

The Swedish Securities Council

Annual report

2014

Increased stock market activity in 2014 was clearly reflected in the Swedish Securities Council's operations. The Council issued more than one statement a week, decided on an unusually high number of cases in council (i.e., not by the Chairman or the Director General alone) and handled a large number of consultations. The majority of the statements dealt with public takeover offers or mandatory bids.

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

Through its statements, advice and information, the Swedish Securities Council promotes best practices in the Swedish stock market. The Council is managed by a non-profit association – the Association for Best Practices in the Securities Market – with nine members: the Swedish Association of Listed Companies, FAR (the professional institute for authorized public accountants, et.al.), 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 Insurance Sweden.

The Council may examine any action by a Swedish limited company with shares admitted to trading on a regulated market (the main markets of Nasdaq Stockholm or Nordic Growth Market NGM) or by a shareholder of such a company if the action relates to or may be of importance to a share in such a company. The Council may also examine such actions by foreign companies with shares admitted to trading on any of the above-mentioned exchanges, insofar as such actions are governed by

Swedish rules. Finally, the Council may try matters relating to companies listed on a multilateral trading facility (MTF) in Sweden.

The Council may make statements on its own initiative or at the instigation of third parties. The Council decides itself whether or not to try a matter brought before the Council. As part of that process, the Council takes into account whether the issue at hand is a matter of principle or is otherwise of practical importance to the market. The Council will also take into consideration whether the issue is, or is expected to be, examined elsewhere.

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

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

The Chairman or the Director General may give rulings 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 Director General (undersigned) and a part-time rapporteur (Ragnar Boman).

A significant share of the Council's work concerns takeover bids. In this area the Council principally applies the Swedish Takeovers Act 2006 ("the Takeovers Act") and other statutes but also rules established through self-regulation, primarily the Takeover Rules issued by Nasdaq Stockholm and NGM as well as corresponding

Takeover Rules for companies with shares traded on certain multilateral trading facilities.

In its capacity as a supervisory authority and as set out in the Takeovers Act and the Financial Instruments Trading Act 2007, the Swedish Financial Supervisory Authority has delegated to the Council the authority to take certain decisions which, according to the Takeovers Act, rest with the supervisory authority. This applies, for example, to decisions on the interpretation of, and exemptions from, the rules on mandatory bids. Moreover, Nasdaq Stockholm and NGM have delegated to the Council the authority to interpret and try applications for exemptions from their Takeover Rules.

The Council's international contacts, etc.

The Council's activities involving public takeover offers are largely modeled on the UK Takeover Panel. The Council's secretariat maintains continuous contact with the Panel and similar organizations in other countries such as Germany, France and Luxembourg.

In May 2014 the Takeover Panel hosted *The International Takeover Regulators' Conference*. The Council was represented by the secretariat and one member. The secretariat also held other meetings with the Panel during the year.

Together with the Financial Supervisory Authority, the secretariat participates in a continuous European exchange of knowledge on public takeover offers through the Takeover Bids Network (TBN) within the European Securities and Markets Authority (ESMA).

During the year the secretariat also held several meetings with officials from the EU Commission to provide information on various aspects of the practical application of mandatory bid rules.

In a different capacity, the undersigned also participated in the OECD's Corporate Governance Committee, where corporate governance issues, including public

takeover offers, are regularly discussed by a global membership. The Committee held two meetings during the year.

The Council's statements

Since its start in 1986, the Swedish Securities Council has issued over 730 statements. In 2014 it issued 55, slightly more than 2013 and nearly twice as many as 2012. The increase coincides with the higher level of activity in the stock market in general and higher level of activity in the market for corporate control in particular. The vast majority, 50 of the 55 cases, dealt with public takeover offers, including mandatory bids.

There were also a significant number of fairly complicated cases, which is reflected by the fact that one third of cases were dealt with in council (i.e., not by the Chairman or the Director General alone). An average of seven members attended the Council's meetings. The remaining cases were considered by the Chairman.

Of the 55 cases in 2014, 17 were delegated wholly or in part by the Financial Supervisory Authority. The majority of these cases involved interpretations or exemptions from mandatory bid rules.

With regard to mandatory bids, the Council normally no longer gives temporary exemptions. Due to extraordinary circumstances, the Council made an exemption in one case during the year (Council Statement 2014:20) and granted one owner a six-month deadline to reduce its shareholding in an orderly fashion to less than three tenths of the votes for all shares in the company. The Council also ruled that if the owner still controlled at least three tenths of the votes for all shares when the deadline expired, the mandatory bid would have to be announced *immediately*. In a subsequent statement (Council Statement 2014:44) regarding the same holding, the Council stated that if the owner in question were to make a voluntary offer in compliance with the rules on mandatory bids before the six-month deadline expired, the mandatory bid requirement would be considered to have been met.

In a statement not made public, the Council dealt with a situation where a mandatory bid would be triggered by a transaction that would not provide a relevant reference point to determine the lowest permissible price in the mandatory bid. In this case the mandatory bid would be triggered by the bidder exercising a call option. It was obvious, the Council stated, that the price the option holder would have paid for the share, by exercising the option, did not have to correspond at all to what the holder would have paid for the share in a non-option-based transaction. Consequently, the price in question could not serve as a basis to determine the lowest permissible bid price. Instead, the so-called 20-day rule in Section II.21 of the Takeover Rules was applied.

Several cases during the year were brought by competing bidders, e.g., the fight for control of ReadSoft (Council Statements 2014:37 and 38).

The most spectacular bidding war of the year from the Council's standpoint was for control of two companies, Shelton Petroleum and Petrogrand, which offered to take over each other and in a number of petitions to the Council asked for clarification of the Takeover Rules and challenged each other's actions.

In all, the Council ruled on no less than nine petitions relating to Shelton and Petrogrand. With one exception, the petitions were comprehensive and of a nature that the parties had to be given the opportunity to comment on each other's submissions. A considerable part of the Council's work in the first half of 2014 involved this bidding war.

It was partly against this backdrop, but primarily for the benefit of the companies' shareholders and the confidence in the stock market that the Council, after seven cases, took unprecedented action and in a letter to both parties stated that their actions exceeded the limit of what could be considered acceptable for listed companies, that the ongoing conflict and the parties' actions had damaged confidence in the stock market, and that the damage could worsen if the conflict continued.

The Council explained that it had to seriously consider whether it could continue issuing statements at the request of the parties and therefore asked them whether a deal was in sight to resolve the conflict.

A couple of weeks later a settlement plan was presented and just before year-end the companies announced that they had reached a deal; they would sell their shareholdings in each other and go their separate ways. In February 2015, however, the chances of a deal seemed to have diminished after Shelton's general meeting voted against it and Shelton by then had a new principal owner.

On 1 July 2014 the Takeover Rules were supplemented with special rules on statutory mergers, amalgamations, schemes of arrangement, etc. The general meeting of a listed company that is a target of a statutory merger or similar must approve the transaction by at least a two-thirds majority, excluding the votes of the acquiring company. Moreover, most of the general provisions of the Takeover Rules apply to the merger transaction, as if it were a takeover bid. The new rules pertain to both Swedish and foreign companies listed in Sweden.

In Council Statements 2014:34 and 36, which dealt with a change in domicile through a statutory merger, the Council stated that the new decision-making procedures for statutory mergers and similar transactions are designed to protect the target company's shareholders. This interest in protecting shareholders did not apply, the Council stated, in cases where the ownership structure essentially remains unchanged after the transaction. In such instances an exemption can be offered.

A recurring topic in the petitions to the Council concerns the principles for delisting from a marketplace. In Council Statement 2014:33, in which a company listed on Nasdaq Stockholm requested a delisting, the Council pointed to a number of rules which, in addition to the Companies Act, are in place to protect shareholders in a listed company and stated that a request to delist should be preceded by careful consideration by the company's board of directors how the intent of these rules can be fulfilled. In a similar vein, the Council felt in this instance that the board should ensure that the company's shares could still be traded on a marketplace after the last listing date on the stock exchange.

In a statement issued three years ago on its own initiative, Council Statement 2012:05, the Council addressed conflicts of interest in certain related party transactions. Since then the Council, as mentioned in previous activity reports, has received several queries regarding the 2012 Statement. This was true in 2014 as well, and the Council issued a couple of statements on the topic, none of which have yet been made public. In one of them, the Council found that the 2012 Statement should also apply to the licensing of intellectual property.

In another case the Council dealt with the transfer of an asset representing just over 1 percent of the transferring company's market value and nearly 2 percent of the group's assets. Because it specifically involved a financial asset of little importance to the company's operating profits or revenues and the transfer did not provide any undue benefit to the counterparty (cf. Council Statement 2012:30), the Council felt, in its overall assessment, that the transfer was immaterial in the sense referred to in the 2012 Statement and the requirements of the 2012 Statement thus did not need to be complied with.

In its Annual Report for 2013, the Council cited the main elements of a non-public statement on the applicability of the so-called Leo rules to associated companies. In its statement the Council noted that if the ownership structure of an associate company is such that a decision on share issues to employees in accordance with the Leo rules is warranted from the standpoint of best practices in the stock market, this is necessary only if the share issue in question is of material significance to the "group" and its shareholders. The Council applied the same view in a statement in 2014 regarding planned share transfers to executives of an associate company or subsidiary of an associate company.

On 21 November 2014 the Swedish Corporate Governance Board issued a recommendation on best practice for private placements. The recommendation applies to placements announced on or after 1 January 2015. Together with certain statements from the legislator, the recommendation in certain respects changes the conditions on which the Council earlier based certain statements on private placements. The Council intends to revisit this.

In principle, the Council's statements should be made public. Around 80 percent of all statements and about 85 percent of the statements that have been issued in the last ten years have been made public to date. The statements which have not been made public as a rule pertain to transactions that were planned but not completed. In several cases it is obvious that the deal will not be finalized as planned, since the Council's decision in some critical respect went against the petitioner. Nevertheless, the Council tries, after time has passed, to obtain permission to make such statements public as well, sometimes in anonymous form. Over three fourths of the 55 statements in 2014 have been made public to date.

The Council's aim is to be accessible and quickly respond to queries. The secretariat can be reached seven days a week for consultations and formal cases. In cases handled by the Chairman, the Council generally gives its ruling the day after the final petition is submitted. Even with cases examined by the Council, response times are usually short. During the year response times ranged from one day to a couple of weeks (in cases where the parties were given time to respond to each other's submissions). One of the cases was submitted on the evening of the St. Lucia's Day, December 13. The Council met a day later, on Sunday evening, and a statement was expedited just before midnight.

The Council's decisions in matters dealt with by the Council as part of its statutory tasks delegated by the Financial Supervisory Authority can be appealed to the FSA. None of the Council's rulings in 2014 were appealed.

Consultations with the Swedish Securities Council

The Swedish Securities Council's activities also include 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 any regard to previous consultations. Therefore, the details of consultations are not made public by the Council, and its decisions cannot be publicly cited with reference to the Council.

The year's last consultation took place on the afternoon of New Year's Eve.

Rolf Skog

Director General