson, Senior Advisor Ingrid Engshagen and Senior Legal Counsellor Johanna Bergqvist participated in the final proceedings.

Appendices

Appendix 1 – How to appeal
Appendix 2 – Applicable provisions

Copy: CEO of JM