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Swedish Corporate Governance Board review of takeover rules complete

The Swedish Corporate Governance Board took over the tasks of Näringslivets Börskommitté, the Swedish Industry and Commerce Stock Exchange Committee, in 2010, which means that regulation of takeover issues is now part of the Board's responsibility. In May 2011, the Board decided to conduct a review of the takeover rules.

The current regulations came into force on 1 October 2009 for NASDAQ OMX Stockholm's and NGM's main markets. Corresponding rules for the trading platforms First North, Nordic MTF and AktieTorget came into force on 1 January 2010.

The Board's review is now complete, and its proposals have been submitted to NASDAQ OMX Stockholm and NGM. The Board expects the proposals to be adopted and to come into force on 1 July 2012. When these new takeover rules come into force, the Board will simultaneously issue a revised version of the rules for takeovers on the First North, Nordic MTF and AktieTorget trading platforms. As previously, these rules will be to all intents and purposes identical to those of the NASDAQ OMX Stockholm and NGM Equity exchanges.

The review was led by the special investigator appointed by the Board, Rolf Skog, Executive Director of the Swedish Securities Council, assisted by Erik Sjöman and Björn Kristiansson, Executive Director of the Swedish Corporate Governance Board. As with previous reviews, the work was conducted in close consultation with a diverse reference group.

Here is a brief summary of some of the proposed changes:

- The scope of the takeover regulations, including in the case of offers for non-Swedish companies, has been linked directly to the scope of the Act on Public Takeover Offers, (LUA).
- The Board considered whether the recent prohibition of deal protection arrangements between offerors and offeree companies in the United Kingdom should give rise to any changes in the Swedish rules. One example of such an arrangement is that the offeree company agrees under certain circumstances to compensate the offeror for costs incurred should the deal fall through. The nature and extent of the problems that led to the British regulation have not been seen in Sweden so far, and the Board has therefore confined itself for the time being to further emphasise that restrictiveness is to be shown in the case of such arrangements.
- The Board also considered the issue of in which circumstances different actors in a takeover process may deviate from public statements connected with the offer, e.g. statements from offerors that they will not increase the bid consideration. The Board's proposal contains a reminder that the role of the Swedish Securities Council includes adjudication on such issues. The

existing rule obliging offerors to stand behind statements that the acceptance period will not be extended remains unchanged.

- Offerors with financial instruments that give the offeror purely financial exposure corresponding to possession of shares in the offeree company, e.g. in the form of cash-settled equity swaps, are to declare this in the bid announcement, in the offer document and in the press release concerning the result of the bid.
- If an offeror wishes to offer employees in the offeree company a bonus arrangement or similar before completion of the offer, the board of directors of the offeree company must first approve the arrangement. Examples of such arrangements may be that employees are promised participation in a bonus program when the offer has been completed or that they will receive a cash settlement if they remain in the company for a certain amount of time following completion of the offer. The offeror is to provide clear information regarding any such arrangements.
- Rules concerning financing terms and conditions have been clarified. As previously, bids may be made conditional upon the payment of an acquisition credit. The offeror may not, however, invoke a credit condition that could have been imposed as a condition for the bid. This means that the offeror is only permitted to invoke the payment condition in cases where the creditor breaches the terms of the credit agreement by refusing to issue the credit, e.g. where the creditor is insolvent.
- A regulation stating that an offeror is not obliged to extend the acceptance period in order to allow the terms of the offer to be fulfilled has been added. Other conditions may apply in cases where deals must be approved by the authorities.
- Offerors are allowed to exempt holders of share-related transferable securities issued within the framework of an incentive program in the offeree company from the offer, on condition that the holders are otherwise reasonably treated. This has previously required special dispensation for each individual case.
- The rules for pre-, side- and post-acquisitions have been revised to make it clear that they do not apply to group-internal transactions or to subscriptions of shares in new rights issues to existing shareholders. Whether individual cases of subscription of shares through *directed* share issues are covered by the regulations is an issue for the Swedish Securities Council to decide on a case by case basis.
- The information requirements for stock exchange listed offeree companies continue to apply during a takeover process. If information exists that can affect assessment of the deal but which the offeree company is not obliged to disclose immediately, a new regulation states that the offeree company should strive to make this information public no later than two weeks before the end of the acceptance period. (Cf. the company board's obligation to disclose its opinion on the deal no later than two weeks before the end of the acceptance period.)

Additionally, as in previous reviews, the Swedish Securities Council's accepted practices have been codified in a number of matters and a certain amount of fine tuning of technical details has been carried out.

The Swedish Corporate Governance Board's proposals for new takeover rules for the stock exchanges, with changes clearly marked, can be found in Swedish on the Board's website, www.bolagsstyrning.se. An English version will be published as soon as possible. The equivalent revised rules for the First North, Nordic MTF and AktieTorget trading platforms will be made available as soon as they have been issued.

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