

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

**2010**

*In 2010, the Swedish Securities Council issued an average of nearly one statement a week. The majority concerned public takeover offers or mandatory bids. Nearly half 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.

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 of the Swedish Industry and Commerce Stock Exchange Committee (NBK) 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 the Committee of European Securities Regulators (CESR), a consultative body that addresses public takeovers. The Executive Director 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 nearly 600 statements. In 2010 it issued 46, or nearly one a week. This is significantly more than the previous year (30 statements in 2009) and marked a return to the high levels of prior years. The increase reflects generally higher activity in the business sector than in 2009. Another factor was that the Council was given greater responsibility as of 2010 to examine issues involving the interpretation of, and exemption from, NBK's rules on public takeover offers for companies whose shares are quoted on one of the trading platforms First North, Nordic MTF and Aktietorget.

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 NASDAQ OMX Stockholm AB (2010:15). Another was issued on the Council's own initiative (2010:40).

During the year the Council issued 21 statements delegated by the Financial Supervisory Authority. This corresponds to nearly half of all statements during the year. The majority of the statements that were delegated involved mandatory bids.

Of the 46 cases, nearly half, 20 cases, were considered by committee, about the same percentage as the previous year. An average of 6 members attended the Council's meetings. The remaining cases were considered by the Chairman.

Just over three quarters of the statements, 37 of 46, related to public takeover offers including mandatory bids. Of these, 28 related to companies on a regulated market and 8 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.

Several of the statements concerning public takeover offers including mandatory bids in one way or another involved the concept of related parties in the Takeover Act (and the Takeover rules). This applies, for example, to 2010:03 and 27, in which the Council had to determine, among other things, the importance that a shareholder agreement with a specific content should have to the question of whether shareholders should be considered related parties in a legal sense (cf. also 2008:26, which was made public during the year).

The Council's statements during the year involving mandatory bids make it clear that an owner who held at least three tenths of the votes for all shares when the mandatory bid rules entered into force (on July 1, 2006 for ownership of a company on a regulated market and January 1, 2010 for ownership of a company on First North, Nordic MTF or Aktietorget) can transfer all or part of its holding to another party which, at the time of the transfer, is related without requiring a mandatory bid (e.g. 2010:19). It is also made clear that if such a transfer is made to a related party which is a wholly owned subsidiary, this company, in the same way as the transferor, is able to acquire additional shares without necessitating a mandatory bid.

Also worthy of note in terms of mandatory bid practices is the situation where an owner which holds three tenths of or more of the votes, with the support of an exemption from the Council, transfers all or part of the holding to another party which, at the time of the transfer, is related. In this case as well, a mandatory bid is not required of the acquirer if it, through the acquisition, increases its holding to three tenths of or more of the votes. If, however, the acquirer in question subsequently increases the number of votes it holds, a mandatory bid takes effect.

With regard to statements on areas other than public takeover offers, it can be noted that the Council issued 5 statements on incentive programs and the application of the so-called Leo rules. One of these statements (2010:40) also concerned the provisions of the Code of Corporate Governance.

Of the 46 statements issued in 2010, 33 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 deal will not be completed as planned, since the Council ruled against the questioner in some critical respect.

With few exceptions, the statements that have not yet been made public also relate to public takeover offers including mandatory bids. One of the confidential statements not involving public takeover offers concerned the terms of a preferential issue. The Council reiterated in the statement its previous view that a condition for withdrawal of an issue should be designed in such a way that it can be objectively determined whether or not it has been met (see 2009:13) and extended this to apply to the terms in an agreement on a guarantee necessary for implementation of the issue.

Another confidential statement involved good practices with regard to changes to convertible terms. The Council noted in the statement that it is widely accepted in the securities market that trading should take place on predictable terms and reaffirmed its previous view that changes in the conditions for outstanding convertibles are acceptable only under special circumstances (cf. 1988:6, 1992:7, 1996:1 and 2006:46). In this case, the Council also stated that it did not matter to its

determination whether the question of amended terms was referred to the general shareholders meeting for resolution.

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 been made public.

The Swedish Securities Council promotes good practices in the Swedish stock market and, as mentioned above, determines itself whether a petition should be brought up for evaluation. As also mentioned above, the Council considers in this context whether the issue is or can be expected to be treated in another rule. On this basis, the Council rejected a petition during the year that essentially concerned the interpretation of the provisions of the Swedish Companies Act on directed issues.

The Council aim is to maintain short response times. In more than half of the cases handled by the Chairman, the Council announced its decision the day after the final petition was submitted, and in some cases as early as the same day. Even for cases evaluated by the Council, the response times were short; three quarters of the decisions were announced within a week. Cases requiring longer consideration generally involved another party that was offered an opportunity to respond.

The Council's decision in cases delegated by the Financial Supervisory Authority can be appealed to the latter authority. This occurred in one case in 2010 and related to an exemption from a mandatory bid (2010:04). The Financial Supervisory Authority denied the appeal and the authority's judgment has become final.

### **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 higher than in 2009.

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 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.

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