7. Non-Compliance

Providing Financial Services without a licence and other breaches of the WFD’s provisions may result in criminal or administrative sanctions, including substantial fines, the imposition of cease-and-desist orders subject to a penalty (last order deeming) or licence withdrawal.

SWITZERLAND

SWX Swiss Exchange Rules
On Ad Hoc Publicity Revised

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The provisions on ad hoc publicity are of great significance for listed companies as issuers. Recently, the ad hoc publicity provisions of the SWX Swiss Exchange were amended. Although some of the amendments simply reflect the development of the SWX Swiss Exchange over the last few years, others effect material changes to issuers.

The provisions concerning ad hoc publicity are contained in Section 72 of the Listing Rules [LR] of the SWX Swiss Exchange. The amended version of LR Section 72 now reads as follows:

In order to trigger an ad hoc publicity obligation, the price-sensitive facts must have occurred in the issuer’s sphere of activity. If this is not the case, there is no disclosure obligation.

An issuer is, in principle, obliged to inform the market about all potentially price-sensitive facts which occur in its sphere of activity and which are not publicly known. The SWX Swiss Exchange defines the term “facts” broadly. Mere rumours, ideas, planning alternatives and intentions are not deemed to be facts.

While potential facts are assumed to be “true” and may lead to an increase in the share price, they are not considered to be facts. Hence, facts are considered to be themselves. They should be kept in mind, in particular, with regard to forecasts about future earnings and results.

In order to trigger an ad hoc publicity obligation, the price-sensitive facts must have occurred in the issuer’s sphere of activity.

The issuer must inform the public once it has knowledge of the main aspects of potentially price-sensitive facts. In case if senior management or non-executive members of the board of directors know the main elements of the potentially price-sensitive facts. However, if key individuals are unaware of certain facts due to an inadequate or ineffective communication structure, they are not freed from the duty to publish the ad hoc information. In such a case, the issuer is likely to have violated the provisions on ad hoc publicity.

Form Of Disclosure

Under LR Section 72.4, the disclosure has to be made in a manner ensuring equal treatment of all market participants. In particular, disclosures are not permitted to result in significance price movements of the issuer's securities. The provisions dealing with ad hoc publicity do not fix a specific percentage threshold. Price-sensitive facts are deemed to be significant if an average market participant would base its decision to buy or sell the issuer's securities on such facts.

The following examples may constitute potentially price-sensitive facts and are therefore likely to be subject to ad hoc publicity:

- changes in corporate structure; mergers, takeovers, spin-offs, or restructuring;
- changes in capital; capital increases or decreases as well as share buyback programmes;
- major personnel changes; change among the members of the board of directors, management board or other key personnel as well as a change of auditors;
- changes in the structure of business, new sales or strategic alliances, new important products, withdrawal of

азвається на stock exchange in their country of origin. However, the provisions are applicable to issuers who are not domiciled in Switzerland. Swiss-listed equity and debt instruments listed in Switzerland as well as on another stock exchange outside their country of origin.

Court of Appeal

The ad hoc publicity information must be distributed to:

- the SWX Swiss Exchange (at least 90 minutes ahead of general release to the public if published during trading hours);
- at least two electronic information systems widely used by major market participants (for example, Bloomberg; Reuters; Telekurs);
- at least two Swiss newspapers with national circulation;
- all interested parties upon request (known as the “push system”); and
- the issuer’s website (where the information must remain available for 20 years in the “pull system”).

The issuer is obliged to provide a service on its website that allows interested parties to receive free and timely notification of potentially price sensitive facts via email (the "push system"). Furthermore, when ad hoc information is published, it must

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simultaneously be made available on the issuer’s website for at least two years (the pull system).

Postponement Of Disclosure
In some situations, the issuer may have an interest in delaying the disclosure of facts which are subject to ad hoc publicity. A postponement of disclosure is permissible if the following three conditions are satisfied:

- the facts are based on a plan or decision of the issuer;
- the dissemination of the facts is likely to prejudice the legitimate interests of the issuer; and
- the issuer guarantees complete confidentiality of the facts.

The possibility of postponement of disclosure is particularly important when there are corporate crises, mergers and takeovers. However, as postponement of the notice is admissible only as regards facts based on a plan or decision of the issuer, it is not viewed as admissibility in the event of a loss of capital or over-indebtedness. Postponement ought to be permissible in these situations as well, because immediate disclosure to the public would in most cases make any restructuring efforts obsolete. This is particularly true if the issuer plans to initiate insolvency proceedings or seeks to postpone bankruptcy. However, the admissibility of postponement of the disclosure in a corporate crisis must be carefully examined in each case. Another less frequently used right to ad hoc publicity is a planned mass leak. The benefit of a planned mass leak may not only be a price-sensitive fact, but it may also trigger a consultation procedure. Taking the above criteria into account, the disclosure of this fact may be postponed. However, there is a considerable risk of a leak because employees or their representatives may be informed about the planned leak. It is therefore recommended to inform the public about the basic decision by the time the consultation procedure has started. Finally, as outlined above, postponement of disclosure is no longer permissible if the relevant information has issued. In such cases, the issuer must immediately inform the public in accordance with LR Section 72. In the event of postponement of disclosure, it is recommended that the relevant facts are disclosed to only a very small circle of privileged people (the so-called principle of people who are asked to sign confidentiality agreements. Because the public must be informed immediately after an information leak, a continuously updated press release should be kept on hand. In the case of stock exchange, the SWX Swiss Exchange must be notified immediately by phone, provided that the leak has occurred during trading hours.

SPAIN

Corporate Governance Code Proposed For Listed Companies

MADRID In an attempt to combine national and international corporate ethics standards, the Comisión Nacional del Mercado de Valores (CNMV) January 19, 2006, proposed a set of corporate governance recommendations for companies listed on the Spanish market.

The proposed Unified Code of Recommendations on the Governance of Listed Companies, which incorporates recommendations from the European Union and other sources, limits its

Recommendations Come From Variety Of Sources

With Order ECO/372/2000, the former Popular Party government commissioned the CNMV to elaborate a code of

corporate conduct based on recommendations of the social dialogue co-legislative process (1999) and the Agenda Report drafted in the aftermath of the 2001 financial scandal surrounding the failed brokerage house Gescantors (see WSJL, October 2001, page 8).

The current Socialist-led government July 25, 2005, created a special working group to help the CNMV update and integrate lessons learned since publication of the Agenda and Aldina documents into a single, unified code that also reflects recent recommendations from the European Commission.

Among these recommendations are Recommendation 2004/191/EC fostering an appropriate regime for the remuneration of directors of listed companies and Recommendation 2004/62/EC on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board.

Also considered were recommendations of the Basel Committee on Banking Supervision, included in the document "Enhancing Corporate Governance for Banking Organizations."

The CNMV proposal is open for public comments until February 28, 2006. The definitive version of the code is scheduled to be approved by March 31, 2006.

The text of the proposed code is available, in Spanish, at www.cnmv.es/cvmv/dias/decetiv/CUFD.pdf


SWEDEN

E.U. Directive On Takeover Bids Would Be Implemented By Proposal

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The Committee initially notes that mergers and acquisitions through public offerings for shares — takeover offers — are commonly occurring in business and industry in Sweden, in other European countries, and elsewhere in the world. In Sweden, the 10-year period between 1995 and 2004, an aggregate of 358 takeover offers was made for companies with shares listed on the Stockholm Stock Exchange, the Nordic Growth Market (NGM), or Aktietorget, a smaller list. A total of 29 of these offers led to an acquisition of the target company. In somewhat different terms, an average of 20 listed companies was acquired each year in Sweden in the same period.

In a number of countries, rules regarding takeover offers have emerged gradually over a number of years. The first set of such rules, the U.K. City Code on Takeovers and Mergers, was developed at the end of the 1960s within the framework of self-regulation in the British stock market. Generally based on the U.K. regulations, takeover laws have thereafter been introduced in the majority of other European countries. At the point when the E.U. Takeover Directive was adopted, these laws had many common features, but also clear differences.

Swedish Approach

Sweden was one of the earliest adopters of takeover rules among countries outside the United Kingdom. Briefly, takeover rules were promulgated by the Swedish Industry and Commerce Stock Exchange Committee (the NBB) in 1971 in the form of recommendations. The rules have subsequently been developed and adapted to the needs of business and industry and in the light of international developments, and have been introduced into the listing agreements of the Stockholm Stock Exchange, the NGM, and Aktietorget.

New and extensively revised takeover rules issued by the NBB came into force on March 1, 2003. Later in 2000, the NBB again amended the takeover rules, among other things to reduce the threshold for mandatory offers from 40 percent to 30 percent, as well as to introduce a requirement under which the bidder must make an explicit statement regarding the bid for all shares in the company. The NBB rules and rulings by the Swedish Securities Council.

The substantive contents of the NBB rules are now materially similar to the corresponding rules in the Takeover Directive. However, the Directive also contains certain provisions that lack direct counterparts in the NBB rules.

Implementing The Takeover Directive

After many years of negotiations, in 2004 the E.U. member states and the European Parliament agreed on a harmonisation directive for the regulation of takeover offers: the Takeover Directive (see WSJL, January 2004, page 4). The purpose of this directive is, in short, to be the protection of the interests of the holders of securities of companies governed by the law of a member state when these companies are subject to a takeover bid or to a change in control and at least one of their securities are admitted to trading on a regular market. The directive is a minimum directive, meaning that the member states are free to prescribe stricter rules than the directive provides.

The Committee's task has been to propose how the Takeover Directive may be implemented in Swedish law. The work has been carried out in close consultation with the corresponding committees in other Nordic and European countries, primarily the United Kingdom, Germany, and France.

The proposals made by the Committee can be summarised as follows:

Combination Of Rules

The Committee's proposal for future takeover regulation in Sweden is based on a combination of law and stock exchange rules. The main rules will also in the future consist of the NBB's