

The Swedish Securities Council's operations

2011

The Swedish Securities Council celebrated its 25th anniversary in 2011. Since its founding in 1986, the Council has developed into a well-established institution in the Swedish stock market and has issued around 600 statements on good practices in the stock market.

In 2011 the Council issued 34 statements. The majority concerned public takeover offers or mandatory bids. A third of the cases were delegated by the Swedish Financial Supervisory Authority.

The Council's responsibilities, rules of procedure, etc.

Through its statements, advice and information, the Swedish Securities Council promotes good practices in the Swedish stock market. The 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, Far (the professional institute for authorized public accountants), the Swedish Association of Listed Companies, the Institutional Owners Association for Regulatory Issues in the Stock Market, NASDAQ OMX Stockholm AB, the Stockholm Chamber of Commerce, the Swedish Bankers' Association, the Swedish Association of Stockbrokers, the Confederation of Swedish Enterprise and the Swedish Insurance Federation.

Any action by a Swedish limited company which has issued shares that are quoted on a regulated market (NASDAQ OMX Stockholm or Nordic Growth Market NGM) or by a shareholder of such a company may be subject to the Council's evaluation if the action relates to or may be of importance to a share in such a company. The same

applies to foreign limited companies which have issued shares quoted on a regulated market in Sweden, to the extent such actions must comply with Swedish rules.

To the extent it deems appropriate, the Council can also release statements on issues concerning good practices in the stock market which affect companies whose shares are traded on a trading platform in Sweden.

The Council can comment on issues on its own initiative or after receiving a petition. The Council determines itself whether a petition warrants that the issue in question be brought up for evaluation. In doing so, the Council takes into account whether the issue is a matter of principle or of practical importance to the stock market. The Council also considers whether the issue is or can be expected to be treated in another rule.

A predominant share of the Council's operations of late has concerned public tender offers. In this area the Council principally applies the Act on Public Takeover Offers on the Stock Market (2006:451) ("the Takeover Act") and other statutes, but also uses rules established through self-regulation, primarily the NASDAQ OMX Stockholm's and NGM's (identical) rules on public takeovers on the stock market, as well as the corresponding rules on public offers for shares in Swedish companies whose shares are traded on certain trading platforms. The Council also applies the Swedish Code of Corporate Governance to cases in the area. However, the Council may also comment on issues where there is no written rule to apply or self-regulations.

In its capacity as a regulatory agency and with the support of the Takeover Act and the Financial Instruments Trading Act (2007:375), 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, NASDAQ OMX Stockholm and NGM have delegated to the Council the authority to interpret and evaluate questions regarding exemptions from their takeover rules.

The Council is composed of a Chairman (Johan Munck), a Vice Chairman (Marianne Lundius) and around 20 other members representing various sectors of the Swedish business community. The members are appointed by the Association for Good Practices in the Securities Market.

At least four and not more than eight members must be present to evaluate a case. The composition is determined according to the principles in the Council's by-laws and rules of procedure. An especially important case can be considered by a plenary session at the initiative of the Chairman.

The Chairman or the Executive Director may decide on behalf of the Council in urgent cases, where similar issues have already been considered or in cases of lesser importance.

The Council has a secretariat led by the Executive Director.

The Council's operations involving public takeover offers are largely modeled after the British Takeover Panel. The Council's secretariat also maintains continuous contact with the Panel. Contacts are maintained with similar bodies in other countries as well, such as Germany and France. Moreover, the secretariat participates, together with the Financial Supervisory Authority, in a continue exchange of knowledge on public takeover offers within the European Securities and Markets Authority (ESMA). The Executive Director also participates in the OECD's corporate governance work, where issues regarding public takeovers are frequently discussed by a global membership.

The Council's statements

Since it began operations in 1986, the Swedish Securities Council has issued around 600 statements. In 2011 it issued 34. This was fewer than the previous year (46 statements in 2010) and reflects, among other things, the uncertainty that weighed on the financial markets in 2011.

Similar to previous years, the majority of statements were issued after petitions from companies or owners, generally through a legal adviser. One statement was issued after a petition from AktieTorget (2011:02). Another was issued after a petition from the Swedish Shareholders' Association (2011:16).

During the year the Council issued 13 statements delegated by the Financial Supervisory Authority. The majority of the statements that were delegated involved mandatory bids.

Of the 34 cases, seven were considered by committee, a lower percentage than the previous year. An average of 6 members attended the Council's meetings. The remaining cases were considered by the Chairman.

Practically all the statements, 31 of 34, related to public takeover offers including mandatory bids. Of these, 18 pertained to companies on a regulated market and 13 to companies on a trading platform. Whether a statement relates to a company on one type of marketplace or the other is irrelevant to what the Council, through its statement, considers acceptable practices in the Swedish stock market.

The Council's statements on good practices are forward looking in the sense that after a statement has been made public it is expected that market actors will respect its contents. Many times, however, the statements also articulate what the Council considers established practices. In such cases the Council may criticize actions that have already been taken which contravene good practices. This happened in one case in 2011, where the Council criticized a bidder for violating the takeover rules and for failing to engage a competent advisor when the bidder obviously lacked the necessary competence (2011:02).

In terms of mandatory bids, the Council in one statement during the year found that although, according to the letter of the law, the mandatory bid rule was not triggered, the way in which the company would obtain an owner with more than three tenths of the votes was so special that, against the backdrop of the mandatory bid rules, it would be a violation of good practices on the stock market not to offer to acquire all the outstanding shares (2011:28).

Several of the statements concerning exemptions from mandatory bids involved exemptions in connection with company acquisitions through non-cash consideration. As indicated in the statements, one condition for such exemptions is normally that the issue has been resolved or approved by the general meeting with a large majority among other shareholders. The same applies to exemptions from mandatory bids in connection with the fulfillment of an issue guarantee.

Of the 34 statements issued in 2011, 32 have been made public to date. Statements that have not been made public right away usually concern deals that have been planned but not yet implemented. In certain cases, it is obvious that the transaction will not be completed as planned, since the Council ruled against the questioner in some critical respect.

After consulting the parties in question, the Council also publicly released a number of older statements during the year where the need for confidentiality was no longer evident. In total, over three quarters of all statements have now been made public.

The Council aim is to maintain short response times. In cases handled by the Chairman, the Council generally announces its decision the day after the final petition is submitted. Even for cases evaluated by the Council, response times are usually short. During the year response times varied in these cases from two days to two weeks.

The Council's decision in cases delegated by the Financial Supervisory Authority can be appealed to the latter authority. One of the Council's rulings (2011:12) in 2011 was appealed, although the appeal was later withdrawn.

Consultations with the Swedish Securities Council

The Swedish Securities Council's operations also consist of consultations where companies, shareholders, advisors and marketplaces contact the secretariat by

telephone or e-mail. The number of consultations was about the same as the previous year.

Some of the consultations concerned issues that were later covered in formal statements by the Council, although many never led to a Council ruling. The decisions made by the secretariat in consultations are not binding for the Council. If the party that consulted the Council proceeds with a request to have its issue formally evaluated, the case will be evaluated without preconditions. Therefore, details of consultations are not made public by the Council, and its decisions cannot be publicly cited with reference to the Council.

The Council's 25th anniversary

The Swedish Securities Council was founded in fall 1986. To celebrate its 25th year in operation, the Council had a book prepared during the last year highlighting its activities and a number of topics of particular interest to the Council. The book was presented at a full-day seminar arranged by the Council in October 2011. In addition to authors and commentators, the seminar was attended by a number of the Council's current and former members as well as a hundred other guests. Documentation from the seminar, including contributions to the anniversary publication, can be found on the Council's website, www.aktiemarknadsnamnden.se.

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