

SWEDISH TAKEOVER RULES

LEGISLATION
AND
STOCK EXCHANGE RULES

TRANSLATED BY
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Preface

A new Act concerning Public Takeover Bids in the Stock Market entered into force on 1 July 2006, implementing EU Directive 2004/25/EC regarding takeover offers in Sweden.

This publication comprises an English translation of the relevant Swedish legislation and stock exchange rules on takeover bids for Swedish companies as of 1 July 2007. In this respect it replaces "NBK Rules", 5th edition, which we published in March 2004.

A brief description of the background and the present takeover regulatory framework in Sweden can be found on page 29.

David Canter, a certified public translator, has translated the documents. His translation has been discussed in some detail by an editorial committee, which also included Leif Thorsson, Gunnar Nord and Robert Ohlsson.

The publication has been generously sponsored by The OMX Nordic Exchange Stockholm AB.

Stockholm, May 2007

FÖRETAGSJURIDIK NORD & CO AB

Gunnar Nord

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Act Concerning Public Takeover Bids in the Stock Market (2006:451)

CHAPTER 1

Initial provisions

Area of application

Section 1

This Act contains provisions regarding public takeover bids for shares.

This Act does not apply to public takeover bids for shares issued by the bidder.

The provisions of this Act concerning shares also apply to the shareholder's rights vis-à-vis a trustee holding shares on the shareholder's behalf (depository receipts).

Definitions

Section 2

The following definitions are used in this Act:

1. *Public takeover bid*: a public offer to holders of shares issued by a Swedish or foreign limited company for the transfer of all or part of such shares.
2. *Stock exchange* and *authorized market place*: companies referred to in Chapter 1, Section 4, points 1 and 3 of the Securities and Clearing Operations Act (1992:543).
3. *Bidder*: any party making a public takeover bid.
4. *Group*: corporate groups as referred to in Chapter 11 and 12 of the Swedish Companies Act (2005:551) and Chapter 1, Section 9 of the Insurance Business Act (1982:713). In this connection, the provisions concerning a parent company also apply to Swedish or foreign parties other than limited companies.

CHAPTER 2

The bidder's obligations

Section 1

A public takeover bid for shares covered by the second paragraph may only be issued by a party which has made an undertaking to the stock exchange or authorized market place on which the company's shares are listed

1. to comply with the rules determined by the stock exchange or authorized market place for such offers, and
2. to accept any sanctions which may be imposed by the stock exchange or authorized market place in the event of infringement of these rules.

The first paragraph applies to takeover bids involving

1. shares in a Swedish limited company whose shares are listed on a stock exchange or authorized market place in Sweden;
2. shares in a foreign limited company whose shares are solely listed on a stock exchange or authorized market place in Sweden;
3. shares in a foreign limited company whose shares are not listed in the state in which the company is domiciled, but which are listed on a stock exchange or authorized market place in Sweden and are also registered for trading in some other regulated market in the European Economic Area (EEA), provided that the shares were first registered for trading on a stock exchange or an authorized market place in Sweden, or
4. shares in a foreign limited company whose shares are not listed in the state in which the company is domiciled, but which are listed on a stock exchange or authorized market place in Sweden and, when they were initially registered for trading, were registered for trading simultaneously on one or more other regulated markets in the European Economic Area (EEA), if the company has notified that Finansinspektionen* is to be the supervisory authority.

Finansinspektionen is to make public any notification referred to in the second paragraph, point 4.

Section 2

In connection with the announcement of a bid in accordance with Section 1, the bidder shall notify Finansinspektionen concerning the offer and the undertaking made to the stock exchange or authorized market place.

If the bidder makes public information concerning plans for an offer, this information shall be submitted simultaneously to Finansinspektionen.

* The Swedish financial supervisory authority.

Section 3

The bidder shall prepare an offer document within four weeks of announcement of the offer in accordance with Section 1, and shall apply to Finansinspektionen for approval of the document. Chapter 2 a of the Financial Instruments Trading Act (1991:980) contains additional provisions regarding such documents.

Finansinspektionen may extend the period indicated in the first paragraph if special reasons apply.

CHAPTER 3**Mandatory offers****Prerequisites for a mandatory offer requirement*****Section 1***

A party with no shareholding or a shareholding that represents less than three-tenths of the votes for all shares in a company covered by the second paragraph and which, alone or together with a related party as defined in Section 5, achieves a shareholding which represents at least three-tenths of the votes for all shares in the company shall

1. immediately make public the extent of this shareholding in the company, and
2. make a public takeover bid for the remaining shares in the company (mandatory offer) within four weeks.

The first paragraph applies to the acquisition of shares in a Swedish limited company whose shares are listed on a stock exchange, authorized market place or some other regulated market.

Section 4 contains provisions under which Finansinspektionen may decide that a mandatory offer requirement is to be implemented by a party other than that implied by this paragraph.

Section 2

The provisions of Section 1 regarding a mandatory offer requirement also apply if

1. a party with no shareholding or a shareholding that represents less than three-tenths of the votes for all shares in a company covered by Section 1, second paragraph which achieves a shareholding representing at least three-tenths of the votes for all shares in the company as a result of measures taken by the company or another shareholder, alone or together with a related party in accordance with Section 5, and subsequently achieves increased voting rights by acquiring one or more additional shares in the company by a means other than a public offer for acquisition of the remaining shares in the company, or

2. a related party relationship in accordance with Section 5, points 1 or 4 is established and, as a result, the parties jointly achieve a shareholding representing at least three-tenths of the votes for all shares in a company referred to in Section 1, second paragraph.

If a mandatory offer requirement occurs as a result of the first paragraph, point 2, the following applies. In a case covered by Section 5, point 1, the mandatory requirement shall be implemented by the parent company or a corresponding party as stipulated in Chapter 1, Section 2, point 4 and, in a case covered by Section 5, point 4, by the party representing the greatest proportion of votes for all shares in the company. If, in the latter case, several related parties have equal voting rights, each of them is liable to ensure that the mandatory offer requirement is fulfilled.

Section 4 contains provisions under which Finansinspektionen may determine that the mandatory offer requirement is to be implemented by a party other than that indicated in this Section.

Section 3

The provisions in Sections 2 and 3 do not apply if a party achieves a shareholding representing at least three-tenths of the votes for all shares as a result of a public takeover bid for all shares in the company.

Section 4

If special reasons apply, Finansinspektionen may decide that the mandatory bid is to be implemented by a party related to the party for which a mandatory offer requirement is stipulated in accordance with Section 1 or 2.

Definition of the related party concept

Section 5

In applying Section 1, a related party shall be considered to be

1. a company in the same corporate group as the acquirer,
2. the acquirer's spouse or cohabitant,
3. a minor who is a child of the acquirer and under the acquirer's custody,
4. any party with whom an agreement has been reached regarding a coordinated exercise of voting rights to achieve a long-term joint position designed to achieve a decisive influence over the administration of the company, and
5. a party cooperating with the acquirer with the object of gaining control of the company.

Prerequisites for lapse of a mandatory offer requirement

Section 6

If a mandatory offer requirement has arisen under Sections 1-4 and the party subject to the mandatory offer requirement or, where applicable, a related party in accordance with Section 5, divests shares within four weeks of the date when the mandatory offer requirement arose so that the shareholding does not represent three tenths of the votes for all shares in the company, the mandatory offer requirement no longer applies. This also applies if the party subject to the mandatory offer requirement, another party, or the company takes some other action within this time limit that ensures that the shareholding does not represent three-tenths or more of the votes for all shares in the company.

If a mandatory offer requirement has occurred and the party subject to the mandatory offer requirement requests compulsory acquisition of the remaining shares under Chapter 22 of the Companies Act (2005:551) or Chapter 14 a of the Insurance Business Act (1982:713) within four weeks of the date when the mandatory offer requirement arose, the mandatory offer requirement no longer applies. However, the mandatory offer requirement applies if such a request for compulsory acquisition is withdrawn, disallowed or rejected.

If the mandatory offer requirement no longer applies as a result of the provisions in the first or second paragraphs, the acquirer shall announce this immediately.

CHAPTER 4

Information to employees

Section 1

A bidder domiciled in Sweden shall inform its employees regarding a public takeover bid that has been launched, and the offer document. This information shall be provided as soon as the takeover bid and the offer document, respectively, have been made public.

Section 2

The board of a company referred to in Chapter 3, Section 1, second paragraph and to whose shareholders a public takeover bid has been made shall inform its employees about the takeover bid, the offer document and its recommendation to shareholders as a result of the bid. This information shall be provided as soon as the takeover bid, the offer document and the recommendation, respectively, have been made public.

Section 3

Information in accordance with Sections 1 and 2 shall be supplied to employee organizations representing the employees of the party which is to provide this information. Information shall also be given to employees not represented by an employee organization.

CHAPTER 5

Defensive measures

Section 1

If, on the basis of information emanating from the party intending to make a public takeover bid for shares in a company referred to in Chapter 3, Section 1, second paragraph, the board or the managing director of a company has reason to assume that a bid of this nature is imminent or if such a bid has been made, the company may only take steps which may impair the prerequisites for making or implementing the bid following a decision by a general meeting of shareholders.

However, notwithstanding the stipulations in the first paragraph, the company may seek alternative offers.

CHAPTER 6

Provisions regarding breakthrough in the articles of association

Section 1

In accordance with what is prescribed in this Chapter, a breakthrough provision may be included in the articles of association for a company covered by Chapter 3, Section 1, second paragraph. In this case, Sections 2-6 are to be applied.

A decision to introduce a provision as referred to in the first paragraph in the articles of association is only valid if it has been supported by all shareholders attending the general meeting of shareholders and if they jointly represent at least nine-tenths of all shares in the company.

The company shall notify the supervisory authority in the state or states in the European Economic Area (EEA) in which the company's shares are registered for trading of a decision in accordance with the second paragraph.

Section 2

If a party has made a public takeover bid in accordance with Chapter 2, Section 1 regarding shares in a company whose articles of association contain a provision in accordance with Section 1, a pre-emption provision in accordance with Chapter 4, Section 27 of the Companies Act (2005:551) or Chapter 3, Section 3 of the Insurance Business Act (1982:713) does not apply to a transfer of shares within the framework of the offer, and nor do restrictions on the right to transfer shares apply in an agreement between shareholders.

Section 3

If, in a situation covered by Section 2, the general meeting of shareholders is to determine whether that company is to take a measure of a nature referred to in Chapter 5, Section 1, a provision in the articles of association or in an agreement between shareholders that limits the number of votes which a shareholder may cast at a general meeting is invalid. Furthermore, at such a general meeting all shares entailing an equal entitlement to participation in the company's assets and profits shall have the same voting weight.

Section 4

If, as a result of a public takeover bid in accordance with Chapter 2, Section 1, a bidder who has achieved a shareholding corresponding to at least three-quarters of the shares in a company whose articles of association contain a provision covered by Section 1 requests that a general meeting of shareholders is to be convened to amend the articles of association, or to dismiss or appoint members of the board, this is to take place as soon as possible. Notice to convene the meeting shall be issued not earlier than four weeks and not later than two weeks prior to the general meeting.

Section 5

At a general meeting of shareholders held in accordance with a request referred to in Section 4, all shares entailing an equal entitlement to participation in the company's assets and profits shall have the same voting weight in a decision regarding a change in the articles of association or the dismissal or election of members of the board.

At such a general meeting, a clause in the articles of association or in an agreement between shareholders which limits the number of votes that a shareholder may cast at a general meeting of shareholders is invalid. This also applies to a clause in the articles of association that gives a specific shareholder special rights regarding election of the board.

Section 6

If application of a provision referred to in Section 1 entails loss or impairment of the rights of a shareholder or another party, the bidder shall pay reasonable compensation to the holder of such rights.

CHAPTER 7**Supervision, etc.****Section 1**

Finansinspektionen is to supervise compliance with the provisions in Chapters 2-5.

Chapter 6, Sections 1 a, 1 c and 1 d of the Financial Instruments Trading Act (1991:980) contains provisions that entitle Finansinspektionen

- to obtain the information required by Finansinspektionen for its supervision,
- to prohibit public takeover bids, and
- to prohibit advertising regarding a public takeover bid.

Special charges**Section 2**

If the bidder has failed to issue an undertaking in accordance with Chapter 2, Section 1 and, as a result, Finansinspektionen has prohibited the offer in accordance with Chapter 6, Section 1 c, third paragraph of the Financial Instruments Trading Act (1991:980), Finansinspektionen shall decide that bidder is to pay a special charge.

This special charge shall amount to not less than SEK 50,000 and not more than SEK 100 million.

This charge accrues to the state.

The provisions of Chapter 6, Sections 3b-3e of the Financial Instruments Trading Act also apply concerning this charge.

Non-approval of an offer document

Section 3

Finansinspektionen may not approve an offer document as referred to in Chapter 2, Section 3 unless the bidder has provided an undertaking covered by Chapter 2, Section 1.

Information concerning interpretation

Section 4

On application, Finansinspektionen shall provide information regarding whether a mandatory bid requirement applies in accordance with the provisions of Chapter 3, or whether a given measure contravenes the provisions regarding defensive measures in Chapter 5. Such an application may be made by a party with a valid interest in the matter.

Exemption

Section 5

If special reasons apply, Finansinspektionen may, on application, permit exceptions from the provisions on mandatory offers and defensive measures. Conditions may be attached to such an exemption.

In the case of a mandatory offer requirement, an application in accordance with the first paragraph may be made by a shareholder as referred to in Chapter 3, Section 1, or some other party with a valid interest in the matter.

In the case of defensive measures, an application in accordance with the first paragraph may be made by a company as referred to in Chapter 3, Section 1, second paragraph.

Injunctions

Section 6

Finansinspektionen may order a party that fails to fulfil a mandatory offer requirement in accordance with Chapter 3, Section 1 to make restitution by fulfilling the requirement, divesting a sufficient number of shares so that the requirement no longer applies or dissolving a related party relationship covered by Chapter 3, Section 5, points 1, 4 or 5 so that a mandatory offer requirement no longer applies.

Finansinspektionen may order a party that fails to inform its employees in accordance with Chapter 4 to fulfil its obligation to provide information.

Finansinspektionen may order a company that has failed to comply with the provisions of Chapter 5, Section 1 regarding certain measures on the company's part, to rectify the situation by desisting from such measures.

An injunction in accordance with the first, second or third paragraph may involve a conditional penalty.

Prohibited representation of shares

Section 7

If a prohibition in accordance with Chapter 6, Section 1 c, third paragraph of the Financial Instruments Trading Act (1991:980), or an injunction in accordance with Section 6, first paragraph has been issued, Finansinspektionen may decide that the party to whom the prohibition or injunction is addressed may not represent the shares it holds in the company to whose shareholders a public takeover bid is being made or is to be made.

Section 8

If special reasons apply, Finansinspektionen may request that a district court appoints a suitable person as a trustee to represent shares that, in accordance with Section 7, may not be represented by the shareholder. An application of this nature is to be reviewed by the district court in the location in which the shareholder is domiciled or, if the shareholder is not domiciled in Sweden, by the Stockholm City Court.

A trustee is entitled to reasonable compensation for tasks performed and expenses, and the shareholder is to pay such compensation. If the party liable for payment does not accept the trustee's claims, payment is to be determined by the district court.

Announcement of a decision

Section 9

A decision regarding matters covered by Sections 4 and 5 shall be announced publicly if the decision involves partial or total approval of an application. The announcement shall be made immediately or, if special reasons apply, at a subsequent date determined by Finansinspektionen or, where applicable, by an entity specified in Section 10. The Government or an authority authorized by the Government stipulates detailed provisions regarding such an announcement.

Delegation of administrative functions

Section 10

The Government or Finansinspektionen, following authorization by the Government, may announce provisions to the effect that issues covered by Sections 4 and 5, Chapter 2, Section 3, second paragraph and Chapter 3, Section 4 may be determined by a body containing representatives of the private sector. The following provisions of the Administrative Procedure Act (1986:223) shall be applied in respect of issues dealt with by a body of this nature:

- Sections 11 and 12 regarding conflicts of interest,

- Section 14, first paragraph regarding a party's right to make an oral statement,
- Section 15 regarding the recording of information,
- Sections 16 and 17 regarding a party's right to receive information,
- Section 20 regarding the announcement of reasons for decisions,
- Section 21, paragraphs 1-3 regarding notification of decisions,
- Section 26 regarding the rectification of errors in writing, etc., and
- Sections 27-28 regarding the review of decisions.

Supervisory cooperation

Section 11

In the course of its supervisory activities, Finansinspektionen is to exchange information and cooperate with the relevant public authorities in other countries to the extent indicated by Directive 2004/25/EC of the European Parliament and the Council of 21 April 2004 on Takeover Bids¹.

Notification obligation for certain Swedish limited companies with regard to supervision

Section 12

If the shares in a Swedish limited company whose shares were not previously listed by a stock exchange or authorized market place in Sweden and which are not registered for trading in any other state are simultaneously registered for trading in two or more regulated markets in other states within the European Economic Area, other than Sweden, the following applies. The company shall determine which supervisory authority is to be authorized to exercise supervision of public takeover bids involving the company's shares in these states by notifying the regulated markets and the supervisory authorities concerned.

Fees for supervision, etc.

Section 13

Institutes subject to Finansinspektionen's supervision in accordance with this Act shall pay annual fees to defray the cost of Finansinspektionen's supervision. The Government may announce rules for such fees. If Finansinspektionen has delegated powers to make certain rulings regarding mandatory offer requirements or defensive measures to some other body, in accordance with Section 10, this body may charge the applicant a reasonable fee for the work and costs involved.

CHAPTER 8

Appeals, etc.

Section 1

An appeal against a ruling by a body referred to in Chapter 7, Section 10 may be lodged with Finansinspektionen by the party concerned if the ruling is to this party's disadvantage. The appeal shall be made in writing, stating which ruling is concerned and what amendment is requested.

¹ OJEU L 142, 30.4.2004, p.12 (Celex 32004L0025).

The appeal document shall be received by the body which has issued the ruling against which an appeal has been lodged within three weeks of the date when the appellant received notice of the ruling. In cases covered by Chapter 7, Sections 4 or 5, if the appeal is lodged by a party other than the applicant, the appeal shall be lodged within three weeks of announcement of the ruling.

The body referred to in the first paragraph is to consider whether the appeal has been submitted in time and, in this connection, the provisions in Sections 24 and 25 of the Administrative Procedure Act (1986:223) are to be applied.

An appeal may be made against a decision by a body referred to in the first paragraph to reject an appeal document on the grounds that it was not submitted in time, in the same manner as an appeal against the main ruling.

Section 2

Finansinspektionen and a body as referred to in Chapter 7, Section 10 may decide that a ruling is to apply immediately.

Section 3

An appeal against a decision by Finansinspektionen under this Act may be lodged with a general administrative court.

Leave to appeal is required for an appeal made to the Administrative Court of Appeal.

If Finansinspektionen has ruled on an issue covered by Chapter 7, Section 4 or 5 and this does not involve review of a ruling by a body referred to in Chapter 7, Section 10, then Chapter 8, Section 1, second paragraph is to apply as regards the deadline for an appeal against a ruling by Finansinspektionen.

1. This Act enters into force on 1 July 2006.
2. The provisions in Chapter 6, Sections 2, 3 and 5 regarding agreements between shareholders only apply to agreements entered into after 21 April 2004.
3. The provisions in Chapter 2, Section 1 shall, in addition to what follows from that paragraph, apply to takeover bids for shares in a foreign company if the shares were listed on 20 May 2006 in a manner described in Chapter 2, Section 1, second paragraph, point 4 and Finansinspektionen has reached agreement, following consultation, with other supervisory authorities concerned within four weeks of the date stipulated regarding Finansinspektionen's authority to exercise supervision.
4. The provision in Chapter 7, Section 12 regarding a Swedish company's obligation to determine which supervisory authority is to be authorized also applies if the company's shares were registered for trading in more than one state within the European Economic Area, other than Sweden, and they were registered for trading there simultaneously, and if the supervisory authorities concerned have failed to reach agreement within four weeks of the date stipulated regarding which authority is to be authorized to exercise supervision.

Extracts from the Financial Instruments Trading Act (1991:980)

CHAPTER 1

Section 1

As used in this Act:

.....
public takeover bid means a public offer to holders of shares issued by a Swedish or foreign company for the transfer of all or part of these shares to the bidder,

bidder means the party making a public takeover bid,

target company means a company to whose shareholders a public takeover bid is made.

CHAPTER 2

Section 5

If financial instruments are offered to the general public, a prospectus does not need to be drawn up if the offer involves

.....
2. financial instruments offered as payment in connection with a public takeover bid following approval by Finansinspektionen* of an offer document as referred to in Chapter 2 of the Act concerning Public Takeover Bids in the Stock Market (2006:451).

Section 6

When financial instruments are registered for trading in a regulated market, a prospectus does not need to be drawn up if

.....
3. financial instruments are offered as payment in connection with a public takeover bid following approval by Finansinspektionen of an offer document as referred to in Chapter 2 of the Act concerning Public Takeover Bids in the Stock Market (2006:451).

* The Swedish financial supervisory authority

CHAPTER 2 a

Public takeover bids

Section 1

Chapter 2 of the Act concerning Public Takeover Bids in the Stock Market (2006:451) contains provisions concerning the bidder's obligation to prepare an offer document and to apply for approval of this document. The provisions in this Chapter apply to such a document.

Section 2

An offer document shall contain the information required to enable shareholders in the target company to make a soundly based decision regarding the offer.

The offer document shall contain information regarding

1. the terms of the offer,
2. the identity of the bidder and, if the bidder is a legal entity, the bidder's legal status, name and registered office,
3. the identity of parties working in cooperation with the bidder and, in the case of legal entities, their legal status, name and registered office, and their relationship with the bidder,
4. the shares covered by the offer,
5. the acceptance period for the offer,
6. the consideration offered for the shares covered by the offer, the manner in which the offer is financed and, if payment is made in a form other than cash, a specification of the form of payment that permits evaluation,
7. the maximum and minimum number of shares which the bidder offers to acquire,
8. the number of shares in the target company held by the bidder and, where applicable, by parties working in cooperation with the bidder, and also the proportion of the share capital and the votes for all shares in the target company which these shares represent,
9. reasons for the offer,
10. the bidder's intentions as regards the future operations of the target company and, to the extent that it is affected, the bidding company.
11. the bidder's intentions as regards the companies' employees and management, including any material changes in the conditions of employment,
12. the bidder's strategic plans for the companies, and the possible impact on employment and the locations in which the company conducts its operations,
13. where applicable, compensation as referred to in Chapter 6, Section 6 of the Act concerning Public Takeover Bids in the Stock Market (2006:451), with further details regarding the manner in which compensation is to be provided and the method to be employed in determining consideration,
14. information regarding which national legislation is to be applied as a result of the takeover bid to agreements reached between the bidder and shareholders in the target company.

Section 3

If the consideration offered consists of financial instruments intended for general trading and which are issued or held by the bidder, in addition to the provisions of Section 2 the offer document shall contain information equivalent to the information which a prospectus is to contain in accordance with Chapter 2 and the Prospectus Regulation*.

Section 4

The offer document shall be in the Swedish language, unless Finansinspektionen decides, in a specific case, that it may be drawn up in some other language.

Section 5

Finansinspektionen shall announce rulings within 10 working days of receipt for approval of a complete offer document in accordance with Chapter 2, Section 3 of the Act concerning Public Takeover Bids in the Stock Market (2006:451).

Section 6

If Finansinspektionen concludes that an offer document stipulated in Section 3 does not contain information equivalent to the requirements for prospectuses stipulated in Chapter 2 and the Prospectus Regulation, Finansinspektionen shall announce within 10 working days of receiving a complete offer document that a prospectus is to be drawn up in accordance with Chapter 2. However, the deadline for announcement of a ruling by Finansinspektionen is instead 20 working days from receipt of a complete offer document if the consideration consists of financial instruments issued by a party which

1. has not previously issued financial instruments to the general public, and
2. has not previously had financial instruments registered for trading in a regulated market.

Section 7

If an offer document needs to be supplemented, Finansinspektionen shall notify the party that submits the document and request provision of the additional information required as soon as possible, and not later than 10 working days of receipt of the document by Finansinspektionen.

Section 8

In accordance with Chapter 7, Section 3 of the Act concerning Public Takeover Bids in the Stock Market (2006:451), Finansinspektionen may not approve an offer document unless the bidder has provided an undertaking referred to in Chapter 2, Section 1 of the Act.

Section 9

Following approval of an offer document, Finansinspektionen shall register the document and the bidder must make it public. The offer document may not be published before it has been approved and registered.

* Regulation (EC) 809/2004 of 29 April 2004

Section 10

An offer document which has been approved by an authorized authority in another EEA country is valid in a public takeover bid for shares in a foreign company whose shares are registered for trading on a stock exchange or authorized market place in Sweden.

Finansinspektionen may determine that such an offer document is to be translated into Swedish.

Finansinspektionen may also determine that such an offer document is to contain information concerning the manner in which holders of shares listed on a stock exchange or authorized market place in Sweden are to proceed in order to accept the offer and receive payment, and also as regards tax liability on the payment.

Section 11

The provisions of Chapter 2, Sections 29-31 and 34 also apply to offer documents.

CHAPTER 6**Section 1 a**

In order to monitor compliance with the Provisions of this Act, the Securities Business Act (1991:981), the Exchange and Clearing Operations Act (1992:543), the Act concerning Mandatory Notification of Certain Holdings of Financial Instruments (2000:1087), the Act concerning Penalties for Abuse of the Market in Trading in Financial Instruments (2005:377), the Prospectus Regulation and the Act concerning Public Takeover Bids in the Stock Market (2006:451), Finansinspektionen may, for the purposes of its supervision, request that

1. a company or another party supplies information, documents or other materials,
2. the party which is expected to provide information regarding the matter in question presents itself for questioning at the time and place determined by Finansinspektionen.

The first paragraph does not apply if such a request contravenes the statutory secrecy requirement for lawyers.

The first paragraph, point 2 does not apply for the application of Chapters 2 and 2 b.

The Government, or a public authority designated by the Government, may announce detailed provisions regarding the manner in which information requirements in accordance with the first paragraph are to be fulfilled.

Section 1 c

Finansinspektionen may temporarily prohibit an offer of financial instruments to the general public, admission of financial instruments for trading in a regulated market, or a public takeover bid, if Finansinspektionen has reasonable grounds for assuming that the offer, admission for trading, or the takeover bid contravenes the provisions of this Act or the Prospectus Regulation. A prohibition of this nature may not apply for more than 10 working days.

Finansinspektionen may permanently prohibit an offer of financial instruments to the general public if Finansinspektionen concludes that the provisions in this Act or the Prospectus Regulation have been contravened.

Finansinspektionen may permanently prohibit a public takeover bid if Finansinspektionen concludes that the provisions of the Act concerning Public Takeover Bids in the Stock Market (2006:451) have been contravened.

Section 3 a

Finansinspektionen shall determine that a special charge is to be paid by a party that

4. notwithstanding an obligation to prepare an offer document, fails to apply for approval in accordance with Chapter 2, Section 3 of the Act concerning Public Takeover Bids in the Stock Market (2006:451), or
5. fails to make a offer document public in accordance with Chapter 2 a, Section 9.

This special charge shall amount to not less than SEK 50,000 and not more than SEK 10 million.

This charge accrues to the state.

These provisions enter into force on 1 July 2006

Extract From the Exchange and Clearing Operations Act (1992:543)

CHAPTER 4

Rules for public takeover bids

Section 2 a

A stock exchange shall have rules for public takeover bids for shares listed on the stock exchange in question. These rules shall comply with the requirements stipulated in Directive 2004/25/EC of the European Parliament and the Council of 21 April 2004 on Takeover Bids* in its original wording and be appropriate in other respects.

Exceptions from these rules may be determined by the stock exchange or by a body appointed by the stock exchange containing representatives of the private sector, and may be made subject to conditions. The reasons for such an exception must be stated.

This provision (SFS 2006:455) enters into force on 1 July 2006.

* OJEU L142, 30.4.2004, p.12 (Celex 32004L0025).

FFFS 2006:4

**Finansinspektionen's* Directives
Regarding Rulings by the Securities
Council** Concerning Certain Issues
Involving Public Takeover Bids
in the Stock Market, and
the Announcement of Such Rulings;**

Finansinspektionen announces the following provisions by authority of Sections 4 and 5 of the Ordinance (1991:1007) on Trading and Services in the Securities Market.

Delegation of administrative functions to the Securities Council

Section 1

The Securities Council is to make rulings on matters covered by Chapter 2, Section 3, second paragraph, Chapter 3, Section 4 and Chapter 7, Sections 4 and 5 of the Act concerning Public Takeover Bids in the Stock Market (2006:451).

Announcement of rulings by the Securities Council

Section 2

The Securities Council is to announce rulings made by the Council in accordance with Chapter 7, Sections 4 and 5 of the Act concerning Public Takeover Bids in the Stock Market (2006:451) if such a ruling involves approval of the application, in whole or in part.

The Council is to announce such rulings by means of publication on its website.

These directives enter into force on 1 July 2006.

* The Swedish financial supervisory authority

** Sw.: Aktiemarknadsnämnden

The OMX Nordic Exchange Stockholm Rules Concerning Public Takeover Bids In the Stock Market (2007-07-01)

FOREWORD

A new Act concerning Public Takeover Bids in the Stock Market entered into force on 1 July 2006, implementing EU Directive 2004/25/EC regarding takeover offers in Sweden. This has resulted in certain changes in current legislation, primarily in the Exchange and Clearing Operations Act (1992:543)* and the Financial Instruments Trading Act (1991:980).

Under the new Takeover Bids Act, a person or entity making a takeover offer must undertake to comply with the rules for such offers in the market place concerned. Otherwise the Act primarily regulates mandatory offers. The new provisions in the Exchange and Clearing Operations Act stipulate that a stock exchange or authorized market place must have rules for public takeover bids for shares in companies listed by the market place concerned. Changes in the Financial Instruments Trading Act mainly involve the contents of the offer document which is to be drawn up and approved in connection with a bid.

Under the Securities and Clearing Operations Act, the market places' rules for takeover offers must comply with the requirements of the EU Directive, although market places may have rules that extend beyond and supplement the EU rules.

Previously, in Sweden takeover bids have been governed by the Näringslivets Börskommitté (NBK) Rules concerning "Public Offers for the Acquisition of Shares". The NBK Rules have formed part of the regulatory structure for the market place concerned and, as a result, have been mandatory for listed companies.

The NBK Takeover Rules – which have covered the Swedish market since the early 1970s and have been subsequently revised on a number of occasions – are widely considered to have worked well, and it is felt that the standards established by these Rules should be retained. As a result, the Stock Exchange wants to build on and develop these Rules in the future, and to utilize NBK's experience and contact network in the event of further changes in the regulatory system.

* Ed.: Also published in Swedish Commercial Legislation as the "Securities and Clearing Operations Act".

NBK has reviewed the takeover Rules in the light of the requirements posed by the EU Directive and the new legislation. The aim has been to retain the previous Rules as far as possible. This has led to a proposal for new takeover Rules which, in some respects, is more extensive and more detailed than the provisions in the Directive.

The Exchange and Clearing Operations Act, for example, stipulates that the OMX Nordic Stock Exchange Stockholm is to have Rules for public takeover bids. The Stock Exchange has concluded that the revised Rules proposed by NBK for public takeover bids maintain a satisfactory balance and have an appropriate structure and wording. As a result, the Stock Exchange has decided to adopt these Rules.

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INTRODUCTION

The Exchange and Clearing Operations Act (1992:543) stipulates that a stock exchange is to have Rules for public takeover bids for shares in companies with shares listed on the exchange concerned. These Rules must comply with the requirements made by the Directive 2004/25/EC of the European Parliament and the Council of 21 April 2004 on takeover bids, and must fulfil their purpose in other respects. As a result of these Rules, the OMX Nordic Exchange Stockholm (the Stock Exchange) meets these statutory requirements.

The Stock Exchange's takeover Rules are based on Rules drawn up by Näringslivets Börskommitté (NBK). NBK is an organization that has developed Sweden's takeover Rules over the years. NBK and its working groups have expertise and experience which the Stock Exchange wishes to utilize. As a result, when new rules for public takeover bids are called for in the future, it is a natural step for the Stock Exchange to draw up such rules in consultation with NBK. Obviously, NBK may also independently initiate proposals for additions or amendments of these rules.

Moreover, the Exchange and Clearing Operations Act gives the Stock Exchange an opportunity to determine exceptions from these Rules, and this may be delegated to an organization authorized by the Exchange. Hence, the Stock Exchange has decided to transfer decisions regarding exceptions to, and interpretation of, the takeover Rules to the Securities Council*.

The Rules are to be observed by bidders and, in some respects, by target companies. However, it is of the utmost importance for public confidence in the stock market and in industry and commerce that these Rules are also respected by people who, in various capacities, provide advice or assist bidders, target companies or other parties involved in public offers.

The specific Rules cover the various stages of an offer, and broadly comply with the normal chronological order of events in the offer process. At the detailed level, the circumstances often differ from one public offer to another. As a result, the provisions are stated at a relatively general level, for the most part. The Securities Council, which is assigned to promote good practices in the Swedish stock market, may issue rulings concerning the manner in which the provisions are to be interpreted and applied and how various parties should proceed in specific situations.

The provisions in the Rules should be interpreted in the light of their purpose. As a result, the underlying concepts should be respected, not merely the wording of the various provisions.

In order to assist interpretation, initially, certain basic principles in the Takeover Directive on which the Rules are based are presented. These principles should provide guidance in situations not covered by the Rules or where the provisions do not prove to be adequate in a specific case.

* Sw.: Aktiemarknadsnämnden

The basic principles are as follows:

- a) All holders of securities of the same type in a target company must receive equal treatment and, if a person/entity gains control of a company, other holders must be protected.
- b) Holders of securities in a target company must be given sufficient time and information to arrive at a decision regarding the offer which is soundly based. When the board of the target company gives holders of securities advice, it must express an opinion regarding the way in which implementation of the offer will affect employment, terms of employment and the location of the company's operations.
- c) The board of the target company must take into account the interests of the company as a whole and must not deprive holders of securities of an opportunity to decide on the offer.
- d) The markets where securities in the target company are traded, the company making the offer or any other company affected by the offer may not be improperly influenced in a manner that causes the price of the securities to rise or fall in an artificial manner and distorts the normal functioning of the market.
- e) A bidder may not announce an offer until it has been ascertained that cash payment, where offered, can be completed in full and after all reasonable steps have been taken to ensure payment of all other forms of consideration.
- f) An offer concerning securities in a target company may not prevent the company in question from conducting operations for a period that is more prolonged than is reasonable.

I. GENERAL PROVISIONS

Area of application of the Rules

- I.1** These Rules apply to a public offer by any physical person or entity (the bidder) to holders of shares issued by a Swedish company (the target company) with shares listed on the Stock Exchange for the transfer of some or all of these shares to the bidder (public takeover bid).

Unless otherwise stated, the Rules also apply to public takeover bids for shares in a foreign company whose shares are not listed for trading in a regulated market in the country in which the company is domiciled, but which are listed on the Stock Exchange.

Unless stated to the contrary in the Rules, references to shares also apply, to the extent applicable, to convertibles, corporate warrants, participating debentures (capital-linked participating debentures and profit-linked participating debentures), issue rights and corresponding financial instruments issued by a company referred

to in the first and second paragraphs. Holders of such financial instruments are to be regarded as shareholders in this connection.

Comments

In accordance with the *first paragraph*, the Rules apply to public takeover bids involving shares issued by a Swedish company whose shares are listed on the Stock Exchange. This implies that the Rules, as a whole, also apply in cases where the shares are listed both on the OMX Nordic Exchange Stockholm and on a foreign market place, and not merely in cases where the shares are exclusively listed on the OMX Nordic Exchange Stockholm.

The *second paragraph* implies that, unless otherwise stated, the Rules also apply to a public offer for foreign shares (or depository receipts) listed on the Stock Exchange. However, this only applies if the company's shares are not listed on a regulated market in the country in which the company has its legal corporate domicile. Obviously, if a foreign company has its shares listed in one or more countries in addition to Sweden, conflicts between the rules in the various countries may occur. In such cases, the bidder or the target company may apply under Item I.2 for exemption by the Securities Council from the relevant Rules. Generally speaking, there is greater scope for exemption in this context if the proportion of shares traded in Sweden is limited.

Application of the Rules does not depend on the bidder's national domicile. Similarly, it is also irrelevant if the bidder is a physical person or a legal entity.

In parallel with growing foreign ownership of shares in Swedish stock market companies, a bidder making a public takeover bid to shareholders in such companies must also take into account the regulations in one or more foreign jurisdictions, in addition to compliance with these Rules. Drawing up an offer to meet the requirements in all the jurisdictions concerned may sometimes prove to be very time-consuming and expensive. In such circumstances, in accordance with Item I.2, the bidder may apply for exemption from the obligation to address the offer to shareholders in all jurisdictions and apply the Swedish Rules in full in all respects.

These Rules not only apply to offers for all the shares in the target company, but also to partial offers. Certain Rules in Item II.13 apply exclusively to partial offers.

In accordance with the *third paragraph*, the Rules stipulate that, unless stated to the contrary, references to shares also apply, to the extent applicable, to convertibles, corporate warrants, participating debentures, issue rights and corresponding financial instruments issued by a company referred to in the first and second paragraphs. Holders of such financial instruments are to be regarded as shareholders in this context. As a result – with one exception (Item II.9 concerning bid premiums) – the Rules refer solely to share(s) and shareholders, even in situations which involve

other financial instruments which are equated with shares, and holders of such instruments.

The Rules do not cover takeover bids exclusively addressed to holders of call options, although this does not mean that the forms for an offer of this nature may not be subject to review by the Securities Council in the light of the principles expressed in these Rules.

The Securities Council's right to interpret and grant exemptions from the Rules

- I.2 The Securities Council may issue rulings regarding interpretation and application of the Rules. The Council may also grant exemptions from the Rules. The Council may stipulate conditions for such exemptions.**

Comments

A regulatory framework for takeover bids cannot cover in detail all the issues that may arise in practice in connection with such offers. As a result, it is of considerable importance that there is a body which can provide authoritative and final rulings on the manner in which the Rules are to be interpreted and applied. In this context, this task has been allotted to the Securities Council which is assigned to promote good practices in the Swedish stock market.

The Rules are to be interpreted and applied in a manner which is compatible with their aims. In many instances, the provisions explicitly stipulate that the Securities Council should be consulted in order to eliminate uncertainty regarding the implications of a rule in a specific case. This applies, for example, to Items II.5, 6 and 7, but may also, of course, apply to other provisions.

Certain provisions stipulate that special reasons may justify exceptions from the rule. If the comments do not provide sufficient guidance, the Securities Council should be consulted in such cases.

The circumstances in various public offers are seldom identical. It is not possible to take such differences into account fully when formulating rules intended for general application. As a result, it is necessary to combine the Rules with a provision permitting exemptions from the Rules as a whole, or from specific provisions. This is another task performed by the Securities Council.

Measures taken by parties related to the bidder

- I.3 Where stated in Items in the Rules and to the extent stipulated, measures taken by the bidder are equated with measures taken by:**
- a) a company in the same corporate group as the bidder,
 - b) the bidder's spouse or cohabitant,
 - c) a child of the bidder for whom the bidder has custody,

- d) a party with whom an agreement has been reached regarding the adoption of a long-term joint position in the form of a coordinated exercise of voting rights in order to achieve a long-term influence regarding the administration of the target company, and
- e) any party cooperating with the bidder with the object of gaining control of the target company.

Comments

This provision lists the parties that are to be equated with the bidder in certain cases. This applies in cases where this is specifically stated in the Rules (see Items II.10-12).

Under this provision, the consequences of measures taken by one or more of the parties listed are the same as if the bidder had taken the steps in question.

In *category a)*, the bidder is equated with a company which is a member of the same corporate group as the bidder. The definition of corporate group is in accordance with the definition employed in the Swedish Companies Act (2005:551), although the statutory provisions regarding parent company also apply in this context to physical persons and legal entities other than limited companies. This means, for example, that this provision may also apply if the bidder is part of a foreign corporate group.

In *category b)*, the bidder is equated with the bidder's spouse or cohabitant. The definition of a cohabitant complies with the definition employed in the Cohabitation Act (2003:376), i.e. two persons living together on a regular basis as a couple and with a joint household. As stipulated in Chapter 3, Section 1 of the Registered Partnership Act (1994:1117), when interpreting the concept of a spouse in a statute or other legislation, a registered partner is also to be equated with a spouse in this context. In *category c)*, the bidder's children who are in the bidder's custody are equated with the bidder.

The prerequisite for a related party relationship stipulated in *category d)* is a written or oral agreement between the bidder and another physical person or legal entity to adopt a joint and long-term position for administration of the company, as the result of a coordinated exercise of voting rights. This provision may apply, for example, if there is an agreement to coordinate the exercise of voting rights during an extended period (i.e. several fiscal years) to ensure the election of a number of directors which is sufficient, at any rate, to constitute a majority on the board. On the other hand, this provision is not designed to cover cooperation prior to board elections or other decisions taken by a general meeting of shareholders that are of a temporary or merely ad hoc nature.

In *category e*), it is presumed that a party is cooperating with the bidder in order to gain control of the company. In other words, there must be a written or oral agreement for cooperation designed to achieve control of the company in question. In this context, control is defined as the achievement of a shareholding representing not less than three-tenths of the number of votes for all shares in the company.

The Securities Council should be consulted if there is doubt as to whether a given relationship is to be regarded as having related party status in accordance with this provision.

Announcement

- I.4 Information which is to be made public in accordance with the Rules must be made available to the general public quickly and in a non-discriminatory manner. The corresponding information is to be simultaneously submitted to the Stock Exchange and to Finansinspektionen*. If the bidder has a website on the Internet, the information must also be made available on the website as soon as possible, unless there are special reasons for not doing so.**

Comments

It is stipulated in several places in the Rules that information is to be made public. As from 1 July 2007, the provisions regarding the manner in which this is to be accomplished are stated, for example, in Chapter 9a, Section 3, of the Exchange and Clearing Operations Act and Finansinspektionen's directives.

The information must also be submitted to the Stock Exchange and Finansinspektionen not later than the time at which the information is submitted for announcement.

If the bidder has a website on the Internet, the information made public must, in principle, also be made available on the website as soon as possible. However, there may be special reasons – for example the fact that the offer is not addressed to shareholders in certain countries – which may cause the bidder to refrain from making the information universally available in this manner.

* The Swedish financial supervisory authority

II RULES FOR PROCEDURES, DRAWING UP THE OFFER, ETC.

Prerequisites for making an offer

- II.1 A public offer may only be made after preparations have been made which indicate that the bidder is capable of implementing the offer.

Comments

A public offer normally has an impact on the target company's share price. In some cases, it also affects the price of shares in the company making the offer. As a result, a public offer has considerable impact on share trading, but it is also relevant for the target company's board and senior management, and it may also have an impact on operations conducted by the company.

In this context, it is important that the offer is only made public if the bidder seriously intends to implement the offer and has made careful preparations for implementation. Normally, this means that the bidder has utilized the services of experts who are familiar with the Swedish stock market and the regulations that apply.

According to this provision the preparations made must establish that the bidder has the capacity to implement the offer. In the case of an offer wholly or partly in cash, this means for example that the bidder must ascertain that there are sufficient financial resources to implement the offer. The offer may be financed by borrowing. If the bidder is relying on payment of a loan or corresponding sum in order to implement the offer and if the lender has stipulated conditions for such a loan, Item II.4 indicates that the offer must be made conditional on receipt of such a payment.

It is assumed that the bidder will subsequently be able to provide evidence of the manner in which the preparatory process has been carried out – for example by means of written documentation.

This provision should not be interpreted to mean that the bidder has ascertained that the requisite official permits, where applicable, will be granted or that the bidder has ensured that approval by a general meeting of shareholders will be forthcoming, if this is required.

The bidder's obligation to refrain from trading in the target company's shares after commencement of a due diligence investigation

- II.2 If a person/entity intending to make a public offer carries out a due diligence investigation of the target company and, in this context, receives information from the target company that is likely to materially affect valuation of the company's shares, such a person/entity must not buy or sell shares in the target company

before the corresponding information has been issued to shareholders and the stock market.

Comments

A potential bidder sometimes conducts a due diligence investigation of circumstances in the target company as part of preparations for an offer, in cooperation with the target company. This may give the bidder information which is not available to other shareholders and the stock market and which is likely to affect valuation of the company's shares to a significant extent. As a result, in order to uphold the principle of equal treatment of shareholders and public confidence in the functioning of the stock market, if the bidder has commenced a due diligence investigation and received information of this nature, the bidder must refrain from buying and selling shares in the target company until the corresponding information has been issued to shareholders and the stock market.

The requirement in this provision stating that the information received "is likely to materially affect valuation of the company's shares" is less stringent than the corresponding requirement in the Act concerning Penalties for Abuse of the Market in Trading in financial Instruments (2005:377). As a result, the prohibition on trading stipulated in this context is more far-reaching than the Act.

Item II.15 states that if the target company supplies the bidder with information in connection with a due diligence investigation that has not been made public and this information is likely to materially affect valuation of the company's shares, the target company must ensure that this information is supplied to shareholders and the stock market.

The bidder's obligation to make an offer public

II.3 Following a decision to make an offer as defined in Item I.1, the bidder must immediately make the offer public by means of a press release containing the following information:

- the bidder's identity,
- the number of shares in the target company held by the bidder or controlled by the bidder in some other manner, and the corresponding proportion of the share capital and votes for all shares in the target company,
- which financial instruments are covered by the offer,
- the main terms of the offer, including the price, the premium if any, and the basis for calculation of such a premium,
- the manner in which the offer is to be financed,
- possible conditions for fulfilment of the offer (completion conditions),
- an assurance that the bidder has given an undertaking to the Stock Exchange to comply with the Rules determined by the Exchange for such offers and to accept any sanctions that may be imposed by the Exchange in the event of a breach of these

Rules, and is giving shareholders in the target company a corresponding undertaking,

- the extent to which the bidder has received information indicating that shareholders in the bidding company intend to vote for the requisite approval of the offer at the general meeting of shareholders of the company making the offer,
- the extent to which the bidder has received binding or conditional undertakings regarding acceptance of the offer by target company shareholders or whether shareholders have expressed favourable opinions of a general nature concerning the offer,
- the reasons for the offer in brief and, to the extent that this is feasible in practical terms, the impact of acquisition – immediately and in the future – on the bidding company’s earnings and financial position if payment is to consist of shares or share-related instruments issued by the bidder. Where relevant, the financial impact should also be expressed on a per-share basis, and
- the anticipated publication date of an offer document and a schedule for implementation of the bid that is as precise as possible.

Comments

Following a decision to make a public offer, it is of the utmost importance that the offer is made public immediately, in view of the impact on share prices, for example. This takes the form of a press release presenting facts that are relevant for the share price, to the extent that this is feasible. This provision stipulates the contents of the press release.

The press release must provide information about the *bidder’s identity*. If the bidder is a stock market company, it is normally sufficient to indicate the bidder’s name. In other cases, the bidder must be presented in a manner which is relevant for target company shareholders and the stock market. The presentation must, for example, indicate the bidder’s legal corporate domicile, the head-office address, the main features of ownership circumstances and the nature and scope of operations. The latter requirement also calls for reporting of certain important key financial ratios.

The press release must also indicate *the number of shares in the target company held by the bidder or controlled by the bidder in some other manner*, for example under option agreements, and the proportion of the equity and total votes in the target company that this represents.

The press release must also contain information about *which financial instruments are covered by the offer*. If, for example, the offer covers all shares in the target company, and also corporate warrants or convertibles issued by the target company, this must be stated in the press release.

The press release must also indicate the *main terms of the offer*, for example the form of consideration and the amount. If there is a premium, this

must be stated, including the basis for calculation of the premium. This means, for example, that the calculation period for the share price with which the offer price is to be compared must be stated.

Further, the press release must provide information as to *the manner in which the offer is to be financed*. This means, for example, that the press release must indicate the extent to which the offer is financed from the bidder's resources or by borrowing. If the bidder's implementation of the offer depends on additional funds or financing by shareholders or other parties, the relevant information must be provided. Information about financing is particularly important if the offer is made by a company established specifically for this purpose.

If the bidder stipulates *conditions for fulfilment of the offer*, such conditions must be stated in the press release. Fulfilment conditions of this nature should normally be stated in detail. In accordance with the last paragraph of Item II.4, it should also be indicated that the bidder may, in principle, only withdraw the offer in the light of an explicit fulfilment condition if failure to fulfil the condition is of material importance for acquisition of the target company by the bidder. If the bidder is relying on external financing for implementation of the offer and the lender stipulates conditions for payment of the loan or corresponding sum, the fourth paragraph of Item II.4 indicates that the offer must be made conditional on receipt of such a payment. The conditions for issue of the loan must be stated in full in the press release. As pointed out in the comments on Item II.4, the purpose of the requirement for making the financing conditions public is that the market must be in a position to assess the prerequisites for implementation of the offer. This rule must be interpreted in the light of its purpose. Accordingly, conditions of a largely formal nature – for example the drawing up of final credit documentation – do not need to be stated in the press release.

Very extensive conditions may apply – based on practices in other countries – particularly in the case of cross-border offers. Fulfilment conditions of this nature may be stated in a summarized form, providing that the essential meaning is clear.

The bidder must also indicate that an undertaking has been made to the Stock Exchange to *comply with the Exchange's Rules for offers of this nature and to accept any sanctions that may be imposed by the Exchange in the event of failure to observe these Rules*. In addition, the press release must contain a corresponding undertaking by the bidder to shareholders in the target company. It also implies that the bidder and the target company's shareholders are bound to respect the Securities Council's ruling if the Council pronounces on interpretation or application of the Rules as regards a specific aspect (cf Item 1.2). This applies irrespective of whether the Council issues a ruling as the result of a direct request by the bidder or some other party as regards the specific case, or whether the ruling has been made in another context but involves an interpretation which is also of immediate relevance for the current situation. Clearly, in the latter case, it must be assumed that the Council's ruling has been made public, thus enabling the bidder to be aware of the ruling.

If the bidder makes the offer conditional on a specific decision by the bidding company's general meeting of shareholders concerning the offer – *for example that a new share issue is to constitute consideration in the offer* – the press release must contain information regarding the extent to which the bidder has received information indicating that shareholders intend to vote in this manner at the general meeting of shareholders.

If the bidder has obtained assurances regarding conditional or unconditional *acceptances by target company shareholders*, this must be indicated in the press release. If this is not the case, no specific statement is required. One example of a conditional acceptance is a declaration by a shareholder that he will accept providing no other party makes a more favourable offer. If questions posed to shareholders regarding the offer have only resulted in favourable opinions of a general nature, this should be indicated. In this case, it is important that the press release clearly states that such expressions of opinion are not binding undertakings.

This provision does not prevent the bidder from issuing a special press release to clarify the bidder's views if the bidder suspects that information about the offer has been, or may be, leaked to the market prior to the mandatory issue of a full press release in accordance with this Item. On the contrary, such action may be appropriate in order to eliminate a possible information advantage due to a leak. A special press release of this nature should clearly state that the press release in question is not a formal announcement in accordance with this Item, and should indicate when a formal press release is to be expected.

Item III.2 contains provisions regarding supplementary information in the press release if a target company board member or senior executive makes or participates in the offer.

The bidder's possibilities to stipulate conditions for completion of the offer

II.4 The bidder may stipulate conditions for completion of the offer (completion conditions).

A completion condition is to be drawn up in a manner which makes it possible to determine objectively whether or not the condition has been fulfilled. This condition may not be drawn up in a manner which gives the bidder a decisive influence over its fulfilment.

Notwithstanding the first sentence of the second paragraph, a completion condition may be that the bidder receives the requisite official permits on terms which are acceptable to the bidder.

If the bidder is relying on external financing for implementation of the offer and the lender stipulates conditions for issue of the loan or corresponding sum, the offer shall* be made conditional on the provision of such funds. The conditions stipulated for issue of the loan must be drawn up to fulfil the requirements of the second

* Ed.: See however Securities Council Ruling 2003:15; (www.aktiemarknadsnamnden.se)

paragraph and are to be reproduced in full, both in the press release and in the offer document.

If completion conditions are stipulated, the bidder must state that the offer may only be withdrawn on the grounds of failure to fulfil a condition of this nature if failure to fulfil the condition is of material importance for the bidder's acquisition of the target company. However, this does not apply to conditions regarding achievement by the bidder of a given level of acceptance for the offer, or that the general meeting of shareholders of the bidding company or the target company takes certain decisions in connection with the offer, or conditions stipulating that no other party announces an offer to acquire shares on terms which are more favourable for the holder than the bidder's offer.

Comments

Public takeover bids in the stock market have considerable implications for price trends for the shares of the companies concerned and, as a result, considerable implications for share trading. By definition, a takeover bid is addressed to a wide group of shareholders with varying ability to assess the offer. As a result, it is desirable that the offer is characterized by simplicity and clarity, as far as possible. On the other hand, a decisive factor in the bidder's interest in, and ability to complete, the offer may be the fulfilment of certain requirements when the offer is completed and, as a result, the bidder may need to stipulate completion conditions. The *first paragraph* states that such conditions are permitted, as a basic starting point. This may, for example, involve conditions stating that a specific level of acceptance of the offer must be achieved, that the requisite official permits are obtained, that no other party announces an offer to acquire shares in the target company on terms which are more favourable for the holder than the bidder's offer, or that the target company does not take measures covered by Item II.16.

The question of whether the bidder is free to stipulate completion conditions without restriction or whether only certain types of conditions are to be permitted is a key issue. Arguments may be advanced in support of both viewpoints. In this context, no restrictions are stipulated in this respect. However, this issue may be subject to reconsideration if completion conditions are introduced in the market which run counter to the simplicity and clarity requirement and which, as a result, make it more difficult for shareholders to assess future offers.

The *second paragraph* states that a completion condition must be drawn up in a manner which makes it possible to determine objectively whether or not it has been fulfilled. Hence, determination of this question is not a matter for the bidder's subjective judgement. The aim should be that verification of whether or not the condition has been fulfilled is feasible, for example by an auditor. In accordance with the second sentence of this paragraph, a condition may not be drawn up in a manner which gives the bidder a decisive influence over its fulfilment. This means that the bidder may not stipulate conditions that, in practice, entitle the bidder to freely

determine whether the offer is to be closed or not. The bidder must obviously endeavour to ensure that the conditions stipulated are fulfilled, for example by applying for a permit from the competition authority if such a condition is stipulated in the offer.

A due diligence investigation is sometimes carried out in connection with a public offer. In this context, the bidder may stipulate completion conditions stating that the bidder is entitled to withdraw the offer if, after the offer has been made public, information concerning the target company emerges which differs significantly from what the bidder had reason to expect. A condition of this nature must also be formulated sufficiently precisely to permit objective determination of whether or not the condition has been fulfilled. This type of condition is also sometimes employed in cases where no due diligence investigation is carried out.

A certain degree of subjective assessment must be accepted for some types of conditions where it is not possible to rely solely on objective criteria. An official permit for which the bidder has stipulated a proviso may entail requirements with regard to which only the bidder can determine whether or not the prerequisites for completing the offer still apply. This may be the case, for example, concerning decisions by competition authorities. As a result, the *third paragraph* makes an exception to the principle stated in the second paragraph, specifically relating to official permits.

If the bidder is relying on external financing for implementation of the offer and the lender stipulates conditions for issue of the loan or corresponding sum, the offer may be made conditional on the provision of such funds, in accordance with the *fourth paragraph*. The conditions stipulated for issue of the loan must be expressed in a form which complies with the requirements in the second paragraph and are to be reproduced in full, both in the press release and in the takeover offer. The aim is to inform the market of the conditions that apply, thus permitting it to assess the prerequisites for implementation of the offer. This rule must be interpreted in the light of its aims. This does not mean that the conditions which are virtually of a formal nature – for example preparation of the final credit documentation – must be presented.

Item II.5 indicates that, with certain specific exceptions, the bidder may only withdraw an offer on the grounds of failure to fulfil a condition that has been stipulated if failure to fulfil the condition is of material importance for the bidder's acquisition of the target company. It follows from the *fifth paragraph* that this must be stated in the press release and the offer document in connection with the stipulated completion conditions.

The bidder's obligation to stand by the offer

II.5 The bidder may not withdraw an offer which has been made.

However, notwithstanding the first paragraph, the bidder may withdraw the offer if:

- the bidder has stipulated, for fulfilment of the offer, that the bidder achieves a given level of acceptance for the offer or that the general meeting of shareholders of the bidding company or the target company passes certain resolutions in connection with the offer, and it is clear that this condition has not been, or cannot be, fulfilled,
- the bidder has stipulated for fulfilment of the offer that no other party announces an offer to acquire shares in the target company on terms which are more favourable for the holder than the bidder's offer, and an offer of this nature has been announced, or
- the bidder has stipulated some other completion condition and it is clear that this condition has not been, or cannot be, fulfilled and that this is of material importance for the bidder's acquisition of the target company.

If the bidder decides to withdraw the offer in accordance with the second paragraph, this must be made public immediately.

Comments

The Rules are based on the bidder's adherence to the offer. As a result, the *first paragraph* stipulates, as the main principle, that the bidder may not withdraw an offer that has been made.

Three exceptions from this rule are made in the *second paragraph*, based on completion conditions stipulated by the bidder. Firstly, the offer may be withdrawn if the bidder has stipulated a condition requiring a specific level of acceptance of the offer, or approval by the general meeting of shareholders of the company making the bid or of the target company of a matter relating to the offer, and it is clear that this condition has not been fulfilled or cannot be fulfilled.

Secondly, the bidder may have stipulated that no other party should announce an offer to acquire shares in the target company on terms which are more favourable for the holder than the bidder's offer. If a competing offer of this nature is announced, the bidder is no longer bound by its offer.

The bidder is also entitled to withdraw the offer if the bidder has stipulated some other completion condition if it is clear that this condition has not been fulfilled, or cannot be fulfilled. The right of withdrawal is not unlimited in this case, however. The bidder must consider carefully whether developments justify withdrawal of the offer. The offer may only be withdrawn if failure to fulfil the condition is of material importance for the bidder's acquisition of the target company. What is considered to be of material importance may be determined in the light of the type of condition involved and the circumstances in the case in question. However, higher demands are normally made on the bidder's ability to show that failure to fulfil the condition is of material importance for acquisition of the target company if the condition is formulated in

relatively general terms. The bidder should request the Securities Council for a ruling if there is doubt about whether a completion condition that has been stipulated may be cited as a basis for withdrawal of an offer.

Situations may occur which justify exemption from the “material importance” requirement. Under certain circumstances, this may apply, for example, to negotiated offers and offers which take the form of a merger between two companies. The Securities Council is the appropriate body for advance or post hoc decisions regarding whether the circumstances justify remission of the “material importance” requirement without neglecting the interests of shareholders.

It follows from the purpose of this provision that the bidder must always actively endeavour to implement the offer. An active approach of this nature on the bidder’s part is particularly important if withdrawal of the offer would be to the disadvantage of target company shareholders. It may, for example, be considered that a bidder who has stipulated receipt of a specific official permit as a condition for the offer must submit or supplement an application for such a permit. On the other hand, the bidder cannot be required to take steps which would have more than a marginal effect on the cost of implementation of the offer. The bidder is never obliged to pay a higher price for the shares or buy shares in the market in order to fulfil a condition requiring a specific level of acceptance for the offer.

If the bidder decides to withdraw the offer, the *third paragraph* states that this must be made public immediately. The forms for such an announcement are indicated in Item I.4.

The bidder’s obligation to draw up and publish an offer document

- II.6** The bidder must prepare and make public an offer document within four weeks of making the bid. The bidder must announce the date of presentation of the offer document as soon as possible.

The bidder may prepare an information brochure to supplement the offer document. Provisions concerning the contents of the offer document and the information brochure are presented in Section IV.

The offer document must be approved by Finansinspektionen and made available in the manner prescribed in the Financial Instruments Trading Act (1991:980). The offer document or information brochure is to be dispatched to all shareholders covered by the bid with known postal addresses. If the bidder has only distributed the information brochure to shareholders, the offer document must be dispatched to shareholders who so request, free of charge. The offer document and the information brochure are to be sent to the Stock Exchange and, to the appropriate extent, to the news media.

The period for acceptance of an offer must be not less than three weeks and not more than 10 weeks, and may not commence before the offer document has been made public in the manner stated in the Financial Instruments Trading Act (1991:980).

The acceptance period may be extended if the bidder has reserved the right to do so, or if an extension does not delay payment to those who have already accepted the offer. Payment may only be postponed if the offer document contains a proviso to this effect. The acceptance period may not be prolonged indefinitely.

If any major event occurs prior to conclusion of the acceptance period, or circumstances or errors in the offer document emerge which may affect assessment of the bid, a supplement to the offer document must be prepared and distributed in accordance with the third paragraph. Information to this effect must be made public immediately.

Comments

In accordance with the *first paragraph*, the bidder is obliged to prepare and issue an offer document (see Chapter 2, Section 3 of the Act concerning Public Takeover Bids in the Stock Market (2006:451). Preparation of the offer document is to be performed promptly and the bid document must be presented not later than four weeks after the offer is made public. The circumstances in a specific instance – for example in the case of an offer on which payment is to consist of a new share issue or an offer that involves markets in other countries – may make it impossible to issue the offer document within four weeks. The bidder may apply to the Securities Council for exemption in such cases.

The final sentence in the first paragraph stipulates that the bidder must announce the date of publication of the offer document. The aim is to ensure that all shareholders and the stock market as a whole have simultaneous access to the offer document. Normally, this means that the bidder announces the date of publication of the offer document in the form of a special press release.

In accordance with the *second paragraph*, the bidder may prepare a shorter information brochure as a supplement to the offer document in order to facilitate the dissemination of information concerning a public offer and make the contents of the offer more accessible. This brochure is distributed to all shareholders covered by the offer whose postal addresses are known, instead of the offer document. Provisions concerning the contents of the information brochure are presented in Item IV.3. If the bidder has only dispatched the information brochure to shareholders, the offer document must be sent to shareholders who so request, free of charge. A form for acceptance of the offer may accompany both the offer document and the brochure.

In accordance with the *third paragraph*, the full offer document and an information brochure, where applicable, must be sent to the Stock Exchange and, to an appropriate extent, to the news media.

The registration period for acceptances must not be less than three weeks and not more than 10 weeks, in accordance with the *fourth paragraph*, and may not commence before the offer document has been made public in the manner stated in the Financial Instruments Trading Act (1991:980).

The *fifth paragraph* indicates that the acceptance period may be extended if the bidder has reserved the right to make such an extension or if payment to shareholders who have already accepted the offer is not delayed by this action. The Rules do not contain any explicit time limit for the acceptance period. In accordance with the principle stated initially in the Rules under which an offer may not prevent the company from conducting operations for a period which is longer than reasonable, it is stipulated, however, that the acceptance period may not be extended indefinitely.

Shareholders' obligations to honour their acceptances of the offer

II.7 A shareholder who has accepted the offer may not withdraw his acceptance in circumstances other than those specified in this Item.

If, as a prerequisite for fulfilment of the offer, the bidder has stipulated conditions which the bidder has reserved the right to utilize, the shareholder is entitled to withdraw acceptances until the bidder announces that all conditions of this nature have been fulfilled or, if no such announcement is made, until the time stated in the offer as the deadline for acceptances. If conditions in accordance with the first sentence continue to apply in the event of an extension of the offer, the right to withdraw acceptances applies in the corresponding manner during the extension period.

If an offer involving payment in the form of shares or share-related financial instruments issued by the bidder has been reviewed by a competition authority and the authority's permit requires major changes in the target company's or the bidder's operations, the shareholder is entitled to withdraw his acceptance. The bidder must confirm by means of publication and an announcement in at least two daily newspapers with national coverage that entitlement to withdrawal applies, stating the period within which withdrawal may take place. The withdrawal period may not be less than one week from the date of the announcement.

Comments

The main principle is that a shareholder who has accepted the offer is bound by his acceptance. This always applies if the offer does not contain any conditions which the bidder has reserved the right to utilize (i.e. renounce or modify). If, on the other hand, the bidder has stipulated conditions which the bidder has reserved the right to utilize, shareholders should be allowed to withdraw their acceptances (see *first and second paragraphs*). One example of a condition of this nature would be if the offer applies on condition that the bidder achieves a holding of more than 90 per cent of the shares and votes in the target company, but that the

bidder also reserves the right to implement the offer in the event of a lower level of acceptance.

In order to avoid any uncertainty as regards the obligation to honour an acceptance, the bidder must, if conditions of this nature are stipulated, clearly indicate in the offer document the prerequisites for withdrawal of acceptances by shareholders (cf Appendix 1, second main heading).

An acceptance may normally be withdrawn until the deadline for acceptances stated in the offer. In certain cases, however, the right to withdraw expires prior to this deadline; in other cases, it continues to apply after the deadline. If the bidder's conditions are fulfilled prior to expiry of the acceptance period and the bidder has announced this, it is not reasonable for a shareholder to continue to be able to withdraw his acceptances after this date. The *second paragraph* has been drawn up with this in mind. For the sake of clarity, it should be emphasized that a shareholder's right to withdraw his acceptances does not cease simply because the bidder has announced during the acceptance period that he is renouncing or modifying a condition stipulated by the bidder.

The right to withdraw acceptances also continues to apply after the deadline for acceptances stated in the offer if the bidder's conditions and the proviso regarding the utilization of the conditions also continue to apply during an extension of the acceptance period.

Obviously, this provision does not prevent the bidder from giving shareholders the right to withdraw acceptances in cases other than those indicated in this context.

A competition authority may sometimes require undertakings in connection with a public offer regarding divestment of certain operations or similar measures as a condition for granting a permit for the acquisition. If a requirement of this nature is so far-reaching that fulfilment of the requirement would result in a material change in the target company's or the bidder's operations, but the bidder nonetheless wishes to complete the offer, it is reasonable for shareholders who have accepted the offer to be given an opportunity to reconsider their decision. A rule of this nature is stated in the *final paragraph*. If there is doubt as to whether the authority's requirements may be considered to constitute a material change in operations, the Securities Council should be consulted.

The bidder must provide information in the form of publication in accordance with Item I.4 and an announcement in at least two daily newspapers with national coverage concerning the right of withdrawal and the main features of the competition authority's requirements. The period during which withdrawal may be made must not be less than one week from the date of the announcement. This also applies if the acceptance period has expired.

Bidder's obligation to treat all holders of shares with identical terms equally

- II.8** The bidder must offer all holders of shares with identical terms identical compensation per share. If special reasons apply for

certain shareholders, however, they may be offered compensation in another form but with the same value.

Comments

The principle that the bidder must treat all holders of shares with identical terms equally is of fundamental importance for public confidence in the stock market and the rules governing public offers. The expression “identical terms” primarily refers to the rights conveyed by shares in economic terms and in terms of influence, in accordance with legislation or the company’s articles of association. Typically, this involves the dividend entitlement and the right to participate with a given voting entitlement in decisions taken by the general meeting of shareholders.

Exceptions from the overriding principle under which all shareholders with identical terms are to be offered identical compensation may be made in special cases. One example is when certain shareholders are unable to receive the compensation which the bidder intends to offer to other shareholders, for legal or similar reasons. There may also be important practical reasons that justify an exception from the main principle. In the case of companies with a very large number of shareholders, for example, it may be appropriate to offer cash payment for small lots of shares, despite compensation in some other form in other cases. Reference is also made in the Comments on Item I.1 to certain special problems which may occur if the target company has owners in another country.

The bidder’s right to treat shareholders with non-identical terms differently

- II.9** The bidder may give shareholders with non-identical terms offers which differ in terms of the form and value of consideration. If the bidder offers a bid premium in relation to the market value of the shares, the premium must be equivalent for all shares in percentage terms, unless there are special reasons which justify different premiums.

If the offer also covers other financial instruments issued by the target company, consideration for such instruments must be reasonable. Reference to the bid premium amount in the first paragraph does not apply to such instruments.

The bidder may refrain from making an offer to holders of a given type of share or financial instrument issued by the target company. However, this does not apply if the price of such shares or instruments might be materially influenced if listing of the shares or other instruments covered by the offer were to cease.

If an offer applies to both shares and call options on shares covered by the offer, the joint consideration for the call options and shares may not exceed the consideration for the corresponding shares not covered by the call options.

Comments

An offer may be addressed to holders of different types of shares and financial instruments that are regarded as equivalent to such shares. Such differences may involve the type of instrument (for example shares and corporate warrants), but may also involve shares of different classes, for example. In view of such differences, it is not unnatural for different owner categories to be offered compensation which differs both in form and value, although this does not mean that there is unlimited scope for such differentiation. Each owner category should receive fair and reasonable treatment.

As regards the compensation payment for shares, the basic starting point should be the market value, if the shares have a market listing. If the share is unlisted or the market for the share is not particularly well developed and, as a result, the market value is not representative, an estimated or adjusted market value may be employed as the starting point. In this connection, in accordance with generally accepted principles, estimates must be based on the share price for other shares issued by the target company which are more widely traded.

Where applicable, premiums (i.e. percentage mark-ups on the current or estimated market value) must in principle be the same for all shares. However, since circumstances vary so much from case to case, strict and consistent application of this rule is not possible. Apart from rounding off of a practical nature, which is always permissible, deviations may be justified for commercial and market reasons. In certain cases, for example, shares carrying a higher proportion of votes may justify a higher premium than other shares. However, differences in the treatment of various categories of owners may never be unreasonable.

To summarise, the *first paragraph* states that differences in the value of payment offered to holders of shares of various kinds may be due to the same percentage premium for different market values, different premiums based on the same market values or a combination of the two. The Appendix contains provisions for the contents of the offer document in such cases.

The *second paragraph* deals with a situation in which the offer also covers other financial instruments issued by the target company which are not shares, for example convertibles or corporate warrants. The consideration for such instruments must be reasonable. The consideration offered for shares, the conditions for the instruments concerned, their market value, and other relevant factors should be taken into account. Since the price trend for financial instruments other than shares normally differs from the trend for the underlying share, depending on the terms for the instrument in question, this provision does not require that the principle of an equal premium in percentage terms should apply for such instruments.

The *third paragraph* indicates that an offer must always cover listed or unlisted instruments issued by the target company which are related to another type of instrument if the price trend for the former is significantly affected by the price trend for the latter. This type of impact normally occurs if listing of the instrument which is the primary aim of the offer

were to cease. As a result, the offer must cover, for example, instruments which may be converted into shares, or which entitle the holder to a subscription to such shares, for which listing may cease as a result of the offer. This also applies to financial instruments for which the interest rate or amortization is related to the company's profit trend, share price, earnings or financial position.

The bidder's total consideration for a share and an outstanding call option on the share in question may not exceed consideration for other shares of the same type which do not constitute the underlying asset in the call option. Removing obstacles to acceptance of the offer may be considered to be the shareholder's responsibility. A call option that has been issued constitutes an obstacle of this nature, and means that the shareholder must be free from the option commitment if the shareholder is to be in a position to accept the offer for the share without committing breach of contract. If the bidder eliminates this obstacle on the shareholder's behalf by also addressing the offer to holders of call options, the cost of this operation – the amount offered for call options – is to be paid by the shareholder in the form of a corresponding reduction in the price offered for his shares. The *final paragraph* has been drawn up in the light of the above.

Acquisitions prior to the offer

II.10 If the bidder has acquired shares in the target company within six months of making the offer public in some other manner than by means of a previous offer (prior transaction), the terms of the offer may not be less favourable than those which applied for the prior transaction. If the prior transaction involved shares with non-identical terms, the first paragraph of Item II.9 applies as regards consideration under the offer.

Notwithstanding the first paragraph, when determining the conditions for the offer the bidder may take into account a downturn in the price of the target company's shares that occurs in the period between the prior transaction and publication of the offer and which is substantial and not merely temporary. However, if the bidder has paid a premium in relation to the target company's share price in the prior transaction, an equivalent premium in percentage terms must be paid in the offer.

If a party other than the bidder announces an offer to acquire shares in the target company during the period referred to in the first paragraph on terms which are less favourable for the holder than the terms in the prior transaction, the bidder is no longer bound by the prior transaction when drawing up the offer.

If, during the period referred to in the first paragraph, the bidder acquires more than 10 per cent of all shares in the target company for cash payment and in a manner which differs from that employed in a previous public offer, the offer must contain an alternative form

of consideration in which shareholders are entitled to receive payment in cash.

In applying this Item, prior transactions carried out by a party related to the bidder in accordance with Item I.3 are to be equated with prior transactions conducted by the bidder.

Comments

The principle that shareholders in the target company are to receive equivalent treatment means that the terms of an offer must comply, in certain cases, with the terms of other acquisitions of shares by the bidder. Thus, in accordance with the *first paragraph*, an offer which is made public after an acquisition of shares must be at least as favourable for recipients of the offer as the previous acquisition (prior transaction) if the interval between the prior transaction and the public offer is less than six months.

The adjustment requirement means that a comparison must be made between the terms of the prior transaction and the terms of the offer. This comparison must be based on the value of the consideration paid and the consideration offered. In this connection, the consideration paid in the prior transaction should normally be evaluated in accordance with circumstances on the contract date in the prior transaction. This means, for example, that if consideration in the prior transaction consists wholly or partly of shares and the value of the shares has increased, the offer price must correspond to at least the share price paid on the contract date in the prior transaction, and the increased value of the shares should be disregarded. If the bidder considers that the price paid for shares on the contract date does not reflect the value of the payment, as a result of special circumstances, the bidder may apply to the Securities Council for exemption from this provision.

The equal treatment requirement does not necessarily apply in all situations. The *second paragraph* indicates that the equal treatment requirement may be ignored if the price of the target company's shares when the offer is made public is substantially lower than the price which applied on the prior transaction date, and that this decline in the share price is not merely temporary but has a certain permanence. Clearly, a downturn in the share price may be ignored if the decline is a result of the prior transaction.

In the case of an exception to the rule, the circumstances in question may be taken into account when the terms of the offer are determined, although this does not mean that all links with the previous acquisition cease to apply. A percentage mark up in relation to a quoted price in the prior transaction must be followed up by a mark up of at least the same size in percentage terms in relation to the share price when the offer is made public.

Another situation in which the main principle of equal treatment does not necessarily apply is discussed in the *third paragraph*. In this case, a party other than the bidder announces an offer to acquire shares in the target company during the period referred to in the first paragraph on terms

which are less favourable for the holder than the terms in the prior transaction. In a situation of this nature, it is not reasonable for the bidder to continue to be bound by the prior transaction when drawing up conditions for the offer – otherwise bidders would not be competing on equal terms. Thus, in a situation of this nature, the bidder is free to offer terms that differ from those in the prior transaction.

The provisions apply irrespective of whether the prior transaction took the form of trading on the stock market or was conducted in some other manner. An acquisition which has been implemented is equated with an agreement concerning future acquisition. This also applies to the issue of an option that entitles the bidder to acquire shares in the target company.

The adjustment requirements primarily involve shares with identical terms. However, the question of adjustment also arises in other cases, as a result of application of the first paragraph of Item II.9.

When comparing consideration in the prior transaction and the offer, dividends that have fallen due must be taken into account. Interest to compensate for the time factor is not required. Brokerage commission or corresponding transfer costs should not be taken into account.

If an offer provides for alternative forms of consideration, the bidder may choose which alternative is to constitute the basis for comparison. The simplest option is probably to select the alternative which, at the time when comparison is made, appears to be most favourable for shareholders who accept the offer.

In line with the fundamental principle of equal treatment of target company shareholders, the *fourth paragraph* stipulates that if the bidder has acquired more than 10 per cent of all shares in the target company within six months prior to the publication of an offer, for cash payment, and in a manner which is not the result of a previous public offer for all shares in the target company, the offer must contain a consideration alternative which entitles the shareholders to receive payment in cash.

Acquisitions during the offer

II.11 If the bidder acquires shares in the target company after an offer has been made public (side transaction) on terms which are more favourable for the holder than the terms of the offer, the terms of the offer are to be adjusted to the corresponding extent. If the side transaction involves shares with non-identical terms, the first paragraph of Item II.9 is to apply as regards consideration in the offer.

The first paragraph applies to side transactions undertaken outside the offer prior to commencement of payment in accordance with the offer. Item II.12 applies to subsequent acquisitions.

Changes in the terms in accordance with the first paragraph are to be made public without delay, and information to this effect is to be dispatched to all shareholders covered by the offer whose postal addresses are known.

If, during the period referred to in the first and second paragraphs, the bidder acquires shares for cash and in a manner which differs from that employed in a previous public offer for all shares in the target company which, together with shares acquired in the manner stated in the fourth paragraph of Item II.10, represent more than 10 per cent of all shares in the target company, the offer must contain a consideration alternative under which shareholders are entitled to receive payment in cash.

In applying this Item, side transactions carried out by a party related to the bidder in accordance with Item I.3 are to be equated with side transactions conducted by the bidder.

Comments

If the bidder acquires shares on terms which are more favourable for the holder than the offer, after the offer has been made public, the terms of the offer are to be modified in a corresponding manner. A comparison must always be made between the terms of the offer and the terms for acquisitions during the period covered by the offer (side transactions). The cash value of the offer and of side transactions should normally be established in accordance with market circumstances at the time of the side transaction. This means, for example, that if consideration in the offer wholly or partly consists of shares, or if shares are one of several alternative forms of consideration, and the value of the shares has appreciated, side transactions may be concluded at the new share price without the need to compensate holders who have accepted the offer.

The provisions apply irrespective of whether side transactions take the form of trading in the stock market or are conducted in some other manner. An acquisition which has been implemented is equated with an agreement regarding future acquisition. This also applies to the issue of options that entitle the bidder to acquire shares in the target company.

The adjustment requirements primarily involve shares with identical terms. However, the question of adjustment also arises in other cases as a result of application of the first paragraph of Item II.9.

When comparing consideration in the offer and the side transaction, dividends that have fallen due must be taken into account. Interest to compensate for the time factor is not required. Brokerage commission or corresponding transfer costs should not be taken into account.

If an offer provides for alternative forms of consideration, the bidder may choose which alternative is to constitute the basis for comparison. The simplest option is probably to select the alternative which appears to be most favourable at the time when comparison is made for those who accept the offer.

In cases where side transactions call for an adjustment of the terms of the offer, this must be made public and the requisite information dispatched to shareholders.

The *fourth paragraph* stipulates, in line with the fundamental principle of equal treatment of target company shareholders, that if, during the period referred to in the first and second paragraphs, the bidder acquires shares for cash and in a manner which differs from that employed in a previous public offer for all shares in the target company which, together with shares acquired in the manner stated in the fourth paragraph of Item II.10, represent more than 10 per cent of all shares in the target company, the offer must contain a compensation alternative under which shareholders are entitled to receive payment in cash.

Acquisitions after the offer

II.12 If the bidder acquires shares in the target company (subsequent transaction) within a period of nine months after payment has commenced in a public offer on terms which are more favourable than the terms of the offer, the bidder must pay compensation to those who have accepted the offer. If the acquisition involves shares with non-identical terms, the first paragraph of Item II.9 is to apply as regards the terms of the offer.

The first paragraph does not apply if a party other than the bidder has announced an offer to acquire shares in the target company on terms which are more favourable for the shareholder than the terms of the offer.

In applying this Item, subsequent transactions conducted by a party related to the bidder under Item I.3 are to be equated with subsequent transactions undertaken by the bidder.

Comments

If the bidder has acquired shares within a period of nine months after payment has commenced in a public offer on terms which are more favourable for the holder than the terms of the offer, a corresponding change must be made in the terms of the offer, in accordance with the *first paragraph*. In other words, a comparison must be made between the terms of the offer and the terms of the subsequent transaction.

Payment in the offer and acquisition payments should normally be evaluated in accordance with market circumstances at the time when it was announced that the offer would be fulfilled. This means, for example, that if consideration in the offer wholly or partly consists of shares, or if shares are one of several alternative forms of consideration, and the value of the shares has appreciated, the increase in the share price should not be taken into account. In other words, the terms of a subsequent transaction

may not be more favourable than the terms of the offer when fulfilment of the offer is announced.

This provision focuses on transactions conducted after implementation of the offer. As a result, it does not prevent the bidder, in connection with one or more extensions of the acceptance period in an offer in which consideration wholly or partly consists of shares, from paying consideration at different times in accordance with the original exchange ratio, notwithstanding any increase in the price of the share concerned.

Deviation from the principle of valuation in accordance with circumstances which apply when payment is made under the offer may be justified in the case of parallel acquisitions in the course of a buy-out* procedure, for example. The provisions of this Item apply irrespective of whether subsequent transactions take the form of trading in the stock market or are conducted in some other manner. An acquisition that has been implemented is equated with an agreement concerning future acquisition. This also applies to the issue of an option that entitles the bidder to acquire shares in the target company.

The adjustment requirements primarily involve shares with identical terms. However, the question of adjustment also arises in other cases, as a result of application of the first paragraph of Item II.9.

When comparing consideration in the offer and the subsequent transaction, dividends that have fallen due must be taken into account. Interest may, but need not, be taken into account. Brokerage commission or corresponding transfer costs should not be taken into account.

If an offer provides for alternative forms of consideration, the bidder may choose which alternative is to constitute the basis for comparison. The simplest option is probably to select the alternative that, at the time when comparison is made, appears to be most favourable for those who accept the offer.

Certain provisions regarding partial offers

- II.13 A public offer may involve less than all the shares in the target company (partial offer) if**
- a) as a result of the offer, the bidder cannot alone, or in cooperation with a related party as described in Item I.3, achieve ownership of shares representing 30 per cent or more of the votes for all shares in the target company, or
 - b) at the time when the offer is made public, the bidder owns alone, or in cooperation with a related party as described in Item I.3, shares representing 30 per cent or more of the votes

* Sw.: Tvångsinlösen

for all shares in the target company, and there is no obligation to make a mandatory offer.

When a partial offer is made public, the maximum number of shares which the bidder wishes to acquire under the offer must be stated in the press release referred to in Item II.3, and also whether the bidder reserves the right to acquire additional shares as a result of the offer.

If the maximum number of shares stated in the offer is exceeded and the bidder has not reserved the right to acquire the additional shares, the bidder must make a proportional reduction of the share lots covered by acceptances submitted. In assessing whether a given minimum number of shares have been acquired, shares covered by acceptances submitted as a result of the offer are to be added to shares which the bidder has acquired outside the offer, after the offer was made public.

Comments

A public offer normally involves all shares in the target company not already held by the bidder. However, offers are sometimes made for more limited acquisitions of shares. Offers involving less than all the shares in the target company and not already held by the bidder are referred to as partial offers. Unless otherwise prescribed, the Rules also apply to partial offers. Certain provisions which solely apply to partial offers are presented in this Item.

The rules for mandatory offers in the Act concerning Public Takeover Bids in the Stock Market (2006:451) restrict the scope for partial offers. As a result, in accordance with the *first paragraph*, a partial offer may not be made if, as a result of the offer, the bidder and related parties as described in Item I.3 would hold shares representing 30 per cent or more of the votes for all shares in the company. Hence, a partial offer amounting to less than the mandatory offer level is permitted. But the bidder may already hold shares representing 30 per cent or more of the votes for all shares in the target company, alone or in cooperation with a related party as described in Item I.3, and is not subject to the mandatory offer requirement, for example as a result of a ruling granting exemption from the mandatory offer rules. In this case, a partial offer for a proportion of the remaining shares in the company may be made.

In the case of a partial offer, the bidder must indicate in a press release referred to in Item II.3 how many shares in the target company are covered by the offer. This is covered by the *second paragraph*. There is nothing to prevent the bidder from reserving the right to acquire additional shares as a result of the offer if it proves that interest in transferring shares is sufficient to permit this.

This provision does not preclude a situation in which the bidder announces a price range within which the bidder offers to acquire shares and shareholders state the minimum price at which they are prepared to

sell, and the bidder subsequently eliminates surplus acceptances on this basis, providing this is done in a predictable, fair and consistent manner.

The target company board's obligation to state its views regarding the offer

- II.14 The board of directors of the target company must announce its opinion of the offer in reasonable time before expiry of the acceptance period, stating the reasons for its attitude. If the board concludes that it can neither approve nor reject the offer, it must explain the reasons for its attitude.

Based on the offer document issued by the bidder, the board must report its opinion as to the impact that implementation of the offer will have on the company, particularly in terms of employment, and its views on the bidder's strategic plans for the target company and the effects they may be expected to have on employment and locations in which the company conducts its operations. If the board receives a separate statement of opinion from employee representatives expressing a different opinion regarding the impact of the offer on employment, this statement must be attached to the statement made by the board.

The board's statement must also report whether a member of the board has not participated in discussion of the matter on the grounds of conflict of interest or for some other corresponding reason, or whether a member of the board has tabled reservations.

The Act concerning Public Takeover Bids in the Stock Market (2006:451) contains provisions which restrict the right of the board and the managing director to take measures designed to impair the prerequisites for making or implementing the offer.

Comments

In many cases, the views of the board of the target company concerning the offer are of considerable interest to shareholders when they have to reach a decision. The board's views on the offer are of value to shareholders since the board normally has useful insights in the matters concerned. As a result, in accordance with the *first paragraph*, the board must announce its opinion of the offer and explain its attitude. If the board does not consider that it can provide definite information, it must indicate the reasons why it cannot present a clear position.

The board must act in the interest of all shareholders. As a result, the board may not be influenced by special considerations with regard to one or more specific shareholders when preparing its statement of opinion and, of course, may not allow itself to be influenced by the impact of the offer on the board itself. There is no requirement that the board must employ independent expertise to provide a basis for its statement, although this is normally appropriate.

The board needs a certain amount of time to be able to evaluate the offer and issue a statement. As a result, the board cannot be required to make a

statement in the immediate context of announcement of the offer. A statement must, however, be made in reasonable time prior to expiry of the acceptance period, thus giving shareholders who decide to wait for the statement reasonable time to evaluate the board's statement.

The *second paragraph* states that the board must present its opinion regarding the effects of implementation on the company, based on the bidder's statement in the offer document. This applies, in particular to employment and the board's views concerning the bidder's strategic plans for the target company and the impact they may be expected to have on employment and the locations in which the company conducts its operations. If, within a reasonable time period, the board receives a separate statement of opinion from representatives of the employees expressing a different opinion regarding the impact of the offer on employment, this statement must be attached to the statement made by the board. This provision is based on the EC takeover directive.

If a member of the board has not participated in discussion of the issue, for example because he or she has a financial interest in the bidding company or there is some other conflict of interest, the *third paragraph* stipulates that this must be noted in the board's statement. Similarly, if a member of the board has made reservations, this must be noted, together with the reasons, if stated.

If the target company board has expressed its opinion concerning the offer in sufficient time to permit inclusion in the offer document, this statement must be reproduced in the offer document in its entirety, in accordance with the Appendix, fourth main heading. If the board's statement is not available in time for inclusion in the offer document, the offer document must indicate when it is expected to be available. In this case, the bidder is responsible for subsequently ensuring that the statement is dispatched to target company shareholders.

The *final paragraph* draws attention to provisions in the Act concerning Public Takeover Bids in the Stock Market (2006:451) which limit the board's and the managing director's powers to take measures designed to impair the prerequisites for making or implementing the offer (see Chapter 5 of the Act).

Target company's participation in a due diligence investigation

- II.15** If the bidder requests a due diligence investigation of the target company, the board of the target company must decide whether the company can, and should, participate in such an investigation and, if so, on what terms and to what extent. The board should endeavour to restrict the investigation to factors relevant to issuing and implementing the offer.

If the target company supplies the bidder with information which has not been made public and this information is likely to materially affect valuation of the company's shares, the target company must

ensure that this information is supplied to shareholders and the stock market, preferably before commencement of the acceptance period and not later than one week before expiry of the acceptance period.

Comments

In connection with a public offer, the bidder may sometimes ask the target company for permission to conduct a due diligence investigation in order to obtain more information about the company. In accordance with the *first paragraph*, the board of the target company is responsible for determining the extent to which a request of this nature can and should be met in view of the circumstances of the specific case, and taking into account, first and foremost, the scope allowed for such participation under the relevant legislation, in particular the Swedish Companies Act, and the listing agreement for the market place concerned. The board must also take the insider trading rules into account. The board should only agree to participation by the target company in a due diligence investigation if the board considers that the offer envisaged is of interest for a decision by shareholders and if the bidder has presented a request in writing for implementation of the investigation in question as a condition for making the offer.

When arriving at its decision, the board must obviously take the risks to which the company will be exposed – disclosure of corporate secrets for example. In view of such risks, the board should ensure that the investigation does not extend beyond the requirements of the offer. Furthermore, the board should ensure that a confidentiality agreement is drawn up which, for example, places limitations on the bidder's right to use and disseminate the information, and that the company has documentation concerning the information supplied, the persons who have received it and when this occurred. See also the provisions in Section 10 a of the Act concerning Mandatory Notification of Certain Holdings of Financial Instruments (2000:1087). The board should also endeavour to ensure that the investigation is as rapid as possible in order to avoid unnecessary disruption of the target company's operations.

If, in the course of the due diligence investigation, the target company supplies the bidder with information which has not been made public and this information is likely to materially affect valuation of the company's shares, the target company must ensure that this imbalance in the provision of information is rectified before shareholders have to reach a decision about the offer. This may take the form of information – at least in summarized form – supplied in a press release, and included in the offer document. If no public offer is made after the due diligence investigation, the target company's obligation in accordance with these Rules to make public the information supplied does not apply.

If more than one bidder plans to make an offer for shares in the target company, it is of the utmost importance that the target company applies the Rules in the same manner vis-à-vis all bidders. As a result, if information has been supplied to one bidder and another bidder requests the corresponding information, the target company must comply with this

request, providing the circumstances are similar in other respects. Obviously, the board must also consider the risks to the company which the provision of information may entail as regards the other bidder. Circumstances may differ from one bidder to another, depending on the competition situation, for example.

The above comments apply to due diligence investigations which start before the offer is made public. The question of whether an investigation of this nature may also be conducted after the offer has been presented is quite a different matter. This should only occur if required to determine whether or not the completion conditions stipulated in an offer have been fulfilled.

Procedures, formulation of conditions, etc. in mandatory offer bids

- II.16** Unless stated to the contrary, the rules for voluntary offers – including the rules concerning consideration and acquisition outside the offer – also apply to mandatory public offers, where relevant. The following applies to such offers, however:
- the offer must cover all shares in the target company,
 - the offer must contain an option under which all shareholders are entitled to payment in cash,
 - a prerequisite for extension of the acceptance period for the cash alternatives is that payment of consideration to those who have already accepted the offer is not delayed, and
 - the bidder is only entitled to stipulate completion conditions on the grounds of receipt of the requisite official permits.

As stated in Items II.10-12, the terms of a mandatory offer must comply with the terms for other share acquisitions made by the bidder or a related party in accordance with Item I.3 prior to, during or after the offer. However, if the bidder acquires shares via convertibles, corporate warrants, call options or other financial instruments, thus achieving a holding of at least 30 per cent of the votes for all shares in the target company, the price in the offer may not be less than the average market value of the share in question during the 20 trading days prior to the date of announcement of the holding.

Comments

The Act concerning Public Takeover Bids in the Stock Market (2006:451) contains provisions regarding mandatory offers, stating that a person/entity acquiring shares that represent three tenths or more of the votes for all shares in a stock market company is obliged to offer to acquire the remaining shares. In most respects, the rules for voluntary offers also apply to such offers, although certain exceptions must be made in view of the purpose of the mandatory offer rules. These exceptions are covered in this Item.

The mandatory offer rules are designed to give shareholders in a company which has a new controlling owner an opportunity to divest their holding

in the company in its entirety in a specific manner. As a result, it is reasonable to expect that a mandatory offer must always give shareholders an opportunity to receive cash payment for their shares. Compensation in this form gives shareholders maximum freedom of action. In addition, the bidder has an opportunity to offer alternative compensation in another form, but with the corresponding value.

A mandatory offer entails making an offer to all shareholders, and for all shares. This differs from the rules for voluntary offers, under which, subject to certain conditions, it is not necessary to make an offer to holders of a given class of shares. As in the case of Item II.9 regarding voluntary offers, mandatory offers also apply to holders of financial instruments whose price might be materially affected if listing of the shares covered by the offer were to cease.

The acceptance period for mandatory offers must also be at least three weeks and not more than 10 weeks but, as in the case of voluntary offers, this period may be extended (Item II.6). However, an extension of this nature may not delay payment to holders who have already accepted the cash bid.

In the case of mandatory offers, the bidder may not stipulate completion conditions, with the exception of a proviso regarding receipt of the requisite official permits. This means, for example, that the bidder may not stipulate conditions to the effect that the target company must refrain from counter-measures, or regarding submission of a more favourable competing offer.

If the above exceptions are taken into account, the rules for voluntary offers also apply to the relevant extent to mandatory offers. However, since determination of the amount of the compensation paid may be particularly critical in the case of mandatory offers, this aspect calls for special comment.

The link with the rules for voluntary offers means, for example, that, in accordance with Item II.10, the terms of the offer may not be less favourable than for a prior transaction conducted within six months of the offer. Normally, this implies that the buyer must offer the highest price which the buyer or, where applicable, a related party as defined in Item I.3 has paid for the shares in question during the six months prior to announcement of the offer. Items II.11-12 concerning side transactions and subsequent transactions also apply to mandatory offers. If an acquisition which results in a mandatory offer requirement is subject to review by a competition authority and permission for the acquisition is granted more than six months after the date of the contract, the value of the consideration in the prior transaction at the contract date continues to be the determining factor for the price offered.

The threshold for a mandatory offer may be attained or exceeded, for example if corporate warrants are exercised for subscription for shares, or convertible debt instruments are exchanged for shares. Such measures by the acquirer should affect the terms of the resultant mandatory public offer. Consequently, the *second paragraph* states that, in such cases, the price

in the offer may not be less than the average market price for the share in question during the 20 trading days prior to the date of announcement that the threshold for a mandatory offer has been attained or exceeded. If, however, the acquirer has acquired shares in the six-month period prior to announcement of the offer at an even higher price, this price is the determining factor, and the terms must then comply with the terms of the prior transaction.

The provision under which the market price during the preceding 20 trading days constitutes the lower limit for consideration also applies to a mandatory offer requirement as a result of an indirect change in ownership control.

If the company has several classes of shares, the price level and the form of consideration in a mandatory offer are primarily determined by Items II.8-9. If, for example, the buyer has only acquired Class A shares in a company which has also issued Class B shares, holders of A shares must be offered at least the maximum price paid for such shares during the six-month period in question. In addition, holders of B shares must receive fair and reasonable treatment. If a premium is offered in relation to the market value, this must be of equal size, unless there are special reasons to the contrary.

The bidder's obligation to announce the outcome of the offer

II.17 After expiry of the acceptance period, the bidder must announce, as soon as possible:

- how many shares in the target company are covered by acceptances in the offer and what proportion of the target company's share capital and the total number of votes this represents,
- how many shares in the target company the bidder has acquired outside the offer and what proportion of the target company's share capital and the total number of votes this represents,
- whether the completion conditions stipulated have been fulfilled and, where applicable, whether the bidder has decided to complete the offer despite failure to fulfil all requirements,
- how many shares in the target company are held by the bidder or controlled in some other way, and what proportion of the target company's share capital and the total number of votes this represents, and
- when payment of consideration is expected to commence.

Where applicable, information must also be provided regarding a decision to:

- extend the acceptance period,
- reduce share lots covered by acceptances received,
- initiate a buy-out procedure regarding remaining shares, or

- **acquire additional shares on the market.**

Comments

After expiry of the acceptance period in the offer, shareholders and the stock market have a material interest in ensuring that the bidder provides information about the outcome of the offer as soon as possible (i.e. as soon as counting has been completed). This is to take the form of publication as specified in Item I.4. The *first paragraph* indicates that, in the first instance, the bidder must provide information about the number of shares in the target company for which acceptances have been received, and also regarding the proportion of the target company's share capital and the total number of votes these shares represent. This indicates how successful the offer has been.

In addition, the bidder must provide information about the number of shares in the target company which the bidder has acquired outside the offer, and the proportion of the target company's share capital and the total number of votes these shares represent. If the bidder has stipulated completion conditions – for example achievement of a specific level of acceptance – the bidder must state whether these conditions have been fulfilled or, where applicable, that the bidder has decided to complete the offer despite failure to fulfil all the conditions. The bidder must also indicate the number of shares in the target company held by the bidder or controlled in some other manner, and the proportion of the target company's share capital and the total number of votes this represents. Finally, the date on which payment of consideration is expected to commence must be indicated.

The *second paragraph* covers information requirements concerning, for example, an extension of the offer. A bidder may decide to extend the acceptance period at the end of the period. The bidder, for example, may not have achieved the level of acceptance stated in the completion conditions (normally 90 per cent), and therefore wishes to extend the acceptance period in order to achieve a higher level of acceptance. There is nothing to prevent the bidder from renouncing a condition of this nature. The bidder may also achieve more than 90 per cent when the acceptance period expires, but nonetheless extend the offer.

If the bidder has made a partial offer and interest in transferring shares to the bidder is so great that a pro rata reduction is required, information to this effect must be provided in the press release.

Finally, where applicable, it must be stated that the bidder has decided to initiate a buy-out procedure regarding minority shares or has decided to buy target company shares in the market.

III RULES THAT APPLY IF TARGET COMPANY BOARD MEMBERS OR SENIOR EXECUTIVES PARTICIPATE IN A PUBLIC OFFER, OR IF A PARENT COMPANY MAKES A PUBLIC OFFER FOR SHARES IN A SUBSIDIARY

Participation by board members or senior executives in an offer

III.1 The provisions in this Section (III) apply if a board member or a deputy board member of the target company or of a subsidiary of the target company is making or participating in a public offer. They also apply if a senior executive of the target company or a person equated with a senior executive participates in a public offer.

In this context, a senior executive is defined as:

- a) the managing director or deputy managing director of the target company or its subsidiaries and,
- b) holders of other senior executive positions in the target company or its subsidiaries,

The provisions in this Section also apply to:

- a) the spouse, registered partner or cohabitant of a person covered by the first and second paragraphs,
- b) children in the custody of a person covered by the first and second paragraphs,
- c) persons who have recently held positions referred to in the first and second paragraphs and,
- d) legal entities over which a person covered by the first, second or present paragraph has a decisive influence, alone or together with another person covered by these paragraphs.

Comments

In the case of a public offer for the acquisition of shares made directly or indirectly by one or more board members or senior executives in the target company, several problems arise which do not normally occur in public offers. One problem is that, in such cases, the bidder may often be assumed to have a considerable advantage in information terms in comparison with shareholders regarding the target company and, as a result, the bidder is able to make a more reliable assessment of the value of the company's shares.

In order to limit the effects of this imbalance in the information position, provisions are introduced in this Section stipulating that a valuation opinion must be obtained regarding the target company's shares if a target company board member or senior executive, or a person equated with such an executive, is making or participating in a public offer.

The category of persons involved largely complies with what is stated in the Stock Exchange listing agreement concerning certain buyouts of businesses or shares. The terms of the listing agreement also cover persons who have recently held a senior executive position or who have recently resigned from the board. This also applies to the rules in this Section. This provision does not define the expression “recently”. Interpretation of this expression in a specific case should be made in the light of the purpose of the provisions – to eliminate any possible information advantage.

The provisions apply if a member of the board or senior executive in the target company makes or participates in a public offer. The expression “makes” refers to a situation in which a member of the board or a senior executive is the main bidder, alone or in cooperation with others. The expression “participates in” primarily refers to a situation in which a board member or senior executive has a position with the bidder or a relationship to the bidder – without being the principal actor – which enables him or her to influence the terms of the offer. An opportunity to exert an influence of this nature may be based on a shareholding or some other financial involvement in the company making the offer, but it may also, for example, be because the person in question is also a member of the board of the company making the offer or holds some other prominent position in the company making the bid, or is advising the bidder in connection with the offer.

Not all holdings of shares or other forms of financial involvement in the bidding company call for application of these provisions, however. A shareholding which is of the nature of a capital investment in a listed company making a public offer hardly implies that the senior executive concerned is to be regarded as “participating” in the offer. The decisive criterion is whether the senior executive in question is able to influence the terms of the offer, due to his or her holding or position.

Additional information in press releases

III.2 In a press release issued by the bidder in accordance with Item II.3 as the result of a decision to make an offer, information must also be provided, where applicable, regarding which board members or senior executives are making the offer or participating in the offer, and the manner in which this occurs.

Comments

When a bidder has decided to make a public offer, the offer must be made public in the form of a press release, in accordance with Item II.3.

If a senior executive in the target company is making or participating in a public offer, the bidder must include information to this effect in the press release, indicating which senior executives are involved and the form their participation in the offer takes. This information must also be included in the offer document (see Appendix, first main heading).

If a valuation opinion has been obtained in accordance with Item III.3, it may also be appropriate to include the conclusions drawn in the press release.

Valuation opinion

- III.3** The target company must obtain a valuation opinion from an independent expert regarding the company's shares. If the consideration offered is in a form other than cash, the opinion must also include a valuation of the consideration offered.

This statement of opinion, or a summary thereof, must be included in the offer document.

If another person/entity is also making a public offer for the target company's shares and if there is no participation by a board member or senior executive of the target company in this offer, there is no obligation to obtain a valuation opinion.

Comments

If a target company board member or senior executive, or a person equated with such an executive, makes or participates in a public offer, there is a considerable risk of an imbalance in the information position in comparison with shareholders. As a result, the *first paragraph* stipulates that a valuation opinion must be obtained regarding the target company's shares. The board of the target company is primarily responsible for ensuring that this is done.

There is no stipulation requiring more than one valuation opinion, although it may be appropriate to obtain several valuation opinions in certain situations. However, irrespective of the number of valuation opinions obtained, it is important to ensure that any expert employed for this purpose adopts an impartial and independent stance.

Both the board and senior executives of the target company, including persons who are participating in the public offer on the bidding side, are responsible for ensuring that an expert who undertakes a valuation receives all the relevant information concerning the company.

No deadline for presentation of the valuation opinion is indicated in this provision. This question must be determined from case to case, although generally speaking it is desirable that the valuation is available in sufficient time to permit inclusion of the opinion or a summary in the offer document. If the valuation opinion is made public in some other form than inclusion in the offer document, this must take place in sufficient time prior to expiry of the acceptance period.

The *second paragraph* stipulates that a valuation opinion or a summarized version must be included in the offer document (see Appendix, tenth main heading).

The *final paragraph* indicates an exception to the valuation opinion requirement. In a situation in which several bidders are competing, it is considered unreasonable to require that one of them must obtain a valuation opinion.

A “fairness opinion” (i.e. a statement regarding the reasonableness of an offer for shareholders in the target company, from a financial viewpoint) is also to be regarded as a valuation opinion. This applies even if the fairness opinion or a summary thereof which is included in the offer document, does not contain direct information regarding the cash value of shares in the target company or, where applicable, the value of the consideration.

Offer by a parent company for shares in a subsidiary

- III.4 If a parent company makes a public offer for shares in a subsidiary, the requirements regarding a valuation opinion in accordance with Item III.3 apply in the corresponding manner.**

Comments

If a parent company is making a public offer for shares in a subsidiary, a senior executive in the subsidiary usually has a position in the parent company of a nature which means that he or she may be considered to “be participating” in the offer, and hence the valuation opinion requirement would already apply under Item III.3. This is not necessarily the case, however. Nonetheless, a parent company obviously has an information advantage compared with other shareholders. This imbalance with regard to information justifies application in the corresponding manner of Item III.3 regarding the valuation opinion requirement, if a parent company makes a public offer for shares in a subsidiary.

IV RULES CONCERNING THE PREPARATION OF OFFER DOCUMENTS, ETC.

Responsibility for the offer document

- IV.1 The offer document is to be drawn up by the bidder. If the bidder is a Swedish limited company, this task is normally the responsibility of the board of directors of the company making the offer.**

The offer document is to be drawn up after consultation with the board of the target company. If the target company has not cooperated in this manner, this must be stated in the offer document, and also the manner in which information about the target company has been obtained.

Comments

The bidder must prepare an offer document in accordance with Item II.6. If the bidder is a Swedish limited company, the board is normally responsible for this process, and for ensuring that the contents comply with statutes, other legislation and other rules. However, in exceptional situations in which the offer is considered to involve an acquisition of a marginal nature, the managing director may assume responsibility for the offer document.

The offer document must include, for example, specific information about the target company and, as a result, must be drawn up after consultation with the board of the target company, to the extent this is feasible. If cooperation on the part of the target company cannot be achieved, information to this effect must appear in the offer document, and also information concerning the manner in which information about the target company has been obtained. In this context, the bidder may have to rely on documents in the public domain issued by the target company.

If the description of the target company includes comments made by the bidder, in order to comply with the requirements for offer documents stipulated in this context, this must be indicated.

Lack of cooperation on the part of the target company board must not result in postponement or withdrawal of the offer.

General requirements regarding the contents of the offer document

- IV.2 The offer document must contain the information required to enable shareholders in the target company to arrive at a soundly-based decision regarding the offer. The contents are governed by Chapter 2 in the Financial Instruments Trading Act (1991:980). If consideration comprises shares issued by the bidder, also Chapter 2 of the Act and the Commission's Prospectus Regulation (EC) 809/2004 apply for description of the bidder and the bidder's shares. This Regulation is also relevant in other cases in which consideration consists of financial instruments intended for general trading.

In addition to the requirements stated in the first paragraph, the offer document is also governed by stipulations in the Appendix.

Information brochure

- IV.3 If the bidder prepares an information brochure to supplement the offer document, the following applies:
- The information brochure should not give the impression that it replaces the offer document.

- **The front cover of the brochure must clearly indicate that an offer document is available, and the manner in which it may be obtained.**
- **The brochure must contain basic information presented in the offer document about the bidder, the target company and the offer.**
- **The brochure must be objective and impartial.**
- **The brochure may not contain information that is not included in the offer document.**

Comments

An offer document must always provide the basic information about a public offer. The bidder may also prepare a somewhat shorter information brochure to supplement the offer document, facilitate the dissemination of information and make the contents more readily accessible (see Item II.6).

The information brochure does not replace the offer document, and should not give the impression that this is the case. This means, for example that the brochure may not be described as a “mini offer document”, etc. The front cover of the brochure must also clearly indicate the manner in which the offer document may be obtained. Obtaining the offer document must be simple and free-of-charge. It is not sufficient for the bidder to state that the offer document is available on the company’s website or to offer to transmit the offer document in digital format.

The brochure must contain the basic information presented in the offer document concerning the bidder, the target company and the offer, and must be formulated in an objective and impartial manner. This means, for example, that if the compensation offered consists of shares or other financial instruments and these instruments entail special risks, these risks must be indicated in the brochure.

The brochure may not contain information that is not included in the offer document. However, this does not prevent the inclusion of graphic illustrations, etc. that make it easier to understand technical aspects of the offer.

V RULES CONCERNING SANCTIONS

Sanctions in the event of a breach of the Rules

If the bidder disregards or breaks these Rules, or the Security Council’s interpretation and application of the Rules or – where applicable – the Security Council’s previous interpretations of the Rules concerning Public Offers for the Acquisition of Shares issued by Näringslivets Börskommitté (NBK), the Stock Exchange’s Disciplinary Committee may rule that a special charge may be imposed on the bidder, amounting to not less than SEK 50,000 and not more than SEK 100 million.

The Disciplinary Committee may refrain from imposing a sanction if the offence is minor or pardonable.

* * * * *

ENTRY INTO FORCE AND TRANSITIONAL PROVISIONS

These Rules enter into force on July 1, 2006. The Näringslivets Börskommitté (NBK) Rules concerning Public Offers for the Acquisition of Shares apply to offers made public prior to entry into force of these Rules.

APPENDIX

Contents of the offer document

In addition to compliance with legislation and, where applicable, the EU Prospectus Regulation, the contents of an offer document are to be governed by this Appendix. References in the Appendix to “shares” also apply, where relevant, to convertibles, corporate warrants, participating debentures, issue rights and corresponding financial instruments.

The Appendix lists the points – referred to as “main headings” – that an offer document should contain. The main headings may be presented in an order other than that employed in the following. Each main heading is followed by general instructions and, in most cases, detailed instructions.

In principle, the offer document should be published as a single document, although in certain situations it may be appropriate to include one or more separate annual reports as part of the offer document. If the offer document comprises a number of documents, this is to be clearly stated, and the documents included must also be specified.

The main headings are as follows:

1. *The offer*
2. *Terms and instructions for acceptances*
3. *Background, reasons and consequences*
4. *Statement by the target company board*
5. *The new corporate group*
6. *Brief presentation of the target company*
7. *Presentation of the bidder*
8. *Tax issues*
9. *Auditors' reports*
10. *Other information*

1. The offer

General instructions

Under this main heading, the offer document must state who the bidder is and the date of the decision to make an offer. The manner in which the bidder is to be presented in greater detail is indicated under the seventh main heading.

The offer is to be specified. If the consideration is to be paid in a form other than cash, it is to be described in a manner which makes evaluation feasible. If alternative forms of consideration are offered, the description must permit a comparison of the alternatives. If the offer applies to more than one class of shares or several types of

financial instruments, comments on the consideration offered for the various share classes and instruments are to be included.

Information regarding the manner in which the offer is financed must be provided. The total value of the offer must also be indicated.

If a board member or senior executive in the target company is making or participating in the offer, this must be stated.

If the offer is made in accordance with the provisions regarding mandatory offers in the Act concerning Public Takeover Bids in the Stock Market (2006:451), this is to be indicated. The factors which have given rise to an obligation to make a mandatory offer must also be stated.

If rulings have been obtained from the Securities Council, the conclusions drawn must be reported if they are relevant for issuing the offer or formulation of the offer.

The offer document must indicate that the bidder has given an undertaking to the OMX Nordic Exchange Stockholm to comply with the Rules determined by the Stock Exchange for such offers and to accept any sanctions that may be imposed by the Stock Exchange in the event of a breach of these Rules. The bidder must also state that Securities Council rulings regarding interpretation of both the Stock Exchange Rules and the previous Rules concerning Public Offers for the Acquisition of Shares issued by N ringlivets B rskommitt  (NBK), where relevant, apply to the offer. Furthermore, the date of submission of information to Finansinspektionen regarding the offer and the measures taken must also be indicated.

Detailed instructions

Information is to be provided concerning the number of shares in the target company held by the bidder or controlled by the bidder in some other manner, for example as the result of an option agreement, and the proportion of the share capital and the total votes in the target company these holdings represent. In addition, information is to be provided, where relevant, concerning binding or conditional undertakings, declarations of intent, or other favourable opinions by shareholders in the target company regarding acceptance of the offer.

Information is to be provided concerning the number of shares the bidder has acquired or has gained control over in some other manner, for example as a result of option or forward agreements, during the six-month period immediately prior to announcement of the offer, and the highest price agreed for such shares in this connection. Where applicable, information is to be provided separately for each share class involved.

Information is to be provided concerning what premium the consideration offered represents in comparison with the quoted share

price. The premium is to be stated both in comparison with the share price immediately prior to announcement of the offer and in comparison with the average share price during an appropriate period immediately prior to announcement. The manner in which the premium is calculated must be explained.

If there are differences in the consideration offered for shares of various classes, this must be clearly stated. Such differences may be due to application of the same percentage premium for different market values, different premiums based on the same market values, or a combination of the two. The reason for such differences must be stated and explained. If the offer covers both listed and unlisted shares or shares whose market value is adjusted in relation to the quoted share price, the estimated and the adjusted market value must be stated, and the basis for calculation.

If the offer is not confined to shares but also applies to corporate warrants, convertibles or other financial instruments related to the target company's shares, information regarding the principal terms for these instruments must be provided. This may take the form of a reference to the information provided under another main heading. The consideration paid for such instruments is to be stated, and also the basis for calculation.

If an offer is made as a result of the legislative provisions requiring mandatory offers, this must be pointed out to target company shareholders. The share acquisitions or other measures that have resulted in a mandatory offer requirement must also be disclosed.

2. Terms and instructions for acceptances

General instructions

The terms in the offer for transfer must be clear and unambiguous. In addition, the manner in which target company shareholders are to proceed if they accept the offer must be stated, and the date and manner of payment.

Detailed instructions

Clear information must be provided about the acceptance period, and the manner in which shareholders should proceed if they accept the offer.

If the bidder stipulates completion conditions of the offer, these conditions must be stated and accompanied, where applicable, by information concerning shareholders' rights concerning the withdrawal of acceptances. The requisite practical instructions for a possible withdrawal are to be provided, and also information regarding the person/entity to whom a request for withdrawal is to be submitted, the manner in which this is to be accomplished, and the deadline (date and exact time) for receipt of a request for withdrawal. Information must also be provided regarding the steps to be taken by a shareholder who wishes to withdraw his acceptance for shares registered with a nominee.

Information is to be provided concerning when and how consideration for shares that have been acquired is to be paid, and the manner in which this is to be notified.

Where applicable, information is to be provided concerning the bidder's right to extend the acceptance period, and also the right to postpone payment of consideration and notification.

If consideration consists of shares in the company making the offer, information must be supplied concerning the market place or market places on which the bidder's shares are listed or due to be listed. This information must clearly indicate the class of shares listed or due to be listed, the form for trading, the proposed trading lot and the estimated date for commencement of share trading. Information must also be provided concerning the first financial year for which the shares entitle the holder to a dividend.

In the case of partial offers, information regarding the number of shares that the bidder wishes to acquire must be stated and, where applicable, whether the bidder reserves the right to acquire additional shares as a result of the offer. In addition, the principles for reduction of the acceptances received are to be stated and, if a fixed price is not stipulated in the offer, how the price is to be determined.

3. **Background, reasons and consequences**

General instructions

The considerations and reasons underlying the offer are to be stated. This also applies to the anticipated financial and other effects of the offer on the bidder and the target company. Chapter 2 a, Section 2, points 10-12 of the Financial Instruments Trading Act (1991:980) implies that the bidder's intentions and the impact of these intentions on employment, etc. are to be indicated. This information may be reported briefly if more detailed information is provided under "The new corporate group" (fifth main heading) or under some other main heading.

Detailed instructions

Information is to be provided concerning the background to the offer and the consequences of the offer for the bidder and the target company, both from a financial perspective and in other respects. Some aspects of points covered under this heading may be presented more appropriately under the "New corporate group" heading (fifth main heading).

If consideration consists of shares in the company making the offer, the board of the bidding company must provide an assurance indicating that all reasonable precautionary measures have been taken to ensure that, as far as the board is aware, the information in the offer document regarding the company and the new corporate group is in accordance with the actual circumstances, and that nothing of material importance has been omitted

which might affect the picture of the company or the new corporate group given by the offer document. As regards summarized information concerning the target company, the target company board must make a statement to the effect that the company's report has been prepared or scrutinized by the target company board, and that the summarized description of the target company provides a fair and accurate impression of the company, even if it does not provide a complete picture.

If the target company board has not participated in preparation of the offer document, the person/entity responsible for the description of the target company must be indicated, and also the documentation on which the description is based.

If consideration consists of shares in the company making the offer, the board of the bidding company must provide an assurance indicating that, as far as the board is aware, the information in the offer document regarding the bidding company is in accordance with the actual circumstances. In addition, a statement must be made by the board of the target company as regards the summarized description of the target company, in accordance with the above, if the board has participated in this context.

If the consideration offered consists of promissory notes, shares in a company other than the company making the offer, etc., the wording of the assurance and the statement may need to be adapted accordingly.

Chapter 2 a, Section 2, points 10-12 of the Financial Instruments Trading Act (1991:980) indicates that the bidder's intentions and strategic plans must be stated as regards the future operations of the target company, and also the bidder's operations, to the extent that they are affected. This also applies to intentions regarding the employees and senior management of both companies, and the impact of the bidder's strategic plans on employment and the locations in which the target company conducts its operations.

Each assurance and statement is to be signed by the person making the assurance or statement concerned.

4. **Statement by the target company board**

General instructions

If the board of the target company has expressed its opinion of the offer in accordance with Item II.14 in sufficient time to permit reproduction of this statement of opinion in the offer document, this statement must be reproduced in its entirety. This also applies to any statement submitted to the target company by representatives of the employees containing views that differ from the target company board's opinion of the impact of the offer on employment. If such a statement is not available in sufficient time to permit inclusion in the offer document, the date on which it is anticipated that the statement will be available must be indicated. In this case, it is the

bidder's responsibility to subsequently ensure that this statement is dispatched to all target company shareholders.

5. **The new corporate group**

General instructions

When payment is offered in the form of shares in the bidding company, a description of the new corporate group which is to be established as a result of the offer must always be provided. A presentation of the new corporate group as a result of acquisition of the target company is particularly important if acquisition of the target company involves a significant augmentation of the bidder's operations or financial position.

Pro forma income statements and pro forma balance sheets – based on historical accounting documents – must be reported. Plans involving changes in operations, the new group's market position, and coordination measures which are planned and their financial impact must also be presented, as far as possible. This also applies to changes at boardroom and senior management level.

Detailed instructions

In the case of cash offers, a presentation of the new corporate group is not required. When payment is offered in the form of shares in the bidding company – and the size of the target company is marginal in comparison with the bidder – the importance of a description in accordance with the fifth main heading is less acute, but it should nonetheless be included under the seventh main heading. In this case, presentation of the bidder is also relevant in the new corporate group, even if there is limited impact on the scale of its operations and, as a result, description of the new corporate group under the fifth main heading may be brief.

Duplication in the contents of the fifth main heading (“The new corporate group”) and the seventh main heading (“Presentation of the bidder”) should be avoided as far as possible.

Pro forma income statements and pro forma balance sheets for the new expanded corporate group as a result of implementation of the offer must be presented for the most recent fiscal year and also, where appropriate, for an interim period during the current fiscal year. In other respects, the rules in the EU Prospectus Regulation (EC) 809/2004 are to be applied.

The financial benefits and costs of a merger should be discussed, and quantified where feasible, possibly in the form of a range of values. The date when such benefits and costs are expected to be realized or incurred must also be indicated.

In accordance with legislation and the EU Regulation, the risk factors for a bidder who makes payment in the form of shares in the bidder's company must be stated, together with the risks that may be involved in establishment and continued operation of the new corporate group.

The share-capital structure and major shareholders in the bidding company in the event of full acceptance are to be reported, in terms of equity and voting percentages, and based on the most recent ownership data for the bidding company and the target company, respectively.

Plans regarding composition of the board, senior executives and auditors are to be reported, as far as possible.

6. Brief presentation of the target company

General instructions

Irrespective of the form of payment covered by the offer, the offer document must contain a brief description of the target company's financial position, operations, board of directors, senior management and ownership structure. The latest interim report or year-end statement must be reproduced in the offer document.

Detailed instructions

Shareholders in the target company are to receive a summarized description of the company for which they have received an offer to divest shares. This description must include:

- A summary of financial developments (i.e. summarized consolidated income statements and balance sheets), and key ratios and data on a per-share basis. This information should at least cover the previous three fiscal years for which an audit report has been submitted and any interim report that may have been published subsequently. Where applicable, per-share data is to be stated both before and after dilution as a result of the exercise of convertibles and corporate warrants.

This information can normally be extracted directly from the target company's published reports. If information from the income statement in an interim report is presented, the corresponding information for the same period in the previous year must also be provided.

- A summarized description of operations, broken down by the main business areas.
- Shareholding and ownership factors, indicating:
 - The number of shares by share class, shares that may be implemented in the event of the exercise of convertibles and corporate warrants, and holdings of the company's own shares. Where applicable, share data must reflect circumstances both before and after dilution as a result of the exercise of convertibles and corporate warrants.
 - The latest information concerning major shareholders: their percentage holdings in terms of equity and votes, and the number of shareholders.
 - The dividend policy announced.

- Major clauses in the Articles of Association regarding shares in the company and their transfer.
 - In the case of convertibles and corporate warrants, the conversion or subscription price and the date of exercise must be stated.
 - Authorizations by the board for the issue, buying or selling of shares.
 - Important agreements of which the board is aware between major shareholders or between major shareholders and the bidder of the target company.
 - Information regarding where shares and, where applicable, convertibles and corporate warrants are listed.
 - Information provided by the company in its most recent annual report, in accordance with Chapter 6, Section 2 of the Annual Accounts Act (1995:1554), to the extent that such information is not presented in the above. Information in accordance with this Act is designed to provide a picture of arrangements in a target company that may impair or hinder a takeover bid.
- Lawsuits, arbitration proceedings, etc. which have had or may have material importance for the company must be presented briefly.
 - If a due-diligence investigation has revealed information that has not been made public which has a material impact on valuation of the target company's shares, this information must be reported.
 - Members of the board, auditors and senior executives, including deputies for both the former categories, must be listed, as well as the type of information concerning such persons, including information about shareholdings, etc. provided in the most recent annual report.

7. Description of the bidder

General instructions

If the bidder receives payment in the form of shares in the company making the bid, the bidder is to be presented in a manner that enables shareholders in the target company to make a soundly-based decision regarding the offer. Chapter 2 a, Section 2, points 10-12 of the Financial Instruments Trading Act (1991:980) stipulates that, as regards the bidder, the offer document is to contain information equated with Chapter 2 of the Act and which, in accordance with the EU Prospectus Regulation, is to be covered by a prospectus.

In the case of a cash offer by a Swedish limited company, it is normally sufficient to indicate the name and head office of the company making the bid. In other cases involving a cash offer, the bidder must be presented in a manner which is relevant for target company shareholders and the stock market. If the bidder is a legal entity, the corporate domicile and the address of the head office must be stated, for example. In addition, ownership factors must be

summarized, and also the nature and scope of operations, including certain major financial key ratios.

If payment is in a form other than cash or shares in the bidding company, other relevant descriptions of the bidder or some other legal entity may be called for.

8. Tax issues

General instructions

An outline description of the Swedish tax rules that apply to shareholders who accept the offer is to be provided. The tax rules which affect the holding and divestment of the financial instruments that constitute payment for the offer must also be described in brief. In addition, information is to be provided concerning requests for rulings submitted, or due to be submitted, to the tax authorities, the manner in which such rulings will be notified and, where possible, when such information may be expected. Mention should be made of official committee reports, government bills, etc. which may result in changes in tax legislation.

9. Auditors' examination of the offer document

General instructions

If the bidder is a legal entity, the bidder's auditor must scrutinize the relevant sections of the offer document and report on it. This scrutiny and the report must comply with the relevant rules and practices.

The relevant sections of the description of the target company must be examined by the target company's auditor – both in the case of cash offers and offers in the form of shares – if the board of the target company has participated in the description of the target company. An audit report must be issued.

The auditors' reports must be included in the offer document.

Detailed instructions

In the case of a company domiciled in the EEA, the rules and principles in the home country concerned apply. In the case of a company outside the EEA, EU standards apply. The relevant sections of the offer document are defined as financial information linked to the bidder and the target company.

If the bidder is a Swedish legal entity, the FAR* rules and principles for scrutiny and the issue of reports of this nature apply.

* Föreningen Auktoriserade Revisorer; Eng.: Swedish Institute of Authorised Public Accountants

If the offer document has been prepared in consultation with the board of the target company, the bidder's auditor must examine and submit a report on the bidder's historical financial information and, where relevant, must submit a report on the financial statements on the proposed merged operations (the so called pro forma accounts).

In addition, when the offer document includes historical financial information concerning the target company, the target company's auditor must examine and issue a report on such information. In this case, historical financial information is defined as revised financial information for full fiscal years.

In the case of a cash offer, the offer document is largely confined to information regarding the target company. Therefore, in this case scrutiny is solely performed by the target company's auditor.

If the board of the target company board does not wish to participate in preparation of the offer document, the target company's auditor may not participate in this scrutiny. In this case, this must be stated in the offer document, and it must also be indicated that information about the target company is solely based on information that has been made public.

If the board of the target company assigns its auditor to permit publication of audit reports concerning historical financial information in the offer document in the form of complete annual reports for the target company, the target company's auditor must give such permission in writing.

10. Other information

General instructions

If board members or senior executives in the target company are making or participating in the offer, or the offer is made by the target company's parent company, the offer document must include a valuation opinion.

If compensation in the offer takes the form of debt instruments, etc., the full terms for such securities must be reported.

Agreements related to the public offer are to be included in the offer document, in their entirety.

Where relevant, the report issued by the board of the company making the offer must be presented, in accordance with Chapter 13, Section 7 of the Companies Act (2005:551), and also the auditor's statement of opinion on this report.

Detailed instructions

If target company board members, senior executives, etc. are making or participating in the offer, or the offer is made by the target company's parent company, a valuation opinion (fairness opinion), or a summary of

such an opinion, must be included in the offer document, in accordance with Item III.3.

In other cases too, the board of the target company may have occasion to request a valuation opinion or a fairness opinion, depending on the circumstances. A statement of opinion of this nature is to be included in the offer document to the extent that the board of the target company considers this to be appropriate.

The full terms for debt instruments which constitute consideration covered by the offer are to be reported, possibly in the form of an appendix. This also applies to the offer of convertibles, corporate warrants and stock options, participating debentures, etc. The key points in such terms should be presented in summarized form under the second main heading, "Terms and instructions for acceptances".

Agreements related to the public offer, for example merger agreements, must be included in the offer document in their entirety. If such agreements contain information that might be to the detriment of the companies if made public, the Securities Council may grant exemption from this rule.