

## **The Swedish Securities Council's operations 2007**

*The year 2007 was again distinguished by the high level of takeover activity, but the Swedish Securities Council also issued statements on other topics. Nearly a third of the cases were delegated by the Swedish Financial Supervisory Authority.*

### **The Swedish Securities Council**

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 SRS (the institute for the accountancy profession in Sweden), the Swedish Association of Listed Companies, the Institutional Owners Association for Regulatory Issues in the Stock Market, OMX Nordic Exchange Stockholm AB, the Stockholm Chamber of Commerce, the Swedish Bankers' Association, 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 listed on a regulated market 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 regulated market in Sweden, to the extent such actions must comply with Swedish rules.

The Council may also offer, to the extent it feels is appropriate, to issue statements on topical issues concerning companies listed on MTF (Multiple Trading Facilities) in Sweden.

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, though 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. The basic provisions of such offers can be found in the Act on Public Takeover Offers on the Stock Market (2006:451) ("the Takeover Act"). A later act (2007:568) amending the Takeover Act requires stock exchanges to maintain more detailed rules on such offers.

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 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 representatives of the Swedish business community. It consists of a Chairman, Vice Chairman and 22 other members. The Council has a secretariat led by the Executive Director.

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 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's Chairman for many years, Supreme Court Justice Johan Munck, stepped down on 1 July 2007. At that point, the Council's previous Vice Chairman, former Supreme Court Justice Bo Svensson, assumed the role of Chairman, while Supreme Court Justice Marianne Lundius took over as Vice Chairman of the Council.

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

In 2007, the Council issued a total of 44 statements. The majority were issued as a result of petitions from companies or their advisers. One statement was issued on the Council's own initiative and considered by a plenary session (2007:05). One statement was issued at the encouragement of the Financial Supervisory Authority (2007:10). Two statements were issued after a petition from OMX Nordic Exchange Stockholm AB (2007:13 and 24).

Just over a third, or 16, of the statements, were delegated by the Financial Supervisory Authority.

Of the 44 statements, 12 were considered by committee, 1 by the Chairman and the remaining 31 by the Executive Director.

Practically all the petitions pertained to impending or ongoing public takeover offers or changes in ownership which could necessitate mandatory bids. As was the case in 2005 (Skandia) and 2006 (Scania), one specific takeover bid (OMX) generated several statements in 2007.

Just over half of the Council's statements in 2007 involved exemptions from the takeover rules. Ten cases concerned exemptions from the rules on mandatory bids, while the others involved exemptions, for example, from having to offer to buy financial instruments other than shares or from the four-week respite to prepare offer documentation. The basis for granting exemptions was largely the same as in previous years.

A plenary session of the Council issued a statement on mergers (2007:05). Since then, a draft law on the topic has been presented and a bill may be offered in the spring of 2008. The statement should now be read in this light.

In a follow-up to a statement on takeover defense measures issued in 2006 (2006:55), the Council found reason to comment on the cost of such measures (2007:10).

The Council also returned to the question of what constitutes an acceptable price difference between unlisted class A shares (high vote) and listed class B shares (low vote) in a public takeover. In the case in question, the bidder had offered 10 percent more for A shares than B shares. The Council felt that the bidder had followed the takeover rules and acted in accordance with what had been and still are – until this changes through regulatory amendments, the Council's statements or established practices in the market – considered good practices in the Swedish stock market (2007:24; see previously 2004:18 and 19 and 2005:13).

In connection with the takeover offers for OMX, the Council considered a couple of issues bearing on the basic principle of the equal treatment of a target company's shareholders (2007:30 and 32).

Another problem that the Council saw several examples of during the year concerns the methods a bidder can use to create special incentives to retain key persons in a target company after an acquisition (see, e.g., 2007:15).

Among the cases in 2007 that did not involve public takeovers, it is worth noting a couple of statements involving incentive programs (see, e.g., 2007:07 and 27).

Of the 44 statements issued during the year, 38 were made public. In general, confidential statements usually concern deals that have been planned but not yet implemented. In certain cases, it is obvious that the deal will not be implemented. The Council will always seek, after the fact, to obtain the petitioner's permission to release these statements anonymously.

The Council strives to remain accessible and respond promptly to queries. In more than half of the cases in 2007, it announced a decision the same day or the day after a final petition was submitted. Most of the cases that required longer consideration involved another party that was offered an opportunity to respond. In 14 of the 16 cases that were delegated by the Financial Supervisory Authority, a response was issued in less than 1 day, and in the two other two cases, 3 and 5 days.

None of the Council's rulings in 2007 were appealed.

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

As in previous years, a significant part of the Swedish Securities Council's operations consists of consultations by telephone or e-mail. The Council typically handles 3-5 telephone or e-mail consultations per day. Periodically, especially in connection with the particulars of the OMX takeover, the number of daily consultations was much greater.

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, day or evening. Queries are often fairly complex. Some consultations are related to what later becomes a formal statement, though the majority never do. The rulings made in consultation are not binding for the Council's secretariat, Chairman or other members in the event a formal petition is later filed. The details of consultations are not made public by the Council, and the decisions it issues may not be publicly cited.

*Rolf Skog*  
*Executive Director*