

# The Swedish Securities Council's operations 2006

*The Swedish Securities Council's operations underwent major changes in 2006. Implementation of the EU's Takeover Directive in Sweden led to completely new regulations governing public takeover offers on the stock market and a partially new official role for the Council. Moreover, the Council established a permanent secretariat. Due to a wave of takeover activity, the Council issued more statements than in any previous year.*

## **New rules, new conditions**

The Swedish Securities Council was established in 1986 in the wake of the so-called Leo affair. Through statements, advice and information, the Council promotes good practices in the Swedish stock market.

The Swedish Securities Council is managed by a not-for-profit association - the Association for Good Practices in the Securities Market – with ten members: the Swedish Association of Listed Companies, the Confederation of Swedish Enterprise, Stockholm Chamber of Commerce, the OMX Nordic Exchange Stockholm, the Swedish Association of Stockbrokers, the Swedish Bankers' Association, FAR SRS (the institute for the accountancy profession in Sweden), the Institutional Owners Association for Regulatory Issues in the Stock Market, the Swedish Association of Listed Companies and the Swedish Insurance Federation.

Any action by a listed company – a Swedish limited company which has issued shares listed on a stock exchange (OMX or NGM) or an authorized marketplace – or by a shareholder of such a company, which relates to or may be of importance to a share in such a listed company, may be subject to the Council's evaluation. The same applies to foreign limited companies which have issued shares listed on a stock exchange or an authorized marketplace in Sweden, to the extent such actions must comply with Swedish rules. The Council's area of expertise does not include companies listed on OMX First North or NGM Nordic MTF.

The Council can comment on its own initiative or after a petition from a shareholder or company. A petition to the Council can also be filed by a marketplace, for example.

The Council can base its evaluations on current law and self-regulation, but it can also comment on issues where there is no written rule to apply.

A large part of the Council's focus is on public takeovers on the stock market. Until mid-year 2006, the regulations governing takeovers consisted of the Swedish Industry and Commerce Stock Exchange Committee's rules. Implementation of the EU's Takeover Directive created new takeover rules as of July 1, 2006. The basic provisions of such offers can now be found in the Act on Public Takeover Offers on the Stock Market (2006:451) ("the Takeover Act"), which requires stock exchanges and authorized marketplaces to have more detailed rules on such offers. The latter has led the marketplaces in question, with minor modifications, to introduce the former rules of the Industry and Commerce Stock Exchange Committee as their own.

In its capacity as a regulatory agency and with the support of the Takeover Act and the Securities Market Trading and Services Ordinance (1991:1007), the Financial Supervisory Authority has delegated to the Swedish Securities Council the authority to take certain decisions which, according to the Takeover Act, rest with the supervisory authority. This applies, for example, to decisions on the interpretation of and exemption from rules on mandatory bids. Moreover, OMX Nordic Exchange Stockholm and NGM have delegated to the Council the authority to interpret and evaluate questions regarding exemptions from their takeover rules.

In this way, the Swedish Securities Council has essentially retained its role with regard to public takeover offers, although part of its operations is now delegated. The Council's operations otherwise have not been affected by the new takeover rules. This means that the Council, exactly as before, handles queries on incentive programs, amendments to articles of association, new share issues, etc.

On April 1, 2006, the Council created a secretariat, led by the Executive Director.

The Council's activities are largely financed by fees charged to those who request its services. The Council has charged for petitions for a formal statement since it started its operations. As of 2007, a small fee is also charged for consultations on questions of fact.

### **The Swedish Securities Council's statements**

Since its inception, the Swedish Securities Council has issued around 400 statements. The trend is steadily rising. In 2006, the Council issued 59 statements, more than in any previous year.

The overwhelming majority of the statements have been issued as a result of petitions from companies or their advisers. In a couple of cases, statements have been issued after other petitions – e.g., from the OMX Nordic Exchange Stockholm and Swedish Shareholders' Association. One of the statements was issued on the Council's own initiative.

Of the 59 statements, 22 were considered by committee, 18 by the Chairman and 19 by the Executive Director, who since mid-year has been permitted in certain cases to issue statements on his own.

As was the case in the previous year, 2006 was dominated by issues involving public takeover offers. Three fourths of the petitions pertained to impending or ongoing takeovers or changes in ownership that could necessitate mandatory bids. One specific takeover offer (MAN – Scania) generated several statements.

Nearly half of the Council's statements in 2006 involved exemptions from the takeover rules. They primarily concerned exemptions from the rules on mandatory bids, though several cases concerned other exemptions, e.g., from having to offer to buy financial instruments other than shares. The basis for granting or exemptions was largely the same as in previous years.

After receiving a number of queries, the Council took the initiative to comment on whether companies can decline to offer to acquire the shares in companies primarily listed in Sweden owned by shareholders in the United States and other countries with complicated securities laws such as Canada, Australia, Japan and South Africa, as well as other countries that require additional documentation, registration or other measures beyond those required by Swedish law. In the opinion of the Council, there is no need to seek an exemption in such cases if the number of shareholders in such a country, at the time of the offer, presumably represents an insignificant share of the total number of shareholders in the company, the shares in question are not listed on any marketplace in the country and there are no other special circumstances that would suggest otherwise (AMN 2006:22).

The MAN–Scania takeover attempt gave the Council the opportunity to comment on a bidder's obligation to disclose the opinions of the target company and its major shareholders (AMN 2006:53) as well as to determine whether certain actions on the part of the target company can be considered an improper defensive action (AMN 2006:55).

A relatively unusual phenomenon is the contingent offer, where a bidder issues offers for two companies at the same time and makes them contingent on the success of both bids. Such an offer was evaluated by the Council during the year. It stated that such offers are not acceptable per se, but may be considered acceptable if the merger has a significant commercial or industrial justification (AMN 2006: 38).

The Council would return to the issue of mergers on several other occasions (AMN 2006: 30 and 40). Since legislators in January 2007 temporarily tightened the majority requirements for certain types of mergers and appointed an investigation on this matter, it has been left to the Council to determine, through a statement, whether there is any reason to expand upon the transitional rules or to wait for the final legislation.

Among the cases in 2006 that did not involve public takeovers, it is worth noting that the Council for first time had to deal with the issue of nominating committees, which is primarily governed by the rules of the Code of Corporate Governance (AMN 2006: 31).

The Swedish Securities Council can directly criticize companies, shareholders or advisers, and has done so in many statements over the years. It did so once in the last year, in a case where a shareholder did not respect disclosure rules (AMN 2006: 19).

Three fourths (38 of 59) of the statements issued during the year were made public, while the rest remained confidential. Even after issuing a confidential statement, the Council continues to try to obtain the permission of the petitioner for its public disclosure.

Applicants usually want a prompt response, especially when issues concern impending or ongoing takeover offers. The Swedish Securities Council therefore tries to remain accessible. In half the cases in 2006, it issued a response in 0–2 days, while three fourths of the cases took less than a week for a response. All the cases that required longer consideration were petitions that involved another party that was offered an opportunity to respond. In over half of the cases delegated by the Financial Supervisory Authority, a response was issued in 0-2 days, and never longer than a week.

The Council's rulings in cases delegated by the Financial Supervisory Authority can be appealed. None of the rulings in 2006 were appealed.

### **Consultations with the Swedish Securities Council**

A significant part of the Swedish Securities Council's operations consists of consultations by telephone or e-mail. In 2006, the Council typically handled 3-5 telephone or e-mail consultations per day. This is in addition to a periodically large number of questions of a general nature from journalists, among others.

Consultations often concern impending or ongoing public takeovers or other large-scale transactions, which usually demand expedited review. The secretariat responds to such queries every day of the week. Though queries are sometimes trivial, they can often be relatively complex. They are generally submitted by experts employed by legal or accounting firms. Some consultations later lead to a formal statement, though the majority never does. Consultations are not made public.

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