

The Swedish Securities Council's operations 2012

In 2012 the Council issued 31 statements. The majority again involved public takeover offers or mandatory bids. One fifth 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 nine 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 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 an issue is or can be expected to be treated elsewhere.

The Council is composed of a Chairman (Johan Munck), a Vice Chairman (Marianne Lundius) and 26 other members representing various sectors of the Swedish business community. The members are appointed by the Association for Good Practices in the Securities Market. The term of office is two years, but can be extended.

The Council appointed three new members as of January 1, 2012: Peggy Bruzelius, Dick Lundqvist and Thomas Nicolin. When Thomas Nicolin became a member of the Swedish Corporate Governance Board on May 1, 2012, he stepped down from the Council. Thomas Halvorsen was named as a new member of the Council effective the same date.

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 as well as two part-time rapporteurs (Ragnar Boman and Annica Sandberg).

A significant share of the Council's operations concerns 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 NASDAQ OMX Stockholm’s and NGM’s (identical) rules on public takeovers on the stock market, as well as corresponding rules on public offers for shares in Swedish companies whose shares are traded on certain trading platforms.

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’s international contacts, etc.

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

Swedish regulations on public takeovers were originally limited to self-regulation. Following the implementation of the EU’s Takeover Directive in 2006, the regulations on takeover offers for shares traded on a regulated market took on a new form through a combination of laws and stock market rules.

The Takeover Directive was preceded by long and tough negotiations between member states. To pour oil on the troubled waters of negotiation, the directive

introduced a so-called audit clause, which required the Commission to evaluate the directive five years after its implementation and propose any necessary revisions.

The results of the evaluation were announced in June 2012. The Commission's conclusion was that the directive has had a positive effect on national takeover regulations and that there is no reason at this point to propose any changes. This is an important decision for member states, national supervisory authorities and other supervisory bodies such as the Swedish Securities Council. The fact that no new European requirements on the form or substantive content of the regulations are expected in the years ahead promotes stability.

The Council's statements

Since it began operations in 1986, the Swedish Securities Council has issued nearly 650 statements. In 2012 it issued 31, about the same number as the previous year (34 statements in 2011).

Similar to previous years, the majority of statements were issued after petitions from companies or owners, generally through a legal adviser. One was issued on the Council's own initiative (2012:05).

During the year the Council issued 6 statements delegated by the Financial Supervisory Authority. Four involved mandatory bids.

Of the 31 cases, 8 were considered by committee, about the same number as the previous year. An average of 7 members attended the Council's meetings. The remaining cases were considered by the Chairman.

The vast majority, 25 of 31, related to public takeover offers. Of these, about half pertained to companies on a regulated market and half to companies on a trading platform.

A relatively large share of the petitions involved mandatory bid exemptions, and as in previous years most were granted. This is mainly because the reasons that motivate an exemption are cited in the preliminary work that led to the mandatory bid rules and have been established by the Council's practices, and by now are well known in the market, especially by legal advisors. In a couple of cases in 2012, however, the Council found that the reasons given were insufficient and denied the petitions (see, e.g., AMN 2012:07).

Among cases in 2012 not involving public takeover offers, one that stands out is statement AMN 2012:05, which was issued on the Council's own initiative and was designed to address conflicts of interest in certain related party transactions. The statement was issued against the backdrop of a decision by NASDAQ OMX and NGM to repeal the related party rules previously embedded in their stock exchange rules. In the opinion of the exchanges, the subject fell more under the auspices of the Council.

The Council's statement in this sense replaces the stock exchange rule, but also differs in several details from the previous rule. One difference, according to the statement, is that when the general meeting votes on a transaction with a related party who is also a shareholder of the company it will disregard shares belonging to the party with whom the transaction is being conducted. Another difference is that the statement will not be applied to transactions covered by the so-called Leo rules in chapter 16 of the Companies Act. This means, among other things, that there is no longer an explicit requirement in such related party rules to produce an appraisal or fairness opinion as a basis for the meeting's resolution. Other differences exist as well.

Since the statement was issued, the Council has received several queries about its details and the applicability of planned transactions. In one instance the Council established, on its own initiative, that it does not apply to cases where a related party transaction is conducted within the framework of a public takeover offer, i.e., if a company covered by the statement offers to take over another company and within the framework of the offering buys shares in the target company from someone who is also a major shareholder of the bidding company, the statement does not apply.

In another statement in 2012 that was not made public, the Council addressed a cross-border merger where a foreign company was set to be absorbed by a listed Swedish company. Similar to what it had already stated a few years earlier, the Council felt that it could not place any requirements on such a decision over and above what is stated by law in the transferring company's homeland.

A confidential statement raised the issue of a change in marketplace for a company whose shares were traded on a regulated market. The Council usually requires the new marketplace in such cases to have a sophisticated trading and information system. It should be noted that this is not a criticism of marketplaces which do not offer daily trading and instead apply other arrangements. Such marketplaces often play a significant role, especially for capital procurement by companies with limited liquidity in their shares, and do not necessarily raise questions about stock market practices.

Of the 31 statements issued in 2012, 24 have been made public to date. Statements that are not 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 applicant 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, more than three quarters of all statements are now public.

The Council's aim is to maintain fast response times. In cases handled by the Chairman, the Council generally announces its decision the day after the final petition is submitted. Even in 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. None of the Council's rulings in 2012 were appealed.

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 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.

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