

**NBK**  
**RECOMMENDATIONS**

**RECOMMENDATIONS ISSUED BY  
THE NÄRINGSLIVETS BÖRSKOMMITTÉ, NBK  
(THE SWEDISH INDUSTRY AND COMMERCE  
STOCK EXCHANGE COMMITTEE)**

**FOURTH EDITION**

**TRANSLATED BY  
DAVID CANTER**

**FÖRETAGSJURIDIK**  
*NORD & CO AB*

Distributed by:

Jure AB, Artillerigatan 67, 114 45 Stockholm, Sweden

Fax: +46 8 662 00 86, Tel: +46 8 662 00 80, <http://www.jure.se>

In the same series of publications:

OTC och börsmonopolet, R Ohlsson, 1983

“Börsnoterad” vad är det?, G Nord, 1986

Prospektansvaret – En probleminventering, W Luning, 1986

Börsstopp, D Bonnier, 1987

Börsregler, 4:e uppl., 1991

Rättspedagogik – finns det?, A Danielsson, 1993

Setting up a Business in Sweden, R Skog, 1994

Guide till aktiemarknadsrätten, B Kristiansson, 1996

Svenska ägarolicies, B Kristiansson, 1997

The Swedish Insider Legislation, 2001

NBK Recommendations

Edition 4:1

ISBN 91-7223-173-4

© 2003 FöretagsJuridik Nord & Co AB

All rights reserved. No part of this publication may be reproduced, stored in retrieval system or transmitted in any form by any means electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of the publishers.

## **PREFACE**

In August 1999 we published the third edition of the English translation of the Recommendations issued by the Näringslivets Börskommitté, NBK (The Swedish Industry and Commerce Stock Exchange Committee). We have subsequently published two supplements (2000 and 2002).

New Takeover Recommendations were adopted in January 2003, following an extensive review. These Recommendations apply as from 1 March 2003. In view of the key role played by the NBK Takeover Recommendations in the Swedish self-regulation process, we have considered that publication of a new edition of English translations of all the current Recommendations is desirable.

It should be pointed out that all the Recommendations published in this volume (except the Prospectus Recommendations (1999)) are of a mandatory nature for all companies whose shares are listed on the Stockholmsbörsen (Stockholm Exchange) since the Recommendations form part of the Stock Exchange Listing Agreement.\*)

---

\*) This also applies for companies whose shares are listed on another Swedish stock exchange (there is currently none) or on a Swedish authorized market place.

David Canter, a certified public translator, has translated the Recommendations. His translation has been discussed in some detail by an editorial committee, which also included Leif Thorsson, Gunnar Nord and Wilhelm Lünig. Wilhelm Lünig has editorial responsibility for this publication.

Appendix 2 of the Disclosure Recommendations (1994) has been reprinted and amended on the basis of the English translation of the Swedish Financial Instruments Trading Act (published by the Swedish Securities Dealers' Association, 1993) with the kind permission of the publishers.

Publication of this edition has been generously sponsored by The Swedish Industry and Commerce Stock Exchange Committee and the Stockholm Exchange.

Stockholm, February 2003

FÖRETAGSJURIDIK NORD & CO AB

Gunnar Nord

<b>TABLE OF CONTENTS</b>	<b>Page</b>
PREFACE .....	3
TABLE OF CONTENTS .....	5
RECOMMENDATIONS CONCERNING THE DISCLOSURE OF ACQUISITIONS AND TRANSFERS OF SHARES, ETC (1994) .....	7
RECOMMENDATIONS CONCERNING INFORMATION PRIOR TO THE ELECTION OF THE BOARD OF A STOCK MARKET COMPANY (1994) .....	23
RECOMMENDATIONS FOR PREPARING PROSPECTUSES (1999) .....	31
RECOMMENDATIONS CONCERNING THE PURCHASE AND SALE OF A COMPANY'S OWN SHARES (2000) .....	79
RECOMMENDATIONS CONCERNING INFORMATION ABOUT BENEFITS FOR SENIOR EXECUTIVES (2002) .....	101
RECOMMENDATIONS CONCERNING PUBLIC OFFERS FOR THE ACQUISITION OF SHARES (2003) .....	113



**THE NÄRINGSLIVETS BÖRSKOMMITTÉ, NBK**

RECOMMENDATIONS CONCERNING THE DISCLOSURE OF  
ACQUISITIONS AND TRANSFERS OF SHARES, ETC (1994)

The Stockholm Chamber of Commerce  
The Federation of Swedish Industries

## **THE NÄRINGSLIVETS BÖRSKOMMITTÉ (NBK) RECOMMENDATIONS CONCERNING THE DISCLOSURE OF ACQUISITIONS AND TRANSFERS OF SHARES, ETC (1994)**

### **Introduction**

The Swedish Industry and Commerce Stock Exchange Committee (NBK) issued recommendations in 1983 concerning the Disclosure of the Acquisition of Major Blocks of Shares, etc. The recommendations were based on the corresponding regulations in Great Britain. The NBK Recommendations, which were revised in 1984 and 1991, constitute part of the contract entered into between the Stockholm Stock Exchange (Stockholms Fondbörs AB) and companies whose shares are listed on the Exchange.

Special statutory provisions concerning the disclosure of the purchase and sale of shares were introduced in 1993 in Chapter 4 of the Financial Instruments Trading Act (1991:980). These provisions are based on the minimum requirements imposed by an EC Directive of 12 December 1988 "on information to be published when a major holding in a listed company is acquired or disposed of".

The NBK has reviewed the 1991 Recommendations in the light of this legislation. In this connection, the NBK has thoroughly analysed and discussed the possibilities of revising the Recommendations with a view to basing them on the statutory provisions and to supplement such provisions. There are, however, fundamental differences between the statutory provisions and the Recommendations as regards the field of application, the point at which disclosure should be made and the rules for consolidation. In view of this, it would appear that the revisions envisaged by the NBK can only be implemented if the Recommendations are amended to a very significant extent or supplemented by regulations which would be extremely complex, and thus very difficult to apply in practice. It is clear that the principles embodied in the Recommendations are well established in the stock market and are thus of considerable importance. In view of this, the possibility of relying exclusively on the statutory provisions would appear to be ruled out since this would



imply an unacceptable reduction of the level of information in comparison with what has applied in the past. The NBK has therefore considered it appropriate that the Recommendations should apply in parallel with the Act, or on a separate basis. The existence of two parallel systems of rules, which apply to the same phenomenon, is, per se, not practical from the stock market point of view. However, the NBK considers that the provisions under the Act will only be exclusively applicable on relatively few occasions and that, on balance, the continued application of the Recommendations is justified as an autonomous body of rules.

In this context, it should be emphasized that this means that the statutory provisions must be applied on a separate basis. As already mentioned, the statutory provisions<sup>1</sup> differ in significant respects from the Recommendations. The most important differences are as follows:

**The Act**

- \* only requires disclosure of a change in number of votes;
- \* disclosure is to take place when a few percentage thresholds are passed;
- \* calculation of percentage thresholds is exclusively based on shares issued by the company<sup>2</sup>;

**The Recommendations**

- \* also require disclosure in the case of a change in the proportion of the share capital;
- \* disclosure is to take place when a large number of percentage thresholds are passed;
- \* shares which may result from the conversion of convertible debt instruments, etc are included in the basis for calculating percentage thresholds;

---

<sup>1</sup> Statutory provisions, as amended per 1 June 1994 (not included here).

<sup>2</sup> See Bill 1991/92:113 p 220 et seq.

\* reporting is confined to shares; however in certain cases other shares held are also taken into account; shares, e.g. convertible

\* apply - in addition to shares - to several other types av financial instruments which are equated with debt instruments;

\* notification of acquisition or transfer is to be made within one week to the company and to the stock exchange; if the stock exchange does not publish the information within a certain period, the company shall do so.

\* the acquirer or transferor is to disclose acquisition or transfer at not later than 09.00 hours on the next stock exchange working day.

The basic structure of the NBK Recommendations, for example the concept of various percentage thresholds, has not changed since 1983 when the first Recommendations in this field were issued. The NBK considered that there is some justification for changes in certain respects. The market has changed significantly since 1983. Turnover in the stock market is appreciably higher and a large number of financial instruments have been introduced, many of which have been covered in the course of time by NBK Recommendations. As a result, the disclosure of acquisitions or transfers of shares, etc is occurring on a much greater scale and intensity than in the past. Furthermore, the NBK Recommendations are now to be applied in parallel with the statutory provisions, and this represents an additional increase in the complexity of the rules concerning information.

In view of these circumstances - and since in addition the Recommendations go much further in many respects than the rules which apply in most other countries - the NBK has considered it reasonable to modify the current Recommendations in relation to the previous Recommendations as regards the scale of a change in holdings of financial instruments stipulated as a threshold for an obligation to disclose information.

The previous Recommendations meant that information was to be supplied if the holding changed by two per cent or more of the total number of shares or votes in the company, in relation to previously disclosed holding. In this respect, the new Recommendations involve requirements which are much less far reaching. Under the new Recommendations, disclosure shall be made on each occasion when, as a result of an increase or a reduction, the holding is greater than or less than a percentage which is a multiple of five. This also means that fixed percentage thresholds are introduced.

The other important new feature is that the initial obligation to disclose information occurs when a holding amounts to or exceeds five per cent, instead of the previous threshold of ten per cent.

By reducing the level required for the initial disclosure, parity is achieved with the circumstances which apply in most other European countries. Additional changes have been primarily introduced for editorial reasons or to achieve greater clarity, and they are commented on in the Explanation section.

As in the case of previous Recommendations, these Recommendations do not contain any detailed provisions designed to prevent circumvention. However, this lack of detailed regulation should not lead to any difficulties in applying the rules where the person or entity concerned endeavours to observe the Recommendations, irrespective of whether the transaction occurs directly or indirectly. The Recommendations should thus be interpreted from the perspective of their purpose, that is to say whether they meet the stock market's need for information regarding, on the one hand, changes in influence in companies whose shares are held by the general public and, on the other hand, developments in the interest of major investors in such companies. It should be possible to meet these needs without detailed regulation.

## **Recommendations**

### **I. Area of Application**

1. These Recommendations apply when a physical person or legal entity, Swedish or foreign, acquires or transfers shares in a Swedish company which has shares listed on the Stockholm Stock Exchange (Stockholms Fondbörs AB) or another Swedish stock exchange or authorized marketplace.
  
2. The following are considered to be equivalent to the acquisition and transfer of shares specified in Point 1 above:
  - \* the issue, acquisition, transfer or expiry of call or put options for shares if the option is not standardized and also of purchase rights which provide entitlement to purchase shares;
  
  - \* the issue, acquisition or transfer of futures contracts regarding the purchase or sale of shares if the contract is not standardized.
  
3. The acquisition and transfer of the following are considered to be equivalent to the acquisition and transfer of shares specified in Point 1 above:
  - \* claims with the right of conversion to shares;
  - \* claims with option right to subscribe for new shares;
  - \* option rights to subscribe for new shares;
  - \* share subscription rights.

In addition, the cessation or expiry of the holder's right to acquire shares in accordance with financial instruments indicated in the first paragraph are considered to be equivalent to the transfer of shares specified in Point 1 above.

## **II. Disclosure**

1. A person or entity who has undertaken a transaction specified in Points I. 1-3 above shall disclose the transaction and his holding if:
  - a) the transaction causes the holding to attain or exceed the five per cent threshold and any subsequent percentage which is a multiple of five, up to and including 90 per cent of the total number of shares or votes in the company, or
  - b) the transaction causes the holding to decline and thus fall below any of the thresholds stipulated under a).

The term "holding" covers both the holding of shares and of financial instruments specified in Points I.2 and I.3 above. The term "transaction" also includes the expiry of financial instruments in accordance with Points I.2 and I.3.

If the company has issued financial instruments specified in Point I.3, the shares and votes which would accrue as a result of the conversion or corresponding processes for all such financial instruments issued by the company are to be included in the basis for calculation of percentages.

Disclosure in accordance with the first paragraph shall take place at not later than 09.00 hours on the next stock exchange day after the date of the transaction, by means of a statement to an established news agency and at least one Swedish daily newspaper with national coverage. Disclosure shall be considered to have taken place when the statement has reached the news agency. This statement shall be simultaneously communicated to the stock exchange or authorized marketplace on which the company's shares are listed, and to the company.

The statement shall treat the transaction and the current holding of shares and other financial instruments covered by the Recommendations separately, and shall in this connection indicate the number and type of shares and other financial instruments and what the holding represents in terms of a percentage of the share capital and votes.

2. The holdings of a physical person or legal entity with any of the following relationships with the person or entity undertaking the transaction are to be included when calculating whether the percentage threshold in accordance with Point II.1 has been attained, exceeded or is no longer met:
  - a) a company in the same corporate group;
  - b) a spouse, cohabitant or children who are minors;
  - c) another person or entity with whom agreement has been reached regarding the adoption of a long-term joint position in the form of the coordinated exercise of voting rights regarding the administration of the company;
  - d) another person or entity if, in accordance with an agreement, the transaction takes place in collaboration with such a person or entity.
  
3. An obligation to make a disclosure in accordance with Point II.1 does not apply to a person or entity who has:
  - a) submitted a public offer for the acquisition of shares in the company regarding shares which have been acquired in accordance with such an offer;

- b) acquired shares or such financial instruments as are specified in Point I.3 above by reason of priority under Chapter 4, Section 2, or Chapter 5, Section 2, of the Companies Act (1975:1385).

## **Explanation**

### **I. Area of Application**

The Recommendations are directed to all persons and entities who acquire or transfer shares<sup>3</sup>, irrespective of the legal status or nationality of the acquirer or transferor. This is in accordance with previous Recommendations. As a result of the termination of the stock exchange monopoly, the area of application has now been extended so that it is no longer confined to shares listed on the Stockholm Stock Exchange (Stockholms Fondbörs AB), but also covers shares which may be listed on another Swedish stock exchange or on an authorized marketplace. Companies whose shares are listed in this manner are stock market companies under the Insider Act (1990:1342).

The Recommendations only apply to shares in Swedish companies. This means that acquisitions and transfers of foreign shares which are listed on an exchange or which are otherwise traded in Sweden are not covered. However, shares in Swedish companies are covered, even where such shares are acquired or transferred in other countries.

Share loans are covered by the Recommendations. This means that taking out a share loan and the recovery of shares held as security for loans are to be considered equivalent to the acquisition of shares, while the issue of share loans and the return of shares held as security for loans are to be considered equivalent to the transfer of shares.

In the 1991 Recommendations, the area of application was no longer mainly confined to shares but was extended to cover securities which may at a later stage lead to the acquisition or transfer of shares.

---

<sup>3</sup> When not stated otherwise or when it is not clear from the context, financial instruments equivalent to shares are also included in the concept of shares in these Recommendations, and transactions equivalent to acquisition or transfer are also included in the concept of acquisition or transfer.

In this respect, securities which never or extremely seldom lead to share transactions were exempted. This chiefly applies to standardized securities which are normally disposed of without the acquisition or transfer of shares. In assessing what is meant by the term "standardized", guidance may be obtained from the Securities Market Committee Report (SOU 1989:72) entitled "Värdepappersmarknaden i framtiden" (The Securities Market in the Future). In the report (Part 2, p 345), a standardized option is defined as "an option in respect of which the Stock Exchange, the clearing organization or any other body apart from the parties concerned has decided what is to be subject to trading". There is a corresponding definition for standardized futures. Definitions are described in more detail in the explanation section of the report.

The financial instruments which are considered to be equivalent to shares in the Recommendations have been listed under two headings (Points I.2 and I.3). The financial instruments indicated under Point 2 are related to existing shares, while this does not apply to the financial instruments covered by Point 3. Adjustments of the text in the Recommendations regarding these two Points are of an editorial nature, for purposes of clarification.

The various financial instruments which are covered should not require any further definition. However, it should be noted that there may be several different situations in which disclosure must take place. The following list may be useful when studying Point I.2 in the Recommendations:

The following may be considered to be equivalent to the acquisition of shares as specified in Point 1:

- \* the acquisition of a call option regarding shares if the option is not standardized, and the acquisition of a right to purchase shares;
- \* the termination as a result of expiry of the issuer's obligations under such a call option or right to purchase;



- \* the issue and transfer of a put option regarding shares if the option is not standardized;
- \* the termination as a result of expiry of the holder's rights in accordance with such a put option;
- \* the completion of a futures contract regarding the purchase of shares if the contract is not standardized.

On the other hand, the following may be considered to be equivalent to the transfer of shares as specified in Point 1:

- \* the issue and transfer of a call option regarding shares if the option is not standardized, and the issue and transfer of the right to purchase shares;
- \* the acquisition of a put option regarding shares if the option is not standardized;
- \* the termination as a result of expiry of the issuer's obligations in accordance with such a call option;
- \* the completion of a futures contract regarding the sale of shares if the contract is not standardized.

Disclosure need not be made in certain situations, for example when utilizing non-standardized share options or the conversion to shares of convertible debt instruments if disclosure of acquisition has occurred previously.

## **II. Disclosure**

The Recommendations are applicable to all acquisitions and transfers. In this connection, it makes no difference if the transaction takes place on the stock

exchange or outside the exchange or if it is a question of some other form of acquisition which is not a purchase, for example an exchange or a gift.

For the reasons stated in the Introduction, the provisions regarding percentage threshold which involve disclosure have been changed. The first occasion when information is to be provided occurs at the five per cent threshold, instead of ten per cent.

In previous versions of these Recommendations, disclosure requirements have applied to changes in holdings in relation to previously disclosed holdings of two per cent or more of the total number of shares or votes in the company. As a result of the current amendment, disclosure is now to occur instead where there are changes which involve attaining or exceeding fixed percentage thresholds which are multiples of five. Disclosure shall take place when holdings amount to, exceed or are less than 5, 10, 15, 20, 25%, etc up to 90% of the total number of shares or votes in the company. The basis for calculating percentage thresholds also includes financial instruments specified in Point I.3. We have considered that this is natural in view of the fact that such financial instruments are considered to be equivalent to shares for disclosure purposes.

Disclosure shall take place at not later than 09.00 hours on the next stock exchange working day after the day of acquisition or transfer. This is in order to make such information available when the stock exchange or the authorized marketplace opens. Information must now also be submitted to an established news agency and at least one daily newspaper with national coverage - in addition to the exchange or the authorized marketplace on which the company's shares are listed, and to the company. This means that the information will become public immediately.

The appropriate form for communicating such a statement has not been stipulated. However, in view of the requirements as to the contents, such information should normally be supplied in some form of written statement (fax, telex, telegram, etc). A letter despatched by ordinary post is not adequate. However, such information may be sent by messenger, of course.

**Appendix 1** contains examples of how disclosure statements may be formulated.

The Recommendations contain a list of persons and entities whose shareholdings are to be consolidated. Consolidation is prescribed for corporate group or blood relationships or in certain situations where there is an agreement concerning collaboration. One case of collaboration (II.2 c) refers to situations in which two or more shareholders have agreed on long-term collaboration as regards the exercise of voting rights and in which one of the parties acquires or transfers shares. The other case (II.2 d) refers to a specific share transaction which takes place in collaboration between two or more parties without there necessarily being an agreement of the type mentioned above between the parties to the agreement. One example of this might be an acquisition which is undertaken to secure an ownership position in the company which is desired by one or more of the collaborators.

Two exceptions have been made under Point II.3 as regards the obligation to disclose information.

In the 1994 Recommendations, the exception regarding a person or entity who has made a public offer for the acquisition of shares in the company has been confined to shares which have been acquired in accordance with such an offer. This means that the obligation to make disclosure may occur for acquisitions which lie outside the offer, for example privately or via an exchange.

The exception regarding the acquisition of the financial instruments specified in Point I.3, due to priority for shareholders in accordance with Chapter 4, Section 2, or Chapter 5, Section 2, of the Companies Act, has been clarified in comparison with the 1991 Recommendations.

The 1991 Recommendations contained a further exception which referred to situations which permitted compulsory purchase. This exception has become superfluous as a result of a change in the percentage threshold in Point II.1.

**APPENDIX 1**

Appendix to the Recommendations concerning the Disclosure of Acquisitions and Transfers of Shares, etc (1994) issued by the Näringslivets Börskommitté (NBK)

**EXAMPLES OF DISCLOSURE STATEMENTS**

In order to facilitate the application of the Recommendations, the following suggestions are provided for the formulation of disclosure statements in some typical situations. These examples cannot cover every possible situation.

As stated in the Recommendations, if the company has issued financial instruments specified in Point I.3 above, the basis for calculating percentages shall also include shares and votes which would accrue in the case of conversion or corresponding processes for all such financial instruments issued by the company. In the case of transactions in companies which have issued such financial instruments, the disclosure statement should indicate, in the interest of clarity, that the holding is stated as a percentage of the company's share capital and the number of votes after full conversion, etc. Example 6 shows how a disclosure statement of this kind may be drawn up.

It should be noted that if disclosure statements are to be formulated in accordance with statutory provisions, they must be accompanied by personal identity/organization number information and an address.

**EXAMPLE 1: a single class of shares, with no convertibles or options**

We have today purchased/sold (yesterday purchased/sold) nn shares in AB Y. Thereafter, we own a total of nn shares which together represent kk per cent of the company's total share capital and votes.

**EXAMPLE 2: class A and B shares**

We have today purchased/sold nn class A shares and nn class B shares in AB Y. Thereafter, we own nn class A shares and nn class B shares which together represent kk per cent of the share capital and rr per cent of the votes in the company.

**EXAMPLE 3: acquisition of options**

We have today acquired an option to purchase not later than xx (day) xx (month) 19xx nn class A shares in AB Y. If this option is taken up, we will own nn class A shares and nn class B shares which together represent kk per cent of the share capital and rr per cent of the votes in the company.

**EXAMPLE 4: issue of options**

We have today issued a call option which entitles the holder to purchase not later than xx (day) xx (month) 19xx nn class B shares in AB Y. If this option is taken up, we will own nn class A shares and nn class B shares which together represent kk per cent of the share capital and rr per cent of the votes in the company.

**EXAMPLE 5: consolidation**

We have today purchased/sold nn shares in AB Y. Including the shares held by subsidiary company AB XX (our principal owner and his family, associated company XX, etc), the total holding in AB Y thereafter amounts to nn shares, which represents kk per cent of the share capital and rr per cent of the votes in the company.

**EXAMPLE 6: convertibles, etc**

We have today purchased/sold convertibles with a nominal value of nn million Swedish kronor (nn convertible participating debt instruments, nn stock options, etc) in AB Y. Thereafter our total holding will be nn shares and a nominal nn million Swedish kronor in convertibles, which together represent kk per cent of the share capital and rr per cent of the votes in the company after full conversion (full utilization of outstanding stock options).

**EXAMPLE 7: options which have not been utilized, etc**

Our option to acquire nn shares in AB Y has expired. We own nn shares in the company, which represents kk per cent of the share capital and the votes in the company.

**EXAMPLE 8: share loans**

- a) We have today lent/borrowed nn shares in AB Y. Our holding of shares in the company - excluding shares lent/including shares borrowed - subsequently amounts to nn, which represents kk per cent of the share capital and votes in the company.
- b) We have today recovered/returned nn shares in AB Y which have been subject to lending/borrowing in connection with a share loan. Our holding of shares in the company subsequently amounts to nn, which represents kk per cent of the share capital and votes in the company.

**THE NÄRINGSLIVETS BÖRSKOMMITTÉ, NBK**

RECOMMENDATIONS CONCERNING INFORMATION PRIOR  
TO THE ELECTION OF THE BOARD OF A STOCK MARKET  
COMPANY (1994)

The Stockholm Chamber of Commerce  
The Federation of Swedish Industries

February 23, 1994

### **Recommendations concerning Information Prior to the Election of the Board of a Stock Market Company**

There is no regulation, either in a legal or any other form, nor is there any established practice as to the manner in which arrangements shall be made for the election of the board of a joint stock company. The forms for such arrangements presumably differ considerably between different companies, depending on the ownership structure, the size of the company, its traditions, circumstances at a given point in time, etc. This probably also applies even if the field is narrowed down to stock market companies.

However, in the case of stock market companies it appears to be relatively common for the chairman of the board to take the initiative prior to a company general meeting involving election of the board and to consult major shareholders and other members of the board elected by the general meeting in connection with this matter. In companies with one or a limited number of dominant shareholders, it is not unusual for the process of preparing for the election of the board to be centred on the chairman or major shareholders.

Irrespective for the form for arrangements for the election of the board, the results are frequently not presented prior to the general meeting, when a proposal is normally presented by a shareholder.

The Näringslivets Börskommitté (NBK) has, per se, no reason to propose changes in the different forms for arrangements for the election of the board. This question must be handled in a practical and flexible manner, taking into account the circumstances which may apply in a specific company.



The NBK has, however, found reason to raise this question in order to consider possible recommendations in this area, particularly in the light of current reform endeavours concerning the legislation in the securities and joint stock company sphere.

One proposal which has been raised in this context, both recently and in the past, is the establishment of an electoral or nomination committee to prepare for elections to the board. This proposal has normally been rejected, however.

Amongst other things, it has been pointed out that an electoral committee, which is a normal phenomenon in voluntary associations and which is regarded in this context as a flexible instrument for preparing for the election of a board, is on the whole unsuitable for a joint stock company. In contrast to an association, the right to vote is not dependent on membership - normally one vote per member - but is instead associated with shares in the company. The number of shares may vary significantly in the case of different shareholders, and there may also be a difference in the voting-power of different shares. As a result, one or more shareholders working together may exercise a dominant influence on the general meeting, including the election of the board, in a manner which does not correspond with the situation which applies in voluntary associations. This means that there is a risk that efforts expended in an electoral committee which does not take this factor into account may be futile since the election of the board of a company is in any case not dependent on a majority vote at the general meeting. At the same time, an electoral committee whose composition and proposals merely reflect the prevailing balance of power in the company, can hardly be of any real advantage to the company or to individual shareholders. This would only serve to unnecessarily formalize the electoral process.

The appointment of an electoral committee is another problem. The selection of an electoral committee - based on the voluntary association model - at an annual general meeting and with the task of presenting proposals at the next annual general meeting, would seldom be appropriate in view of the fact that shareholdings can change over time in a manner which is quite different from

that which applies to membership of an association. After a year has passed, the situation may very well be such that the appointment or the composition of an electoral committee no longer corresponds to the wishes of shareholders. It may also be the case that, one year later, shareholders who are represented on the electoral committee in their capacity as shareholders no longer own any shares in the company or have significantly reduced their holdings. Similarly, it is not always appropriate that the board, which is the body which is to be elected, should itself constitute or appoint an electoral committee.

The NBK does not therefore wish to issue general recommendations regarding the appointment of electoral committees in all stock market companies, even if, obviously, there may be individual companies or specific situations in which an electoral committee may be an effective instrument for preparing for an election. In other respects too, the NBK has not considered it meaningful to recommend a standardized nomination process.

Instead, the NBK would like to concentrate on the question of information. As noted above, the different methods of preparing for board elections which currently exist often mean that other shareholders are not informed of the results until the general meeting. According to the NBK, such information should be available at an earlier stage, if possible. This would not only reinforce confidence in the process and in the proposals presented, but would also give shareholders who did not participate in the process better opportunities of preparing to take a decision at the general meeting.

## **RECOMMENDATIONS**

### **1. Area of Application**

**The Recommendations apply to the election of the board of Swedish companies which have issued shares quoted on Swedish stock exchanges or by authorized marketplaces.**

The word of these Recommendations closely follows the definition of a stock market company under the Swedish Insider Act (1990:1342).

## **2. Notification**

**If, prior to a general meeting at which election of the board is to take place, the company is informed by the board or by shareholders of a proposal for the election of the board which is supported by shareholders with holdings corresponding to ten per cent of the votes for all shares in the company, the company shall make public the proposal in good time prior to the general meeting, with notification of the proposer's name or how many votes the shareholders who support the proposal represent. The stock exchange or an authorized marketplace on which the company's shares are quoted shall be informed at the same time.**

**Notification in accordance with the first paragraph will be considered to have taken place when the information has been supplied to an established news agency and to at least one daily newspaper with national distribution.**

**In cases in which the company is aware of a proposal for election of the board, the NBK has considered it most appropriate to make the company in question responsible for providing information. However, the provision of prior information on all proposals concerning the election of the board cannot be required. Such information must be confined to proposals which may be considered to have a reasonable degree of support amongst shareholders. In order to determine whether this is the case, the NBK has considered it appropriate to base assessment on a factor which may be noted objectively, that is to say whether the proposal is supported by shareholders holding shares with at least ten per cent of the voting rights for all the shares in the company.**

Proposals may have originated in various ways, for example because the chairman of the board has taken the initiative and contacted shareholders regarding this matter or because a group of shareholders has discussed the issue. Thus, the company's awareness of the existence of a proposal may be acquired in various ways, but it is essential that the company has become clearly aware of this information if it is to be required to make it public. If it is not clear from the circumstances that the proposal has the requisite support in accordance with these Recommendations and that the members of the board who are proposed are prepared to make themselves available, it is the responsibility of the proposer to clarify matters before the company makes the proposal public.

As regards the question of to what person in the company the proposal for election of the board should be submitted, it is probably natural in most companies that such a proposal should be addressed to the chairman of the board. However, there is nothing to prevent the appointment of another person to fulfil this function.

When a proposal for the election of members of the board is made public, the possibility of assessing what support the proposal has is a matter of interest. Therefore, the company should normally also indicate the name of the proposer or how many votes shareholders who support the proposal represent. It is not necessary, however, to list all the shareholders who support the proposal when it is made public. If the number of votes is stated, this does not necessarily have to take the form of a precise figure, although the information provided must give as clear a picture as possible of the level of support.

The object of prior information is, amongst other things, to enable shareholders to be aware, as far as possible, of existing proposals for board nominations in advance of the general meeting so as to give them a better opportunity of making up their minds. Since the registration of ownership which may be required must be initiated not

later than two weeks before the general meeting, it is desirable that the company is informed of a proposal at an earlier stage.

There may be cases in which the preparatory process has not been completed two weeks prior to the general meeting. In such situations, it must be accepted that information arrives at a late stage or even fails to emerge before the general meeting. There is, however, reason to assume that compliance with these Recommendations will be possible in the majority of cases.

Information should be supplied to an established news agency and to a daily newspaper with national distribution. If there is time in a specific case, it may be appropriate to supply such information in connection with the convening of the general meeting. In view of the fact that the Recommendations involve stock market companies, stock exchanges or authorized marketplaces on which the company's shares are quoted should also be informed.

For the record, it should be emphasized that it is not intended that these Recommendations should restrict the right, or the opportunities, of shareholders to obtain information themselves as regards what proposals will be presented or to make nominations for election to the board at the general meeting.

Obviously, companies are also free to go further than these Recommendations by disclosing proposals for the election of the board which do not enjoy support amongst shareholders in accordance with Point 2. However, in this case the information provided should make it clear that the company is not aware that the proposal is supported by a number of shareholders corresponding to the proportion of votes indicated in the NBK's Recommendations.

-----



**THE NÄRINGSLIVETS BÖRSKOMMITTÉ, NBK**

RECOMMENDATIONS FOR PREPARING PROSPECTUSES (1999)

The Federation of Swedish Industries  
The Stockholm Chamber of Commerce

**Foreword**

The Stockholm Chamber of Commerce and the Federation of Swedish Industries are the principals of the Näringslivets Börskommitté (NBK). NBK issued its first Recommendations for Preparing Prospectuses in 1986.

Since there has been reason to conduct a further review of the Recommendations, and following work by a special working group, NBK is now issuing revised Recommendations for Preparing Prospectuses.

Stockholm, April 1999

The Stockholm Chamber of Commerce  
The Federation of Swedish Industries



<b>TABLE OF CONTENTS</b>	<b>Page</b>
<b>Introduction</b>	
Reasons and area of application for the NBK Prospectus	
Recommendations .....	34
Prospectus rules .....	37
Various types of share-related prospectus, etc .....	38
Information brochures .....	40
Responsibility for the contents of the prospectus .....	41
<b>The NBK Recommendations</b>	
Purpose and orientation of the prospectus .....	42
Future-oriented information .....	44
Main headings in the prospectus, etc .....	45
<b>1. Invitation, terms and instructions for participation .....</b>	<b>47</b>
<b>2. Background and reasons .....</b>	<b>50</b>
<b>3. Brief presentation of the company .....</b>	<b>51</b>
<b>4. Financial trends in brief (key ratios and data per share) .....</b>	<b>53</b>
<b>5. The company's operations .....</b>	<b>56</b>
<b>6. Comments on developments .....</b>	<b>62</b>
<b>7. Financial objectives and future outlook .....</b>	<b>64</b>
<b>8. Shares and ownership .....</b>	<b>66</b>
<b>9. Board of Directors, senior executives and auditors .....</b>	<b>69</b>
<b>10. Tax issues .....</b>	<b>71</b>
<b>11. Financial statements .....</b>	<b>71</b>
<b>12. The auditors' report .....</b>	<b>74</b>
<b>13. Additional information about foreign shares .....</b>	<b>75</b>
<b>14. Possible appendices to the prospectus .....</b>	<b>77</b>

## **INTRODUCTION**

### **Reasons and area of application for the NBK Prospectus Recommendations**

In 1986, the Näringslivets Börskommitté (NBK) published Recommendations for Preparing Prospectuses, which were designed to follow up the provisions of the 1975 Swedish Companies Act (1975:1385) regarding the contents of prospectuses. It was considered that supplementation of the statutory provisions by means of “self-regulation” was required.

Since publication of the 1986 Recommendations, regulations concerning prospectuses (FFFS 1995:21) have been issued by the Financial Supervisory Authority, following an EC directive. These regulations stipulate the information that should be included in a prospectus, but do not cover all types of prospectus. In addition, they are largely restricted to the minimum requirements under the EC directive. As a result, self-regulation continues to be required as regards the contents of the prospectus. Hence, NBK considers that its prospectus Recommendations should be retained. However, a review has been conducted, in the light of both the Financial Supervisory Authority’s regulations and of overall developments as regards views on the contents of prospectuses.

As in the case of the 1986 Recommendations, in principle the current Recommendations cover the following areas:

- General comments on preparing prospectuses,
- Specification of the information which a prospectus should normally contain if it is to meet the needs of the capital market, largely based on statutory and regulatory requirements. However, the specifications go further than these requirements in a number of respects. Special

comments are made on certain types of information which should be included in a prospectus.

As in the case of the 1986 Recommendations, the current Recommendations are self-contained, and not linked to statutory requirements and official regulations. It has been considered that integration into the official regulatory structure would be complicated and, as a result, would not facilitate application of the principles which must be observed when preparing a prospectus.

There are relatively few changes in these Recommendations as regards major aspects of the prospectus, as compared with the 1986 Recommendations, although more extensive amendments have been made regarding general lines of argument, comments and the examples given. The structure and the language employed have also been modified where this has been considered justified. The substantive changes are primarily as follows:

1. It is no longer stipulated that background information [may] be less detailed in the case of companies which are already listed.
2. Brief comments are made on "information brochures" (which are sometimes prepared in parallel with the prospectus).
3. In connection with funds derived from new share issues, it is stressed that it is crucial that shareholders receive a satisfactory return and that it is essential that the possibilities of receiving a satisfactory return are discussed.
4. Cash flow and R&D costs are included in the list of key ratios.
5. Interim reports which are four months old are permitted. (The Swedish Companies Act, where applicable, stipulates not more than three months. However, at the time of publication of the current Recommendations, it is proposed that the Act should be amended to permit a period of four months.)

6. The Board of Directors must make an assurance regarding the correctness and completeness of the information presented in the prospectus, even in the limited number of cases where this is not required in accordance with the Financial Supervisory Authority's regulations.
7. It is stipulated that hypothetical forecasts (pro forma forecasts) are desirable in certain cases. More detailed comment is made on such forecasts.
8. If foreign shares are issued, special information must be provided regarding the relevant regulatory systems which are of interest to Swedish shareholders.
9. Compensation received by the following three groups: the Board, senior executives and auditors, must be stated, even in the limited number of cases where this is not required in accordance with the Financial Supervisory Authority's regulations.

The current Recommendations are designed to apply to all types of prospectus made public in the Swedish capital market and which apply for shares, convertibles, warrants, participating debt instruments and depository receipts which are – or which are intended to be – subject to regular trading. However, in the case of public offers for the acquisition of shares, the NBK Recommendations concerning Public Offers for the Acquisition of Shares (1999) apply.

The current Recommendations do not apply to the redemption of shares and – if and when this is possible – the repurchasing of the buyer's own shares.

## **Prospectus rules<sup>4</sup>**

Following publication of the 1986 Recommendations, provisions regarding prospectuses have been introduced in Chapter 2 of the Financial Instruments Trading Act (1991:980) (LHF) and Chapter 5, Section 5, of the Stock Exchange and Clearing Operations Act (1992:543) (LBC). LHF and LBC do not stipulate precise requirements for the contents of the prospectus, however, although requirements of this nature are stated in the Financial Supervisory Authority's regulations concerning prospectuses (FFFS 1995:21 – partially amended by FFFS 1997:16) issued in connection with LHF and LBC. As a result of the provisions in these two Acts, Swedish legislation complies with the EC directive on prospectuses (89/298/EEC) and the second EC stock exchange directive (80/390/EEC).

In accordance with Chapter 4, Section 18, of the Swedish Companies Act (ABL), the Board of Directors is responsible for drawing up a share-issue prospectus when a public company or shareholders in such a company address an invitation to acquire shares or subscription rights in the company to a widespread group, provided that the total compensation amounts to at least SEK 300,000. A share-issue prospectus of this nature is to be drawn up in accordance with Chapter 4, Sections 19-26 of ABL and, in accordance with the Act (Chapter 5, Section 16 and Chapter 7, Section 4 respectively), this also applies to the issue of warrant loans, conversion loans and participating loans.

Hence, a public joint stock company now has to take into account the prospectus rules in ABL and, in accordance with the circumstances, the provisions concerning prospectuses in LBC or LHF. The Company Law Committee notes in its report (SOU 1997:22) that it is unfortunate that the rules for prospectuses are covered by several different statutes. The prospectus rules should be prescribed in LHF and – in the case of securities with a stock exchange listing or which are intended to have such a listing – in

---

<sup>4</sup> Reference is made in this Section to ABL, LHF, LBC and the Financial Supervisory Authority's regulations concerning prospectuses (FFFS 1995:21), with the wording and formulation which they had when these Recommendations were published.

LBC. Hence, the Company Law Committee proposes that the provisions regarding prospectuses in ABL should be transferred to LHF and LBC.

In addition the Company Law Committee considers that the “open group” requirement in LHF may cause problems in applying the Act, and proposes that this requirement is replaced by the “substantial number of persons” concept employed in ABL. As hitherto, this would involve offers addressed to a group of more than approximately 200 persons.

These Recommendations do not cover prospectuses in connection with public offers for the acquisition of shares, for which reference should instead be made to the NBK Recommendations concerning Public Offers for the Acquisition of Shares (1999).

### **Various types of share-related prospectuses, etc<sup>5</sup>**

Share-related prospectuses may be classified as follows:

- Stock exchange prospectuses
- Share-issue prospectuses
- Offer prospectuses
- Listing prospectuses

The current Recommendations are concerned with all four types of prospectus, which are commented on briefly in the following, with an indication of the statutes and regulations which apply.

---

<sup>5</sup> Reference is made in this Section to ABL, LBC and the Financial Supervisory Authority’s regulations concerning prospectuses (FFFS 1995:21), with the wording and formulation which they had when these Recommendations were published. This also applies to references to the Stockholm Stock Exchange’s requirements regarding listing prospectuses.

In accordance with Chapter 5, Section 5, of LBC, **stock exchange prospectuses** are to be drawn up in connection with the registration of shares on the Stockholm Stock Exchange for listing on the A List. This also applies to the registration of new issues of stock exchange securities which are of the same type as securities which are already registered, thus bringing into play the following aspects of the Financial Supervisory Authority's regulations concerning prospectuses: Chapters 1-5 concerning shares, Chapters 6-10 concerning debt instruments, convertibles, etc and Chapters 11-14 concerning depository receipts. If registration involves the distribution of securities in the market as a result of a new issue or sale, the ABL provisions for prospectuses will also apply. In addition, if a stock exchange prospectus is issued as a result of a public offer in which compensation consists of a new share issue, the NBK Recommendations concerning Public Offers for the Acquisition of Shares (1999) also apply.

In accordance with Chapter 2, Section 2, of LHF, **share-issue prospectuses** are to be drawn up in connection with the issue of securities which are not registered or subject to an application for a stock exchange registration. Hence, this type of prospectus applies to companies whose shares are quoted on the Stockholm Stock Exchange O List or OTC List, and to other companies whose shares are not registered on the Stockholm Stock Exchange. Chapters 15-19 of the Financial Supervisory Authority's regulations and the ABL prospectus provisions are also relevant in this context. If a share-issue prospectus is issued in connection with a public offer in which compensation consists of a new share issue, the NBK Recommendations concerning Public Offers for the Acquisition of Shares (1999) apply.

In accordance with Chapter 2, Section 3, of LHF, **offer prospectuses** are to be drawn up in connection with offers to purchase or sell financial instruments. The Financial Supervisory Authority has not issued any regulations concerning the contents of this type of prospectus. When shareholders receive an offer to sell their shares, the NBK Recommendations concerning Public Offers for the Acquisition of Shares (1999) apply. If payment is offered in the form of a new share issue, the offer prospectus is also a stock exchange prospectus or an issue prospectus in this respect (see above). If the offer

involves the sale of a large number of shares at the same time (block sell-off), the ABL prospectus provisions also apply if the shares are offered to a widespread group.

A **listing prospectus** is to be drawn up in connection with listing on the Stockholm Stock Exchange O List or OTC List, as stipulated by Chapter 6 of LBC. The legislature has decided to let the stock exchange concerned stipulate the requirements which are to be met for this type of listing. In such cases, the Stockholm Stock Exchange stipulates that a listing prospectus is to be drawn up which, in all material aspects requires compliance with the Financial Supervisory Authority's regulations for stock exchange prospectuses. If listing involves the distribution of securities in the market as a result of a new issue or sale, the ABL provisions for prospectuses will normally apply. If this distribution takes the form of a new share issue, the prospectus is also a share-issue prospectus, and hence subject to the Financial Supervisory Authority's prospectus regulations.

### **Information brochures**

If a very large number of people/entities in the stock market are affected, and if the distribution of a prospectus would involve substantial costs, an information brochure may be prepared in some cases, in parallel with the prospectus. The expression "information brochure" does not exclude the possibility of distribution via electronic media.<sup>6</sup>

The following applies for a brochure of this nature:

- The information brochure should not give the impression that it replaces the prospectus. The front cover of the brochure must clearly indicate that a prospectus is available and how it may be obtained.

---

<sup>6</sup> When electronic media are used, it should be noted that there will be unlimited access to the document. As a result, possible restrictions in other countries as regards distribution by electronic means should be taken into account.



The prospectus must be available in a simple manner and free of charge.

- The brochure must be characterized by impartiality. If investment in the share concerned involves special risks, this must be indicated.
- The brochure must contain basic information presented in the prospectus concerning the company and the offer. It may not contain information which materially affects assessment of the company which is not included in the prospectus.

### **Responsibility for the contents of the prospectus**

It has been considered that questions of liability under criminal or civil law which may arise as a result of prospectuses which are erroneous and incomplete fall outside the purview of these Recommendations. However, NBK wishes to underline that it is essential that everyone involved in the production of a prospectus ensures that the prospectus provides information which is as objective, impartial and complete as possible. Hence the Board, senior executives, auditors, banks or other securities institutions, etc are responsible for making every effort to ensure that this is the case.

Certain information in the prospectus may sometimes be presented in a special section under a heading such as “Comments by the President/Managing Director”, and possibly signed. Since the Board is responsible for the entire contents of the prospectus, the Board – and other parties involved – must scrutinize and evaluate information provided under a heading of this nature with the same care as other aspects of the prospectus.

## **NBK RECOMMENDATIONS**

### **Purpose and orientation of the prospectus**

The basic principle is that “The prospectus is to contain the information required to enable an investor to make a soundly based assessment of the issuer’s operations and financial position and of the rights pertaining to the stock exchange securities”. This quotation from Chapter 5, Section 5, of LBC provides the general framework for the contents of a prospectus. More exactly, it may be said that a prospectus must provide a basis for current and potential shareholders *to assess the future returns and risks* associated with the stock market security in question. A prospectus which fulfils all the formal requirements may nonetheless provide a misleading overall picture of the company. As a result, the prospectus should contain all information which may be considered to materially affect the stock market’s valuation of the company. In addition, it should be borne in mind that the prospectus is intended for the stock market, and is not to be regarded as a general information document addressed to other groups.

The prospectus is to be characterized by:

- Impartiality,
- Transparency,
- Problem orientation.

In addition, it should be easy to analyse the contents of the prospectus, which should be sufficiently detailed to achieve its aims.

The selection of information must be governed by its importance in each specific case. The structure and contents of the prospectus thus depend both

on the *industry in which the company is operating* and on the company's *specific circumstances*. Since the Recommendations must inevitably be of a general nature, deviations from the norm may be justified in particular cases – for example companies which have shares listed on foreign stock exchanges where different regulations or information practices apply, or where a foreign company is issuing a prospectus in the Swedish market.

The general nature of the Recommendations may be seen, for example, in the fact that they contain a great number of points in various areas. This means that it is important that the Board emphasizes precisely the points which are necessary to enable the stock market to evaluate the offer correctly, and this is why, in a number of contexts, the Recommendations underline that the information provided must be of material importance for the market (to the extent that it is not mandatory). In certain situations, there may be special reasons for omitting certain information which is not required by statute or regulations, for example if the disclosure of information is to the detriment of the company. An assessment of the risks involved is called for in this context. However, such omissions may not cause the prospectus to provide an erroneous or incomplete picture of the offer in any material respect.

In some cases, the information provided in the prospectus may be different from the information presented in the company's annual reports. However, the principles governing the information provided which are employed in the prospectus should, as far as possible, be the same as in the annual reports as regards accounting principles, evaluations, etc. In order to permit monitoring of the company's development in relation to the assessments presented in the prospectus, the subsequent annual report should also cover the special information included in the prospectus.

When a purchasing right or similar right is to be detached from a share, the aim should be to give the media an opportunity to publish an evaluation in sufficient time prior to detachment of such rights. The Financial Supervisory Authority's regulations contain provisions regarding the publication of prospectuses.

**Future-oriented information**

The stock market often needs forecasts and other future-oriented information about the companies concerned – particularly in situations which give rise to preparation of a prospectus. Briefly, statutes and regulations stipulate as follows:

- The ABL provisions due to be transferred to LHF, in accordance with proposals made at the time these Recommendations were published, do not contain any explicit requirements regarding future-oriented information. Supplying future-oriented information is quite natural, however, and complies with the aims of the provisions in question.
- According to the Financial Supervisory Authority's regulations concerning prospectuses, trends and future prospects must normally be described. Quantified forecasts are not stipulated, however.

Forecasts and other future-oriented information concerning the company may involve varying degrees of precision, as illustrated below. The prospectus may contain information at various levels:

- Quantified earnings forecasts (normally short-term),
- Forecast range of earnings (normally short-term),
- Information regarding the anticipated earnings trend in comparison with the most recently completed year of operations (normally short-term),
- The rate of return on shareholders' equity, operating margins, etc (often covering several years). It is important to make a clear distinction between the company's targets and what it is considered will be achieved, although there should obviously be some correlation between the two,

- General assessments of an unquantified nature, involving indication of and comments on factors which are considered to be particularly important for future financial results. These factors should be included, even where more precise earnings forecasts are provided.

The assumptions on which forecasts and other statements about the future are based must be indicated. Sensitivity analyses indicating how earnings are affected by changes in key factors are also often of considerable value.

As mentioned above, deviations from these Recommendations are sometimes justified in the light of regulations and practices in foreign markets. In addition, in the case of forecasts the risk of claims for damages by investors in certain countries may call for restraint as regards forecasts and future-oriented discussion.

Assessments of the future involve uncertainty. Sometimes there is so much uncertainty that meaningful forecasts cannot be made – although the prospectus should always contain future-oriented discussion. Discussion of factors which are of material importance for future profit trends may be more relevant than an earnings forecast for the same period which is based on unduly uncertain information. In any event, it is important that the prospectus does not include statements which are more far-reaching than can be substantiated.

### **Main headings in the prospectus, etc.**

The NBK Recommendations contain proposals for the items – referred to as “main headings” – which should be included in a prospectus. Where considered appropriate, they may be presented in the order employed in the following. Each main heading is followed by general instructions and detailed instructions which are largely based on requirements stipulated in statutes and regulations, supplemented by items in accordance with the approach adopted by NBK. As already mentioned, the information covered by the main

headings is to be presented unless it is considered to be of minor importance in the specific case. In addition, the requirements stipulated by ABL and the Financial Supervisory Authority regarding the contents of a prospectus must be observed.

Where appropriate, references are made under each main heading to the relevant provisions in the Financial Supervisory Authority's regulations concerning prospectuses, as formulated at the time when these Recommendations were published. References are made in this connection to Chapter 3 which deals with stock exchange prospectuses for shares. However, as indicated previously under the "Various types of share-related prospectuses, etc" heading, other statutes, regulations and recommendations must also be taken into account.

In principle, a prospectus should be published as a single document<sup>7</sup>, although in certain situations it may be appropriate to use a separate annual report as part of the prospectus. Annual reports do not always contain all the information required to describe the company, however, and in such cases supplementary details are required. If the prospectus consists of a number of documents, this is to be clearly stated, and the documents included must be specified.

If the company is a parent company in a corporate group, the prospectus must mainly cover the group. In order to simplify matters, the term "company" is consistently used in the Recommendations, even where reference is made to the corporate group.

Sales, profits, etc are to be allocated by business and geographical areas, where appropriate. In this connection, the Recommendations are based on the Swedish Accounting Standards Board's R9 Recommendation which, in its turn, complies with the Swedish Annual Accounts Act. Both the Act and R9

---

<sup>7</sup> The expression "document" does not exclude the possibility of distribution via electronic means. In such cases, it should be noted that the document will be universally accessible. As a result, possible restrictions in other countries as regards distribution by electronic means should be taken into account.

employ the term “line of business”. In these Recommendations, this has been replaced by the more common concept of a “business area”.

References to “shares” in these Recommendations also apply, where relevant, to convertibles, warrants, participating debt instruments and depository receipts.

The NBK Recommendations are based on the following 14 main headings:

1. The invitation, terms and instructions for participation
2. Background and reasons
3. Brief presentation of the company
4. Financial trends in brief (key ratios and data per share)
5. The company’s operations
6. Comments on developments
7. Financial objectives and future outlook
8. Shares and ownership
9. Board of Directors, senior executives and auditors
10. Tax issues
11. Financial statements
12. The auditors’ report
13. Additional information about foreign shares
14. Possible appendices to the prospectus

## **1. Invitation, terms and instructions for participation**

### **General instructions**

**The invitation must indicate who has decided to make the offer. Where applicable, decisions taken simultaneously regarding the company’s share capital are to be reported, and also the total share capital after implementation of the offer, including a**

**breakdown by class of share. If the offer involves the sale of existing shares, the person/entity offering the shares for sale is to be stated, and also the proportion of votes and capital represented by the block of shares concerned.**

**The terms of the offer are to be stated clearly and unambiguously.**

**In addition, the procedure to be adopted for subscription or application for the offer by a person or entity entitled to subscribe is to be stated.**

#### **Detailed instructions**

- **The persons/entities to whom the offer to subscribe for or acquire shares** is addressed must be clearly stated. If the offer is subdivided, and addressed to different categories – for example institutions and the general public or various geographical areas – the proportion of the offer which is addressed to each category must be stated and also, where applicable, the possibilities for the institution handling the issue or the company to undertake reallocations between the various categories.
- In the case of the **sale of shares which have already been issued**, the offer must be signed by the seller. In certain cases, the seller may have cause to indicate that, since the Board has sole responsibility for the company, the signature does not apply to the description of the company.
- Information is to be provided concerning the stock exchanges, market places or corresponding institutions responsible for **registration or listing** of the company's shares, or where it is intended that registration or listing is to take place. The class of shares to be listed, the form for listing, the proposed trading block



and the estimated date of commencement of trading in the shares must be stated.

- Any **guarantors ("underwriters")** for the issue or the sale are to be specified.
- The **selling price or corresponding information** is to be stated. If the selling price is to be determined following a tendering procedure, the price range within which the selling price is expected to be established is to be stated, and also the date when the final selling price will be announced. In the case of offers to the public, however, the maximum selling price must be stated. Any additional costs, such as brokerage commission, are to be stated.
- Information is to be provided concerning the financial year as from which the shares offered will entail a **dividend entitlement**.
- The **registration period** must be stated, and also the procedure to be adopted by persons/entities entitled to subscribe in order to subscribe or apply for offer.
- If **subscription rights, purchasing rights** or corresponding rights are issued, this is to be stated, and also the entitlements such rights provide in the issue or sale. In addition, the time and place of trading in subscription rights or purchasing rights must be stated. Any reservations on the part of the buyer regarding extension of the registration period should be stated.
- The **principles for allotment** are to be stated. This involves information concerning the manner in which allotment will be made in the event of oversubscription or when applications are received for a greater number of shares than the number offered for sale. The procedure which applies if the issue is not fully subscribed or if applications are not submitted for all shares covered by the offer must also be stated. If certain categories – for

example company employees – are to receive priority in the allocation process, this must be stated. In addition, the date when allotment is to take place is to be indicated, and also the manner in which allotments will be notified.

- The manner in which **payment** will be made for shares which are subscribed for or acquired must be stated. This also applies to the manner in which **notification** concerning paid-up shares is to be received.
- If **completion of the offer is conditional**, this must be stated.

### **Financial Supervisory Authority's regulations**

Chapter 3, Sections 9, 14, 15, 17-21, 23 and 28.

## **2. Background and reasons**

### **General instructions**

**The background and reasons for the offer/listing are to be presented. The circumstances and considerations reported may cover both the company and, where applicable, a person/entity selling shares.**

### **Detailed instructions**

- The **background** to the offer is to be reported.
- The **consequences of the offer for the company** are to be reported, from both financial and other perspectives.

- Information is to be provided concerning **the way in which any additional capital is to be used**. A satisfactory return on additional equity is always important for shareholders, and therefore this topic should be discussed under the current main heading or, for example, under the seventh main heading . A discussion of the company's potential return on additional capital must often be conducted in the light of the company's overall operations and general plans for expansion, provided that the additional funds are not to be employed for a specific investment which is separate from the company's other operations.
- Finally, an **assurance** made by the Board of the company is to be included, stating that, as far as the Board is aware, the information in the entire prospectus or the part of the prospectus for which the Board is responsible complies with actual circumstances and that nothing of material importance which might affect the image of the company presented in the prospectus has been omitted. This assurance is then followed by the **signatures** of the Board of Directors.

### **Financial Supervisory Authority's regulations**

Chapter 3, Section 6

### **3. Brief presentation of the company**

#### **General instructions**

**Together with the fourth main heading (Financial trends in brief - key ratios and data per share), this Section is to provide an outline picture of the company, and present the company's**

**business concept, its principal operations and its organizational structure. Other key factors for the company are also indicated.**

### **Detailed instructions**

The following points should be outlined.

- A **history** should be presented, with an emphasis on the previous five years (approximately). Special emphasis should be placed on structural changes such as the acquisition or divestment of subsidiaries, major strategic changes, etc.
- The **overall business concept** should be indicated, and specified, where appropriate, for the main business areas. The Board's opinion concerning the market's need for the company's products or services, the growth potential and the company's ability to exploit this potential should be stated for these business areas. Comments should be made on the profitability of the business areas, and should be developed in more detail under the fifth main heading (The company's operations).
- **Major products and services**, markets, customer categories and competitors are to be reported, and developed further under the fifth main heading.
- A **breakdown of operations** by business areas and their geographical and legal structure is to be reported. The most important associated companies are to be indicated.

**4. Financial trends in brief (key ratios and data per share)**

**General instructions**

**Key ratios included in the income statements and balance sheets, and also key ratios derived from this information are to be presented for a business cycle, which normally covers a period of at least five years. If there are special reasons, some other period may be selected.**

**If major acquisitions or divestments of subsidiaries have occurred during the period, pro forma key ratios may be appropriate – in certain cases in parallel with key ratios for the actual outcome. Pro forma key ratios indicate what would have happened if the current group structure has applied during the period in question. The assumptions on which the pro forma key ratios are based must be unambiguous and presented in full.**

**Key ratios are to be defined in the same manner as in the company's annual reports, if this definition corresponds with normal practice. Where necessary, adjustment is to be made to comply with generally accepted standards in the industry. Key ratios may be calculated in accordance with the NBK Recommendations.**

**Detailed instructions**

- **Key ratios are to be reported for a business cycle**, which is normally five years. Some other period may be selected if there are special reasons. The following information is to be provided if, on the one hand, it is not insignificant for evaluation of the company

and, on the other hand, it is relevant in view of the industry in which the company operates:

- Condensed income statement or, alternatively, sales, operating profit and profit after net financial items,
- Items affecting comparability and, where appropriate, non-recurring items specified in the notes or in some other manner,
- Operating margin or similar indicators,
- Cash flow,
- Condensed balance sheet or, alternatively, total assets and shareholders' equity,
- Return on average working capital (alternatively total capital),
- Return on average shareholders' equity,
- Equity/assets ratio,
- Debt/equity ratio,
- Interest coverage ratio,
- Information concerning the market value and book value of properties, shares, etc for which there is a market value. The manner in which such market values are determined and the amount of the deferred tax liability should be stated,
- The number of employees,
- Capital expenditure,

- Research and development costs charged against income, and also any items of this nature which have been booked as an asset.
- If **pro forma accounts** are presented (see the eleventh main heading), key ratios must also be based on the pro forma accounts, to the extent this is appropriate.
- As regards **taxes**, the principles applied for calculation of tax expense, deferred tax liability and deferred tax claims must be indicated. In addition, unutilized tax loss carry-forwards are to be stated.
- **The following per share data** – adjusted for new share issues – are to be stated for the same period as the above key ratios, based on a weighted average of the number of shares:
  - The profit, shareholders' equity, dividend, share price, direct return and P/E ratio (at the end of the financial year) are to be stated, and also the average number of shares on which the calculations are based. Share-price diagrams, showing index comparisons and share trading are to be presented. The dilution effects of outstanding convertible loans, warrants, etc should be taken into account when reporting profit and shareholders' equity if such dilution has an impact on the information in question which is not insignificant. If net worth per share is a relevant factor, information of this nature and the principles employed in calculating this item are to be indicated.
  - **The profit forecast** per share should be stated, if a profit forecast is made.

- In the case of an **initial public offering (IPO)**, the P/E ratio and the share price/equity relationship should be stated, based on the initial price or range of prices.

### **Financial Supervisory Authority's regulations**

Chapter 3, Section 62

## **5. The company's operations**

### **General instructions**

**A detailed account of the company's operations is to be provided, in terms of business areas, divisions, or corresponding units. If the offer is to be followed by a stock exchange listing of the company, particularly detailed reporting on certain aspects of operations may be called for. This Section is to be coordinated with the information under the third main heading (Brief presentation of the company).**

### **Detailed instructions**

The detailed instructions are relatively comprehensive. Reference is made, however, to the "Purpose and orientation of the prospectus" section, in which it was indicated that only items which are not insignificant are to be included in the prospectus.

- A description of the **company's operations** should be provided, **indicating its most important products or services**. Special functions and other characteristic features in comparison with competitive products and services should be mentioned, and also



correlations between the various products and services.

Possible **plans for changes** in the range of products or services offered should be indicated, although this should be done in a manner which is not detrimental to the company; a risk assessment may be made in this connection.

- The following information is to be provided for **the various business areas**:
  - Sales,
  - Operating profit,
  - Profit after net financial items (if the business area also has an independent financial status),
  - Working capital or similar,
  - Appropriate indication of return.

In the case of financially independent business areas, information about equity, investments and the number of employees is also of interest.

The information provided is to cover three years of operation and should be presented in tabular form, with adjustment items, thus ensuring that the total of the sub-items corresponds with the corresponding item in the consolidated accounts.

- A **breakdown of the company's operations into geographical markets** is to be made for the following items:
  - Sales,

- Operating profit (where this may be considered justified in the light of generally accepted accounting standards),
- Capital expenditure,
- Average number of employees.

The information provided is to cover three years of operation and should be presented in tabular form, with adjustment items, thus ensuring that total of the sub-items complies with the corresponding item in the consolidated accounts.

- Information concerning previous and, if possible, anticipated developments **for the business area concerned** should be provided as regards:
  - The **size of the market** and its nature (technical trends, the impact of political decisions, etc),
  - The company's **market share** and market position in other respects,
  - The **competitive situation**, and also the main competitors and the company's characteristics in comparison with these competitors.
- Presentation of major **associated companies**, including information in accordance with what is stated above regarding business areas, if published information of this nature is available.
- The major **customers** should be indicated, where possible. Otherwise, comment should be made on the customer structure, particularly in the following respects:

- Types of customers (indicating whether they are dealers, end-users, etc),
  - The number of customers, the number of customers representing a given proportion of sales, etc,
  - The development potential of the major customer categories,
  - Volatility of customers,
  - Sales channels; how the company markets its operations,
  - Special comments which may be justified if the company depends on a single customer or a limited number of customers.
- Major **suppliers** should be indicated, where possible. Otherwise, comment should be made on the supplier structure, particularly in the following respects:
    - Increase or decrease in the company's reliance on subcontractors,
    - The company's sensitivity to interruption of supplies,
    - Special comments which may be justified if the company depends on a single supplier or a limited number of suppliers.
- Information concerning the company's **major operating facilities**, that is to say facilities which represent more than 10 per cent of sales or production. In addition a brief account of **production plants** and other **properties** should be made, indicating their age, condition, investment requirements and expansion potential. If plants and properties comprise a considerable number of units, this description may be of a relatively general nature.

- The focus and the capital invested for **major investments**, including the acquisition of companies, implemented during the current year and the three preceding financial years. Similar information is to be provided for **ongoing and planned investments and acquisitions of companies** in a manner which ensures that publication is not detrimental to the company; a risk assessment may be made in this connection.
- The focus and level of expenditure for **research and development** during the current year and the three preceding financial years. If this information is particularly significant, comments on the manner in which the company has defined these types of expenditure and the extent to which they are booked as assets are called for. Similar information is to be provided regarding the future orientation, but in a manner which is not detrimental to the company; a risk assessment may be made in this connection. In addition, comments should be made on the extent to which research and development are conducted in cooperation with customers, suppliers, universities, etc.
- Major **raw material assets** owned by the company or which are of major importance for the company in other respects should be described. Comment should be made on the extent of such resources, the remaining exploitation period, investment requirements, environmental aspects (see below), availability, etc. If major changes are anticipated, this must also be reported, but in a manner which is not detrimental to the company; a risk assessment may be made in this connection.
- Major **environmental factors** are to be described, including, where possible, the financial impact on the company and, in such cases, the company's environmental initiatives, both implemented and planned. This includes political decisions which are

anticipated or have already been implemented which have an environmental impact on the company.

- Comment should be made on **personnel factors** (in addition to the average number of employees which is covered by the fourth main heading). The following factors may, for example, be of interest, depending on the actual circumstances and the nature of the company's operations:
  - Breakdowns by age, education and sex,
  - Personnel turnover,
  - Future personnel requirements,
  - Availability of personnel, particularly key staff,
  - Financial incentive schemes.
- **Litigation**, arbitration, etc which have had, or may have, a significant financial impact on the company must be reported.
- Reports must be provided primarily concerning the following types of **commercial agreements** which are of major importance for the company:
  - Purchasing and supply agreements,
  - Leasing and sale-leaseback agreements,
  - Cooperation agreements,
  - Acquisition agreements,

- Agreements with external parties concerning additional payments and profit sharing.
- A brief description should be provided of any **contractual relationships** between the company and **associated companies or related parties**. This is particularly important if evaluation of the company's financial results is affected to a significant extent by **agreements and other relationships with related parties** (including senior management personnel). Reference may also be made in this context to the Stockholm Stock Exchange's Recommendations regarding Information on Certain Business Operations Conducted by Parties Related to Stock Exchange or OTC Companies (1986).
- An account should be provided of major patents, licences and other **intellectual property rights**.
- **Addresses and telephone numbers** for the company's head office, major subsidiaries and operating units should be provided.

### **Financial Supervisory Authority's regulations**

Chapter 3, Sections 38-50, 58-59, 68.

## **6. Comments on developments**

### **General instructions**

**Special comments are normally required to clarify important factors and to provide supplementary information which permits evaluation of the company's financial results and position. The Board's comments on the earnings and profitability trend**

**reported are important in this context, and this also applies to major policy issues, such as foreign exchange and financing policy, unless comment on such matters is presented in some other context.**

**The earnings reported in the last few years are often an important factor in assessing the future of the company, and therefore it is essential that the Board comments on and analyses the results achieved. The extent to which coincidences or factors which are no longer relevant have affected these financial results should be explained. Comments of this nature should be at the business area level.**

#### **Detailed instructions**

- In order to facilitate evaluation of the company's financial results and position, comments should be presented in the form of an **ongoing comparison** between the three preceding financial years, including comments on the relevant key ratios. Obviously, the situation faced by the company must be taken into account, but such key ratios may include sales, operating profit, operating margin, profitability and investments. Comments should also be made at the business area level, where possible.
- Comment should be made on **factors which are important for evaluation of the** company's **financial results and position** which are not apparent in the income statements and balance sheets, including notes on the accounts for the three preceding financial years.

- Comment should be made on **major events** affecting the company **after the end of the most recent financial year** for which an annual report is submitted, if such comments are not made elsewhere in the prospectus.

### **Financial Supervisory Authority's regulations**

Chapter 3, Sections 50 and 56.

## **7. Financial objectives and future outlook**

### **General instructions**

**The Board's assessments of the short-term financial outcome and the prerequisites for the long-term development of the company are to be presented. The financial objectives are presented to provide a basis for discussion of the future of the company.**

### **Detailed instructions**

- In order to provide a basis for a discussion of future developments, the **financial objectives** should be indicated, including equity/assets and profitability targets, other aspects of financial policies, such as the fixed-interest term policy, liquidity planning, and a discussion of the manner in which future capital requirements are to be met, etc. The company's prerequisites for achieving these targets should be discussed.
- The most important **assumptions on which forecasts or other short-term assessments are based** should be presented. This also applies to **medium-term and long-term evaluations**. This is



particularly important in cases in which circumstances outside the company's control may have a considerable impact on earnings – for example cyclical processes (for the geographical areas or industries concerned), energy prices, foreign exchange rates, raw material prices, interest rates and the rate of inflation.

Long-term evaluations may be presented as **opportunities**, on the one hand, and as **threats and risks**, on the other. An assessment of this nature is of great importance. If the risk factor is considered to be particularly great, this should be made a prominent feature of the prospectus.

- If possible, **sales and profit forecasts** should be provided for the current year. In some cases, there may also be prerequisites for such forecasts for the next year of operations. Reference is made in this context to previous stipulations under the “Future-oriented information” heading.
- In certain cases, it may be desirable to indicate a forecast for the company based on the composition and structure which would have applied if changes planned had been implemented at the commencement of the period covered by the forecast. A forecast of this nature should be described as a **hypothetical forecast** rather than a pro forma forecast, and may represent subsequent years better than the actual forecast. There is a risk, however, that the stock market will confuse such a hypothetical forecast with the actual forecast. As a result, clear presentation is essential and, in addition, the actual forecast must also be presented if a hypothetical forecast is employed.
- Information should be provided concerning **foreign exchange policy** regarding currency hedging, etc.
- Information about current **dividend policy** should be provided.

- A **sensitivity analysis**, which presents the impact on earnings of changes in major external factors, frequently provides useful information. An explanation of the manner in which the sensitivity analysis is affected by possible hedging measures is often called for.

The key currencies for the company from a cost and a revenue viewpoint and the impact of various changes in exchange rates on the company should also be indicated in this context.

### **Financial Supervisory Authority's regulations**

Chapter 3, Sections 50, 69 and 70.

## **8. Shares and ownership**

### **General instructions**

**An account is to be provided of the rights which pertain to a holding in the company, and the number and classes of shares which may result from the utilization of outstanding convertibles and warrants. Information is also provided concerning major shareholdings in the company, both in terms of voting rights and the proportion of the equity.**

**The principal provisions of the company's Articles of Association should also be reported.**

### **Detailed instructions**

- The **amount of the share capital** before and after the offer is to be stated. This also applies to the **number of shares**, allocated by

various classes of shares, where appropriate. The **par value** of the share, **financial entitlements**, **voting rights** for shares of various classes and any **restrictions on voting rights** should be indicated by excerpts from the Articles of Association or otherwise.

- The following information is to be provided concerning **convertibles and warrants**, including the planned issue of such securities:
  - The number of additional shares in the case of full conversion or full subscription, and the breakdown by share category. The increase in the number of shares is to be stated both in absolute and percentage terms, both as regards the share capital and the total number of votes,
  - The increase in the shareholders' equity in the event of full conversion and subscription,
  - Time limits for conversion and for subscription,
  - Conversion and subscription prices, respectively,
  - The rate of interest.
- Information is to be provided concerning possible **authorizations** which entitle the Board to take decisions regarding **issues** and – if and when this becomes feasible – the purchase and sale of the company's own shares.
- Information is to be provided concerning the existence of a pre-emption clause, provisions regarding redemption or the conversion of shares, and **other similar provisions in the Articles of Association**. If the company is not registered with the Securities Register Centre (VPC), this should be stated.

- The **number of shareholders** is to be stated. Major shareholdings are to be specified, including the percentage of ownership and the proportion of voting rights, taking into account new owners who may become shareholders as a result of the offer covered by the prospectus. In addition to a breakdown of shareholders by name, the distribution of the total number of shares by size categories should also be presented.
- **Changes in the share capital** in the preceding five-year period are to be reported. This also applies to the issue of convertibles and warrants.
- In the case of issues made within the preceding three years, the date, the amount subscribed and the subscription price are to be stated. If there was no **priority for shareholders** in these issues, the persons/entities who participated in the subscription should be indicated.
- In the case of an **initial public offering (IPO)**, information about the **long-term nature** of holdings by major owners should be provided, where possible.
- Information is to be provided concerning the existence of **shareholder associations** and other significant agreements, if known to the Board, between major shareholders or between the company and its shareholders as regards shares in the company.
- The **stock exchanges** or markets in which the company's shares are **listed** are to be stated.
- The presentation of the provisions of the **Articles of Association** should indicate the name of the company, the registered office, the object of the company's operations, the share capital, the various types of shares, the par value of the share, voting rights at general meetings, provisions regarding the Board of Directors, the financial

year, Securities Register Centre (VPC) registration and other important items in the Articles of Association. In this connection, information is to be provided concerning the company's registered corporate number and, where required, the legal form of business entity, indicating the relevant legislation, the date of corporate registration, and the period during which the company has conducted operations.

### **Financial Supervisory Authority's regulations**

Chapter 3, Sections 8-37.

## **9. Board of Directors, senior executives and auditors**

### **General instructions**

**Information is to be provided concerning members of the Board, senior executives and auditors.**

### **Detailed instructions**

- Information is to be provided concerning **members of the** parent company **Board** and their deputies, stating their main employment and other significant Board positions, the year they became members of the Board, their age and their shareholding (convertibles, warrants, options, futures, etc) in the company. In special cases, corresponding information regarding Board members in major subsidiaries may be called for. If changes in the composition of the Board are planned in the immediate future, this should be stated, including the above information regarding the members or deputies who are expected to become members.

- Information is to be provided concerning **senior executives**, indicating their posts, period of employment, age and shareholding (convertibles, warrants, options, futures, etc) in the company.
- Information is to be provided concerning **auditors and their deputies**, including their accounting firm, their age and the year when their assignment commenced.
- Information is to be provided as regards the **total remuneration and the value of other benefits** paid during the preceding financial year, or due to be paid, to members of the Board, senior executives and auditors, and charged against income in the parent company or subsidiaries. A total amount is to be stated for each category. Information about remuneration for the auditors is to comprise the total payment for auditing operations in the parent company or, where applicable, in the Swedish group companies. In addition, information regarding remuneration, pension terms and severance payments is to be stated under this main heading or elsewhere, as indicated in the NBK Recommendations concerning Information about Benefits for Senior Executives (1993).
- Information is to be provided concerning the nature and scale of the benefits derived by members of the Board, auditors or senior executives from **business transactions** undertaken by the company during the preceding or current financial year which involved unusual features or terms. Information is also to be provided concerning transactions in previous financial years if they have not yet been completed.

- Information is to be provided concerning any **outstanding loans**, guarantees or sureties made or issued by the company in favour of members of the Board, senior executives or auditors.

#### **Financial Supervisory Authority's regulations**

Chapter 3, Sections 63-67.

### **10. Tax issues**

#### **General instructions**

**The investor's tax situation in Sweden regarding the acquisition, holding and divestment of the financial instruments which are the object of publication of the prospectus is to be indicated under this heading.**

#### **Financial Supervisory Authority's regulations**

Chapter 3, Section 12.

### **11. Financial statements**

#### **General instructions**

**Accounting documents are included in the prospectus to provide information about changes in the company's earnings and financial position. It is assumed that the company's financial statements are prepared in accordance with the law and generally**

**accepted accounting standards for stock market companies which, in the case of the initial offering of companies which were not previously public companies, often calls for supplementation of accounting documents issued previously.**

#### **Detailed instructions**

- **Balance sheets and income statements** are to be presented, **including notes, and statements of changes in financial position (cash flow analyses)** for the three preceding financial years for which annual reports and audit reports have been submitted. This information is to be supplied both for the group and the parent company. If information about the parent company may be considered to be largely irrelevant for an assessment of the value of the company's shares, it is sufficient to provide details of the parent company for the preceding financial year.
- Presentation of balance sheets and income statements, and statements of changes in financial position (cash flow analyses) must permit **comparisons between the years**. As a result, the accounting documents are to be based on the accounting principles employed in the most recent financial year. If the accounting principles have changed during the period covered by the accounting documents, this must be reported, together with a clear statement of the effects of such changes. See also the Swedish Financial Accounting Standards Council's RR5 Recommendation.
- Specifications for the balance sheets and income statements, and mandatory **additional information**, are to be presented in the notes to the accounts.



- **A summary** is to be presented of the **mandatory information** contained in the **administration reports** for the three preceding financial years. This information includes:
  - Factors of importance for evaluation of the financial results and position of the group and the parent company which are not indicated by the income statements, balance sheets or the notes to the accounts, unless such comments appear elsewhere in the prospectus.
  - Significant events affecting the group and the parent company during the financial years concerned and also subsequently, unless such comments appear elsewhere in the prospectus.
  - The parent company's foreign branches. Branches are defined as branch offices under independent management. Alternatively, this information may be presented under the fifth main heading.
- **Information** is to be provided **corresponding to interim reports** if the prospectus is presented more than eight months after the close of the preceding financial year for which annual reports and audit reports have been submitted. This information is to cover the period from the end of the financial year concerned to a date not earlier than four months prior to publication of the prospectus.<sup>8</sup>
- **Pro forma accounts** should be drawn up in a number of different situations, for example in the case of divestment of divisions in an existing company, a new capital structure or material changes in the composition of the group during the three year period reported. Pro forma accounting involves presentation of the accounts as if the new structure had applied throughout the period in question.

---

<sup>8</sup> The Swedish Companies Act stipulates, in the wording which applied on the date when these Recommendations were published, that this period is to be three months, not four.

Pro forma accounting should include balance sheets, income statements and key ratios, and also cash flow analyses for the pro forma period.

Pro forma accounting must always include explanatory comments on the assumptions on which such accounts are based. Notes are often called for to explain any discrepancies with the accounting documents included in the prospectus. All major differences between the pro forma accounts and the actual accounts must be explained. In order to avoid the risk of incorrect interpretation, pro forma accounts must be based on historical information, without taking forecasts of costs and revenues into account. When adjustments are made in connection with a switch from the actual accounts to pro forma accounts, all the relevant factors must be included and explained.

### **Financial Supervisory Authority's regulations**

Chapter 3, Sections 51-52 and 55-61.

## **12. The auditors' report**

### **General instructions**

**The prospectus is to be scrutinized by the company's auditors. The Swedish Institute of Authorized Public Accountants (FAR) has prepared recommendations regarding the manner in which**

**such an audit is to be conducted and reported. NBK refers to these recommendations.**

### **Financial Supervisory Authority's regulations**

Chapter 3, Section 7.

## **13. Additional information about foreign shares**

### **General instructions**

**When shares, or depository receipts for shares in foreign companies, are listed on the Swedish stock market, this calls for the inclusion of certain additional information in the prospectus. Such information is to focus on the special circumstances arising from the ownership of foreign shares.**

### **Detailed instructions**

The information concerned is primarily as follows:

- The most important **differences** between Swedish **accounting principles** and the principles applied in the prospectus must be explained. The financial impact of such deviations on the company's financial results and position is to be stated.
- The **differences** between **Swedish corporate law** and the legislation under which the foreign company operates which are particularly relevant for a Swedish investor are to be stated. In particular, this involves preferential rights for shareholders as regards new issues, etc, procedures for determining changes in the

company's share capital and, in the company's Articles of Association (or the corresponding document), the rules for the election and dismissal of the Board and the auditors, the allocation of authority and responsibilities between the Board and the General Meeting of shareholders and between the Board and executive management, rules for the protection of minority interests, rules concerning mergers, liquidation and bankruptcy, rules concerning public offers (for example mandatory offers), and rules for the compulsory purchase of minority holdings.

- The rules for participation in **General Meetings of shareholders** are to be stated.
- A description is to be provided of the **registration procedure** for the shares or depository receipts concerned. The main conditions for depository receipts are to be indicated in the prospectus, or included in extenso as an appendix to the prospectus.
- Information is to be provided concerning the manner in which shareholders and the stock market are informed about major **changes of ownership** in the company.
- Information is to be provided concerning the procedure for the **distribution of dividends**. Tax issues which affect Swedish investors are to be explained elsewhere in the prospectus (see the tenth main heading).
- An account is to be provided of the way in which **information** will be supplied to the Swedish stock market.

**14. Possible appendices to the prospectus****General instructions**

**Information which is to be included in the prospectus may be presented as an appendix to the prospectus if considered appropriate – for example the full terms of loans and warrants which form part of the offer.**



**THE NÄRINGSLIVETS BÖRSKOMMITTÉ, NBK**

RECOMMENDATIONS CONCERNING THE PURCHASE AND SALE  
OF A COMPANY'S OWN SHARES (2000)

The Federation of Swedish Industries  
The Stockholm Chamber of Commerce





<b>TABLE OF CONTENTS</b>		<b>Page</b>
<b>Introduction</b>		
<b>I.</b>	<b>Purchase and sale of a company's own shares on a stock exchange or authorized market place .....</b>	<b>85</b>
<b>II.</b>	<b>Purchase of a company's own shares by means of a public offer .....</b>	<b>92</b>
<b>III.</b>	<b>Prospectus .....</b>	<b>98</b>



## **Introduction**

Following approval of Bill 1999/2000:34 by the Swedish Parliament on 23 February 2000, it is now possible for a Swedish public company whose shares are listed on a stock exchange, authorized market place or some other regulated market to buy and sell its own shares. The new provisions, which are primarily covered by the Swedish Companies Act (SFS 2000:66), entered into force on 10 March 2000.

The possibilities of buying and selling a company's own shares are limited in several respects. The new provisions in the Swedish Companies Act, which are based on the Second EC Companies Directive, stipulate for example that acquisition may not exceed the company's unrestricted shareholders' equity, and that the total holding of the company's own shares may not exceed 10 per cent of the total number of shares in the company. In addition, a decision regarding the purchase and sale of the company's own shares must be taken by the General Meeting of Shareholders, or by the Board of Directors following authorization by the General Meeting.

Additional restrictions are stipulated which are related to provisions in the Swedish Companies Act for reducing and increasing the share capital. Decisions concerning the purchase of shares must normally be taken by a two-thirds majority, both of the votes cast and the shares represented at the General Meeting of Shareholders. This also applies to the sale of shares via a stock exchange, or in other cases in which the preferential rights of shareholders do not apply.

On 24 February 2000, the Swedish Financial Supervisory Authority approved Regulations concerning Trading in a Company's Own Shares, etc. (FFFS 2000:1) in stock exchanges and authorized market places.

Buying and selling of its own shares by a company is a new phenomenon in Sweden, entailing special requirements as regards implementation. It is important that such operations do not have a negative impact on confidence in

the stock market. As a result, NBK has decided to issue Recommendations for such purchases and sales on a stock exchange or authorized market place, and purchases by means of a public offer.

The Recommendations do not include any provisions regarding the sale by a company of its own shares by means of a public offer. A sale of this nature is covered in all material respects by the provisions of the Swedish Companies Act regarding new share issues and the NBK Recommendations for Preparing Prospectuses. Additional recommendations are not required in this context.

## **I. PURCHASE AND SALE OF A COMPANY'S OWN SHARES ON A STOCK EXCHANGE OR AUTHORIZED MARKET PLACE**

### **Area of application**

- 1. The Recommendations made in this Section apply to a situation in which a Swedish limited company, whose shares are listed on a Swedish stock exchange or authorized market place, buys or sells its own shares on the stock exchange or market place, or in a regulated market in another country.**

**The Recommendations do not apply to trading in the company's own shares under Chapter 4, Section 5, of the Swedish Securities Business Act.**

The Recommendations are confined to stock market companies. This means, for example, that they do not cover a foreign company's purchase of its own shares or depository receipts which are listed on the OM Stockholm Exchange. On the other hand, where applicable, the Recommendations cover the purchase and sale by a stock market company of its own shares on a foreign stock exchange which lists the share concerned, providing the share is also listed in Sweden. In certain cases, the permission of the Financial Supervisory Authority is required in this connection.

As is the case in this respect in the Swedish Companies Act, these Recommendations only apply to the purchase and sale of shares, and hence they do not cover the purchase of convertibles, warrants and other financial instruments.

Many foreign market places apply special rules to trading by a company in its own shares, and these rules may differ from those which apply in Sweden. Certain foreign stock exchanges and market places also require foreign companies whose shares are listed on the exchange or market place concerned to comply with these rules. As a result, a Swedish company which buys and

sells its own shares on a foreign exchange may be faced with a situation in which the company must apply both Swedish and foreign rules. Although, in principle, a Swedish company is always obliged to comply with the Swedish rules, it is possible that conflicting rules, trading methods and practices on foreign exchanges and market places may wholly or partially preclude compliance with the Swedish rules. An exception must be made in such cases, although every effort should be made to comply with the Recommendations.

### **Announcing decisions to buy or sell the company's own shares**

- 2. When a company has decided to buy or sell its own shares, it must immediately make this decision public. This information is to be provided in the form of a press release, in accordance with Item I.3.**

It is of the utmost importance that information is distributed to the stock market as soon as a company has decided to buy or sell its own shares. A decision to buy or sell such shares is defined as a decision by the Board to propose that the General Meeting of Shareholders should approve the purchase or sale of the company's own shares or that it should authorize the Board to take such a decision, a decision by the General Meeting of Shareholders regarding such a proposal by the Board, and – where applicable – a decision by the Board to buy or sell shares in the company on the basis of the authorization granted by the General Meeting of Shareholders.

- 3. Following determination of the relevant details, a press release must contain the following information:**
  - the period during which an authorization may be utilized or during which a decision regarding the purchase or sale of the company's own shares is to be implemented**

- **the company's existing holding of its own shares and the maximum number of shares which the company intends to purchase or sell**
- **the maximum and minimum price**
- **a brief summary of the reasons for the purchase or sale and, to the extent that this is feasible, the financial impact on the company's earnings and position – this information should also be expressed on a per share basis**
- **Other terms for the purchase or sale**

The third point indicates that information is to be provided concerning the highest and lowest price which may be paid for the shares. This may take the form of a maximum and minimum amount, or it may be denoted by a given range above and below the current share price, etc. It is important to ensure that the decision is formulated in a manner which does not give rise to interpretation problems.

- 4. An announcement is to be made by dispatching the press release for distribution to an established news agency and at least three daily newspapers with national coverage. The text must be simultaneously submitted to stock exchanges, authorized market places or other regulated market places on which the company's shares are listed.**

#### **Trading rules**

- 5. On any given day, the company may only commission one member or broker on the stock exchange or market place concerned. The company must clearly inform the member or broker in question that the assignment involves trading in the company's own shares.**

Under this rule, the company is not permitted to simultaneously commission more than one broker on each stock exchange or market place to buy or sell its own shares. A commission entrusted to one broker must always be terminated before a new assignment is given to another broker. This rule is designed to make it easier for companies or the stock exchange/market place to check compliance with the relevant restrictions on trading.

**6. With the exception of “block transactions”, the company’s purchase or sale of its own shares on any given day may not exceed 25 per cent of average daily transactions during the four calendar weeks immediately preceding the week during which the purchase or the sale takes place on the stock exchange or market place.**

**“Block transactions“ is defined as trading which involves at least five hundred (500) round lots of the most heavily traded shares on the OM Stockholm Exchange, or at least two hundred and fifty (250) lots of other shares on the OM Stockholm Exchange or other stock exchanges and authorized market places. The purchase or sale of shares acquired from various sellers, which a broker has accumulated for transfer to the company without reaching the above round lot minimum for each individual seller, is not regarded as a block transaction. Block transactions must be reported to the stock exchange or market place as a completed transaction in accordance with the rules which apply in such cases.**

This rule stipulates that, in the course of a single trading day, the company concerned may not buy or sell more than a total of 25 per cent of the daily average number of shares, including its own transactions, traded on the stock exchange or market place on which the share is traded. If the share is traded on several stock exchanges and market places, the company’s trading may thus amount to 25 per cent of daily average trading in the share concerned on each of these stock exchanges and market places.

A trading day is defined as the period in which the exchange is open for business. Both shares traded in real time in an electronic trading system and



shares reported to the exchange during the trading day in accordance with special rules constitute a basis for computing the number of shares traded. Shares traded after the exchange closes, and which are therefore reported subsequently must be included in the computation.

Exemption from the 25 per cent rule is permitted in the case of block transactions, as defined in the OM Stockholm Exchange's trading rules. Block transactions may be conducted during stock exchange business hours, or after the exchange closes.

- 7. The company may only place orders or complete transactions in its own shares within the range of share prices registered at any given time on the stock exchange or market place concerned. The range of share prices is defined as the difference between the maximum buying rate and the minimum selling rate.**

The price range for the company's shares – the "spread" – is indicated on an ongoing basis by information provided by stock exchange trading systems which is normally distributed to the market by various information companies. Under the above rule, all orders must be within this price range. This also applies to block transactions covered by Item 6, above. One effect of this rule is that trading in the company's own shares cannot take place until a price range has been established.

- 8. The company must immediately inform the stock exchange or market place concerned regarding each transaction involving the purchase or sale of its own shares.**

Monitoring trading, in order to discover cases of improper manipulation of share prices and take the appropriate measures, is a crucial task for stock exchanges and market places. A stock exchange or market place has a special market supervision unit which monitors price trends on a continuous basis and may investigate abnormal price movements.

In order to facilitate supervision, this rule stipulates that the stock exchange or market place must be informed immediately concerning the purchase or sale of the company's own shares. The rule complies with the FFFS 2000:1 Regulations issued by the Swedish Financial Supervisory Authority requiring a stock exchange or market place to apply rules to this effect.

The company's information obligation is fulfilled when the broker which is conducting transactions on the company's behalf reports this information to the stock exchange or market place. This information is only available to the stock exchange or market place concerned for supervisory purposes, and is not public information.

**9. The company may not buy or sell its own shares during the last 30 minutes of trading on the stock exchange or market place concerned.**

This rule applies to all types of transactions, including block transactions.

**10. The company may not buy or sell its own shares during the 30-day period immediately prior to publication of the company's annual or interim accounts.**

A company is aware of the contents of future annual and interim reports for some time prior to publication of information concerning the accounts. In order to avoid possible discussion of the company's access to insider information, this rule establishes a standard period of one month prior to publication of a report during which the company may not buy or sell its own shares.

Obviously, prior to this date, the company may also have access to unpublished information concerning a future financial statement or other circumstances which may affect the share price. Under the provisions of the Swedish Insider Act, prohibition on trading in the company's own shares naturally also applies in situations of this nature.

**Notification of the purchase and sale of the company's own shares**

- 11. The company must notify the stock exchange or market place of the occurrence of acquisitions and transfers of the company's own shares as soon as possible, and not later than the time at which the stock exchange or market place opens on the next day of trading after the purchase or sale.**

**Notification made in accordance with the first paragraph must contain information regarding the number of shares, and the type of shares involved, the price per share – or where relevant the highest or lowest price – paid or received, the company's current holding of its own shares and the total number of shares in the company.**

**Information regarding purchases and sales of the company's own shares must also be included in the company's interim reports and in press releases regarding unaudited annual earnings figures. These reports must also indicate the number of shares in the company after deduction is made for shares bought back by the company, both at the closing date and as an average for the period.**

The new provisions contained in Chapter 4, Section 6, of the Swedish Financial Instruments Trading Act (SFS 2000:70) indicate that a company which acquires or transfers its own shares must notify such an acquisition or transfer to the stock exchange or market place concerned. The above rule stipulates, for example, the contents of a notification of this nature.

The Financial Supervisory Authority's Regulations (FFFS 2000:1) state that the stock exchange or market place must make the information contained in the notification public.

## **II. PURCHASE OF A COMPANY'S OWN SHARES BY MEANS OF A PUBLIC OFFER**

### **Area of application**

- 1. The recommendation in this Section apply when a Swedish limited company whose shares are listed on a Swedish stock exchange or authorized market place makes an offer to all shareholders, or all holders of a specific type of share in the company, to transfer their shares issued by the company to the company itself on terms with general application (public offer).**

As in the case of Section I, concerning the purchase and sale of the company's own shares on a stock exchange or authorized market place, these recommendations only apply when a Swedish company makes a public offer regarding its own shares. As a result, for example, they do not cover an offer by a foreign company to acquire its own shares or depository receipts which are listed on the OM Stockholm Exchange or some other market place.

This recommendation only applies to offers to buy the company's shares. They do not apply to the purchase of convertibles, warrants or other securities issued by the company.

### **Announcement of a decision to make an offer**

- 2. Once the company has decided to make a public offer, the company must immediately make its decision public. This information is to be provided in the form of a press release in accordance with Item II.3. In addition, the company must prepare a prospectus in the manner stipulated in Section III.**

**The prospectus is to be sent to shareholders covered by the offer whose postal address is known, and to stock exchanges or market places on which**

**the company's shares are listed, and – to an appropriate extent – to the news media.**

It is of the utmost importance that information is distributed to the stock market immediately after the company's decision to make a public offer to buy its own shares. A decision concerning a public offer is defined as a decision by the Board to propose that the General Meeting of Shareholders should approve a public offer for the purchase of the company's own shares or that it should authorize the Board to make such an offer, a decision by the General Meeting of Shareholders regarding a proposal by the Board, and – where applicable – a decision by the Board to make such an offer in line with the authorization granted by the General Meeting of Shareholders.

**3. Following determination of the relevant details, a press release must contain the following information:**

- **the principal terms for the offer, including any provisos, for example regarding approval by the General Meeting of Shareholders**
- **the company's existing holding of its own shares and the number of shares covered by the offer**
- **the payment to be made, and whether payment is to be in cash or in some other form**
- **the existence of selling rights or possible reduction rules, if acceptances exceed the maximum number of shares**
- **information concerning whether shareholders have notified the company of their intention to accept or reject the offer, including, if possible, the number of shares affected**
- **a brief summary of the reasons for the offer and, to the extent that this is feasible, the financial impact of the offer on the**

**company's earnings and position – this information should also be expressed on a per share basis**

- **a timetable – as precise as possible – for implementation of the offer**
- 4. An announcement is to be made by dispatching the press release for distribution to a well-established news agency and at least three daily newspapers with national coverage. The press release must be simultaneously submitted to stock exchanges, market places or other entities which list the company's shares.**

#### **Acceptance period**

- 5. The period allowed for acceptance of the offer must be not less than three weeks, and may not commence prior to publication of the prospectus.**

#### **Drawing up the terms for the offer**

- 6. Unless there are special reasons to the contrary, the offer is to be addressed to all shareholders in the company. However, the offer does not need to cover shares for which the Articles of Association prescribe an upper limit with regard to participation in the company's assets and earnings.**

In principle, a public offer should be addressed to all shareholders in the company. An offer to purchase which is confined to a single type of share may be considered acceptable, however, if there are special reasons. It may be acceptable to confine the offer to a single type of share with a limited number of outstanding shares, since it may be in the company's interest to terminate listing of these shares.

In economic terms, certain types of shares are virtually equivalent to bonds, although the risk may be greater. This primarily applies to “limited preference shares”, for which the Articles of Association prescribe an upper limit as regards entitlement to participation in the company’s assets and earnings. Such shares do not necessarily have to be covered by the offer.

- 7. All shareholders covered by the offer are entitled to utilize the offer in relation to the number of shares they owned previously. In this connection, holders of shares with identical terms must receive identical payments per share.**

This rule is based on the same principle regarding preferential rights as applies for a cash issue. Identical terms for shares primarily apply to provisions regarding influence or economic rights stipulated by law, in the Articles of Association, or which otherwise apply to all shareholders (for example the share’s voting rights or dividend entitlement).

- 8. Holders of shares with terms which are not identical may receive offers which differ in terms of the amount of the payment, providing that such shares are listed on a stock exchange or authorized market place and that the market for the shares is well developed. If a fixed-amount premium is paid over and above the market price of the share, however, this must be of equal value, unless there are special reasons to the contrary regarding shares other than ordinary shares.**

NBK considers that it may be necessary to pay different prices for shares in the company, both in the case of buying on the stock exchange and in the context of a public offer. In the case of a public offer, a price differential would probably only apply to different types of shares, for example shares with different voting rights or dividend entitlements. It is not unnatural that the shareholder categories concerned may be offered a different price in view of such distinctions. But this does not mean that there are no limitations on the differences which may be accepted. Obviously, each shareholder category should receive fair and reasonable treatment.

The basic factor should be the market price of the shares, if they are publicly quoted. If there is no market price, or if the market for the share is not fully developed and hence the share price is not representative, the main principle should be that the share price applied should be the same as for a type of share which has a representative market price. If, for example, a type of share which carries a limited voting entitlement is listed, but not a share class which carries greater voting rights, the same share price should be applied. If, on the other hand, the difference between the share types involves the right to participate in the company's assets or earnings, an estimated or adjusted share price may apply for shares which differ in such respects.

An offer which confers a benefit (i.e. where the right to participate has an economic value) resembles the appropriation of earnings to some extent. A fixed-amount premium on the current or estimated share price, as described in the preceding paragraph, must therefore be of equal value for all shares in principle, irrespective of the type of share. Shares which provide greater voting entitlements must never entail a higher premium than other shares. However, if the offer also includes shares with different rights to participation in the company's assets or earnings, a premium other than that which applies for ordinary shares may be justified.

Differences in the treatment of various shareholder categories must comply with the Swedish Companies Act and may never be unreasonable. It is of crucial importance in enabling shareholders to evaluate the contents of the offer that clear information concerning any differences in the payment offered for shares of different types, and the reasons, is provided.

## **Reduction**

- 9. If the maximum number of shares stated to be required in the offer is exceeded, the company must undertake a proportional reduction of the blocks of shares submitted for sale under the terms of the offer.**

It should be emphasized that, for practical reasons, the proportional reduction which may be required in certain cases may need to be adjusted somewhat. Hence, it may be



appropriate to exempt small blocks of shares from this process. No reduction is required if selling rights are employed.

This rule does not prevent the company from stating a price range within which the company offers to acquire shares, or shareholders from stating the minimum price at which they are prepared to sell. The company may subsequently eliminate excess acceptances on this basis, providing this is carried out in a predictable, fair and uniform manner.

### **Information obligation**

- 10. The company must make the outcome of the offer public as soon as possible after the end of the application period, and announce the date for the commencement of payment.**

### **III. PROSPECTUS**

In the case of the purchase of the buyer's own shares, a prospectus must be prepared, in accordance with Chapter 2, Section 3, of the Swedish Financial Instruments Trading Act.

#### **1. The offer, terms and instructions for participation**

The following information is to be provided:

- who has decided to make the offer, and the date of the decision
- the terms for a transfer of shares
- the application period, and the manner in which shareholders are to proceed if they wish to accept the offer
- the manner in which payment is to be made, and when this will take place

If the company has reserved the right to extend the application period, and postpone payment and information, this should also be stated.

#### **2. Background and reasons, and the financial impact**

The following information is to be provided:

- the considerations and reasons underlying the offer
- the financial impact of the offer on the company's earnings and position, also expressed on a per share basis, and on the major key ratios
- information concerning the company's existing holdings of its own shares, and the number of shares covered by the offer

- information concerning whether the company has received notification from shareholders of any declarations of intent regarding acceptance of the offer or non-participation in the offer, and the extent to which this is the case
- information concerning any authorization permitting the Board to decide on share issues and the purchase or sale of the company's own shares.

### **3. Shares and ownership in the company**

The following information is to be provided:

- the number of shares in the company, broken down by the type of share
- the potential number of additional shares, and where applicable the type of share, if outstanding convertibles and warrants are exercised
- the extent to which and the manner in which the offer may affect the company's equity structure
- the number of shareholders in the company and the extent to which the number of shareholders may be affected by the offer
- major shareholdings in the company, including information regarding the percentage of shares held and the proportion of voting rights, and the manner in which these factors may be affected by the offer
- shareholder associations and other significant agreements between major shareholders regarding shares in the company which are known to the Board
- stock exchanges and market places on which shares in the company are listed
- the share price trend during the past five years.

**4. Tax issues**

Information must be provided, to a reasonable extent, to permit shareholders to assess tax effects which may occur in Sweden if they accept the offer. In addition, information is to be provided concerning any requests for advance information submitted to the tax authorities or which are to be submitted, the manner in which such advance information will be notified and, if possible, when such advance information may be anticipated.

**5. Auditors' report**

The prospectus is to be scrutinized by the company's auditors. A report on this examination must be included in the prospectus.

**THE NÄRINGSLIVETS BÖRSKOMMITTÉ, NBK**

RECOMMENDATIONS CONCERNING INFORMATION ABOUT  
BENEFITS FOR SENIOR EXECUTIVES (2002)



August 16, 2002

**Recommendations by the Näringslivets Börskommitté (NBK)  
(The Swedish Industry and Commerce Stock Exchange Committee)  
concerning Information about Benefits for Senior Executives (2002)<sup>1)</sup>**

**INTRODUCTION**

In 1993, the Näringslivets Börskommitté (NBK) issued recommendations concerning benefits for senior executives. These Recommendations have helped to achieve considerable transparency regarding salaries and other benefits received by top management in stock market companies.

However the question of whether companies should provide more extensive information of this nature has been raised. Attention has been drawn, for example, to the information requirements that apply in Great Britain and the United States.

The NBK regards transparency concerning the benefits received by senior executives as a major issue of confidence for the business community as a whole, and for individual companies. Considerations of confidentiality and integrity argue against information about circumstances involving the income of an individual person, and competition aspects are another factor that must be taken into account. In making an overall assessment, the NBK has concluded that requirements for a greater degree of clarity and detail should be stipulated, but that information requirements for reporting at the individual level should continue to be confined to the company's top management.

In addition, the NBK has considered that it is justified to extend the area of application of the Recommendations to foreign companies whose shares or depository receipts are quoted on a Swedish stock exchange or marketplace.

Finally, the NBK has concluded that it is important that companies should also provide information about the preparatory and decision-making process employed when determining benefits for senior executives.

These Recommendations do not contain detailed regulations. However, difficulties of application due to the lack of detailed rules are unlikely to be encountered by those who endeavour to observe the Recommendations. The Recommendations are to be interpreted in the light of their purpose – to meet the need for information concerning benefits for senior executives.

Finally, it should be recalled that companies are also obliged to comply with the requirements regarding information concerning salaries and remuneration to the board and senior executives stipulated in the Annual Accounts Act (1995:1554). In this context, it should also be recalled that the Swedish Securities Council Statement 2002:1 includes information requirements about incentive programmes in annual reports.

## **RECOMMENDATIONS**

### **Area of Application**

**1. These Recommendations shall be applied by Swedish and foreign companies whose shares or depository receipts are quoted on a Swedish stock exchange or authorized marketplace.**

**In accordance with these Recommendations, such companies shall provide information concerning remuneration and other benefits which senior executives receive from the company.**



**If the company is part of a group of companies, the benefits received from all companies within the group shall be included.**

**Exemption from the information requirements stipulated in these Recommendations may be granted to foreign companies by a stock exchange or authorized marketplace on which the company's shares or depository receipts are quoted.**

In these Recommendations, "senior executive" is defined as follows: the chairman of the board, other directors who receive remuneration from the company in addition to the customary director's fee and who are not employed by the company, the managing director, the group chief executive (where applicable) and, in certain cases, salaried executives in the company's senior management team. In these Recommendations, the chairman of the board, relevant members of the board, the group chief executive and the managing director are defined as "top management". The expression "other senior executives" refers to persons who are not members of this group. Normally, this applies to persons employed by the company who constitute the group management team or corresponding unit, which also includes the managing director.

A listed company is often the parent company of a group of companies. In many cases, senior executives in the parent company also have important functions in subsidiaries. Special remuneration may be paid for such assignments. Information about these executives must include remuneration and benefits provided by all group companies, whether Swedish or foreign.

### **Information concerning the principles for remuneration to senior executives**

#### **2. The company shall specify the principles for the remuneration of senior executives.**

In order to provide background information for reporting in accordance with items 3 and 4, below, the company must explain the principles applied by the

company as regards remuneration of its senior executives. This may, for example, involve the principles for fixed and variable remuneration and the proportion of such remuneration.

**Information regarding benefits for top management**

**3. Information shall be provided for each of the following:**

**The chairman of the board**

**Board members not employed by the company who receive special remuneration in addition to the fee received for board duties**

**The group chief executive**

**The managing director**

***regarding:***

**The total amount of all remuneration and other benefits.**

**All remuneration items which are not of minor importance.**

**The fixed and variable components in remuneration, including the main principles applied for the calculation of variable remuneration.**

**Holdings of financial instruments and other options or entitlements received during the year in connection with incentive programmes linked to share prices, and the estimated market value on the date of allotment and the acquisition price.**

**Holdings of financial instruments and other options or entitlements received during previous years in connection with incentive programmes linked to share prices.**

**The most important terms of agreements concerning future pensions.**

**The most important terms of agreements concerning severance payments.**

**In cases in which it is impossible to indicate a specific amount in a meaningful manner, the benefit in question shall be described in greater detail in order to permit assessment of its significance.**

Certain officers have a special status – the chairman of the board, other directors who receive remuneration from the company in addition to the customary director's fee and who are not employed by the company, the managing director and, where applicable, the group chief executive. This is considered to justify the provision of relatively detailed information concerning the benefits received from the company by each of these officers. In these Recommendations, the deputy managing director is not regarded as equivalent to the managing director. Deputy directors are regarded as full members of the board, however.

In addition to the total amount of all remuneration and other benefits, each remuneration item which is not of minor importance must be reported. Benefit items of limited scope may be reported as a lump sum. A guideline for reporting items in this manner is that the total benefits do not exceed 10 per cent of annual salary.

In the case of variable remuneration (bonuses, earnings-related payments and similar remuneration), the total amount is to be stated in the form of information regarding the amount charged against the company's profit for the year, and also the main principles for calculating and determining the variable remuneration.

Financial instruments are defined as instruments covered by the definition in Chapter 1, Section 1, of the Financial Instruments Trading Act (1991:980). In addition to these instruments, the Recommendations also cover other options and entitlements employed within the framework for incentive programmes linked to share prices, "employee stock options" as defined in tax legislation (see Government Bill 1997/98:133) and also "synthetic options".

Other entitlements which are not financial instruments and which may involve costs for the company as a result of the trend for the company's share price are also covered by the Recommendations. On the other hand, the Recommendations do not cover call options, etc. issued by a party other than the company and which do not involve any cost for the company.

Financial instruments and other options or entitlements received during the year pertaining to incentive programmes linked to share prices are to be reported with respect to the holding, the estimated market value at the date of allotment and the acquisition price for the instruments concerned. This information must indicate whether or not the allotment involves a benefit (subsidy) for the individual concerned. If there is no established market value for the instrument in question, a theoretical value should be computed, in accordance with a generally recognized valuation model. In this connection, information must be provided concerning the major assumptions that have been applied.

In the case of financial instruments and other options or entitlements received in previous years pertaining to incentive programmes linked to share prices, the holding must be reported.

As the Recommendations indicate, information must be provided concerning special remuneration to directors in addition to the fee for board duties. The amount of such remuneration and the nature of the duties are to be specified. Distinguishing between what constitutes fees for board duties, per se, and other remuneration paid by the company should not normally present any difficulty. In Sweden, the fee for board duties is determined by the general meeting of shareholders for allocation among members of the board. This fee may be determined in other ways in other countries.

Information is to be provided regarding all remuneration received from the company by board members, including payment for assignments covered by the member's normal professional field of expertise, as a practicing lawyer, scientific expert or consultant, for example. In this connection, it is irrelevant if the remuneration is paid to the board member personally, to a company wholly or partly owned by the board member, or in some other manner. Remuneration from a group company in Sweden and other countries is also covered by this obligation to supply information.

In the case of pension benefits, information is to be provided about the most important terms for future pensions, including the pensionable age and the period during which the pension is to be paid. If bonuses or other variable remuneration are payable in addition to a fixed salary, the extent to which such remuneration constitutes pensionable income is to be stated. In addition, information must be provided as to whether the pension is based on contributions or benefits.

In the case of pension schemes based on contributions, the company must provide information regarding cost for the year in relation to pensionable income.

In the case of pension schemes based on benefits, information must also be provided regarding the cost for the year. This cost may be reported in accordance with IAS 19 <sup>2)</sup>. In addition, in the case of schemes based on benefits the company must provide information concerning the pension level in relation to pensionable remuneration. Alternatively – where applicable –

such information may be expressed in Swedish kronor. The company must also state whether or not the pension is revocable. An irrevocable pension is not dependent on future employment, but a revocable pension is governed by a clause of this nature.

In the case of severance payments, the main prerequisites and the conditions for a benefit of this nature must be reported for each executive concerned. The extent of this information may be determined from case to case. However, if the executive concerned is entitled to personally require a severance payment, this must be specifically stated, including the basis for such a request.

#### **Information concerning benefits for other senior executives**

**4. In the case of other senior executives, the total amount of remuneration and benefits for this category of executive shall be reported, and also a summarized account of the most important terms of agreements for future pensions and severance pay.**

"Other senior executives" are defined as persons in the management team other than members of the board, the group chief executive (where applicable) and the managing director. Each company is responsible for determining members of the group management team or corresponding unit who are considered to constitute other senior executives. Details must always be provided concerning the number of executives covered by such information.

In the case of the executives referred to in this context, there are no requirements for individual reporting. Information concerning remuneration, holdings, etc. of financial instruments and other options or entitlements pertaining to incentive programmes linked to share prices, terms for future pensions and severance payments is to be provided collectively for this category of executives.

In the case of the manner in which such information is presented, reference is made to the relevant aspects of the comments on information concerning benefits received by top management.

### **The decision-making process**

#### **5. Information shall be provided concerning the preparatory and decision-making process employed by the company when determining remuneration for top management.**

It is important to provide information concerning the preparatory and decision-making process employed in order to establish confidence in companies' handling of issues involving benefits for senior executives.

Such information should include whether or not a compensation committee has been appointed and, if so, its mandate and composition. Even if a compensation committee has been established, it is appropriate that decisions regarding benefits for the managing director and, where applicable, the group chief executive are always taken by the board, and are not delegated to a committee.

### **Publication**

#### **6. Information covered by these Recommendations shall be presented in the annual report. If there is a significant change in the benefits received by senior executives in comparison with information supplied previously, this shall be publicly announced in the next interim report.**

The information to be provided in accordance with these Recommendations must be published in a manner that ensures access for all shareholders. As a result, such information must be included in the annual report. If the benefits received by senior executives change significantly during the current year, this

must be made public. Information of this nature is to be provided in the next interim report.

Following consultation with a stock exchange or marketplace, foreign companies may provide information in other forms than in the annual report and the interim report.

---

**Footnotes:**

<sup>1)</sup> These Recommendations, which were adopted on August 15, 2002, replace the 1993 Recommendations under the same title. Information in accordance with the new Recommendations is to be provided in annual reports for the financial year commencing January 1, 2002.

<sup>2)</sup> IAS 19 is to be applied by all companies in the European Union for consolidated financial statements prepared as from 2005. Swedish recommendations based on IAS 19 (Employee Benefits) are expected to enter into force as from 2004.

-----



**THE NÄRINGSLIVETS BÖRSKOMMITTÉ (NBK)**

RECOMMENDATIONS CONCERNING PUBLIC OFFERS FOR THE  
ACQUISITION OF SHARES (2003)

**FOREWORD**

In 1971, the Näringslivets Börskommitté (NBK) drew up Recommendations concerning Public Offers for the Acquisition of Shares for the Purpose of Mergers between Companies. The Recommendations, which were based on the London City Code on Takeovers and Mergers, worked well and achieved general application. The Recommendations were revised in 1988. The Recommendations were also revised in 1999, including the introduction of rules for mandatory offers.

In the light of developments in the stock market and a considerable number of rulings by the Securities Council<sup>9</sup> in recent years, NBK has concluded that a further review of the Recommendations is justified. Following preparatory examination by a special expert group, NBK is now presenting the results in the form of revised Recommendations concerning Public Offers for the Acquisition of Shares.

Stockholm, January 2003

---

<sup>9</sup> Sw.: Aktiemarknadsnämnden

<b>TABLE OF CONTENTS</b>	<b>Page</b>
<b>Introduction</b> .....	117
<b>I General provisions</b>	
I.1 Area of application of the Recommendations .....	120
I.2 Securities Council's right to interpret the Recommendations and permit exceptions .....	123
I.3 Measures taken by parties related to the bidder .....	124
I.4 Publication in accordance with the Recommendations .....	126
<b>II Rules for procedures, drawing up the offer, etc.</b>	
II.1 Prerequisites for making an offer .....	127
II.2 Bidder's obligation to refrain from trading in the target company's shares after commencement of a due diligence investigation .....	128
II.3 Bidder's obligation to make an offer public .....	129
II.4 Bidder's possibilities to stipulate conditions for fulfilment of the offer .....	133
II.5 Bidder's obligation to fulfil the offer .....	137
II.6 Bidder's obligation to issue a prospectus .....	139
II.7 Shareholders' obligations to honour their acceptances of the offer .....	142
II.8 Bidder's obligation to treat all shareholders with identical terms in the same manner .....	145
II.9 Bidder's right to treat shareholders with non-identical terms differently .....	146
II.10 Acquisitions prior to the offer .....	149
II.11 Acquisitions during the offer .....	152
II.12 Acquisitions after the offer .....	155
II.13 Certain provisions regarding partial offers .....	157
II.14 Target company board's obligation to state its views regarding the offer .....	159

II.15	Target company's participation in a due diligence investigation .....	160
II.16	Measures taken by the target company .....	163
II.17	Bidder's obligation to announce the outcome of the offer .....	165
<b>III</b>	<b>Rules regarding mandatory offers</b>	
III.1	Prerequisites for an obligation to make a mandatory offer .....	167
III.2	Obligation to announce attainment of the threshold for a mandatory offer .....	175
III.3	Procedures, drawing up terms for the offer, etc. ....	177
<b>IV</b>	<b>Rules that apply if target company board members or senior executives participate in a public offer, or if a parent company makes a public offer for shares in a subsidiary</b>	
IV.1	Participation by board members or senior executives in an offer .....	181
IV.2	Additional information in press releases .....	184
IV.3	Valuation opinion .....	184
IV.4	Offer by a parent company for shares in a subsidiary .....	186
<b>V</b>	<b>Rules concerning the preparation of a prospectus, etc.</b>	
V.1	Responsibility for the prospectus .....	187
V.2	General requirements regarding the contents of the prospectus .....	188
V.3	Contents of the prospectus for various types of compensation .....	191
V.4	Information brochure .....	195
	<b>Entry into force and transitional provisions .....</b>	<b>196</b>
	<b>Appendix 1: Contents of the prospectus .....</b>	<b>197</b>

## **INTRODUCTION**

These Recommendations apply to public offers for the acquisition of shares in the Swedish stock market. Such offers do not normally involve any direct contact between the bidder and target company shareholders. The offer is not negotiable. Shareholders who receive an offer must either accept or reject it within a given period on the basis of information provided in the prospectus. As a result, a regulatory framework such as that embodied in these Recommendations is needed in connection with public offers, in order to safeguard certain fundamental rights for shareholders in the target company and guarantee that they receive fair treatment.

The Recommendations are addressed to bidders and, to some extent, to target companies. However, it is of the utmost importance for public confidence in the stock market and in industry and commerce that these Recommendations are also respected by people who, in various capacities, provide advice or assist bidders, target companies or other parties involved in public offers.

The Recommendations regulate the various stages of a public offer, and broadly comply with the normal order of events in the offer process. At the detailed level, the circumstances often differ from one public offer to another. As a result, the provisions are stated at a relatively general level, for the most part. In common with NBK, the Securities Council is assigned to promote good practices in the Swedish stock market. As a result of the NBK Recommendations, the Council has a status which enables it to issue rulings concerning the manner in which the rules are to be applied and how various parties should proceed in specific situations, thus making it possible for most disputes to be resolved in a rapid and authoritative way without involving a court of law. As a result, for example, the uncertainty which normally applies in a protracted judicial review of stock market issues in the public courts can be avoided.

The provisions in the Recommendations should be interpreted in the light of their purpose. As a result, the underlying concepts should be respected, not

merely the wording of the various provisions. However, the provisions concerning mandatory offers should not be applied to situations other than implied by the wording, with the exception of situations in which the aim is evasion or circumvention.

The key role played by the Securities Council in supplementing the rules makes it desirable to recall, initially, certain basic principles on which the Recommendations are based. These principles should provide guidance in situations not covered by the Recommendations or where the provisions do not prove to be adequate in a specific case.

The basic principles are as follows:

### **Respect for the stock market**

The stock market depends entirely on the confidence of the general public. One of the special features of the stock market is that measures taken by one participant are immediately relevant for a wide circle of individuals and entities with no direct mutual contacts. Each player must be in a position to rely instantly on information concerning a stock market company. This also applies to the process surrounding a public offer. As a result, the Recommendations prescribe, for example, that a public offer may only be made if the bidder seriously intends to implement the offer and has made proper preparations to achieve this aim.

Each party participating in an offer process – the bidder and shareholders in the company making the bid, the board and senior management of the target company, and the target company's shareholders and advisers who participate in the offer process – must take responsibility for ensuring that no measures are taken which may endanger confidence in the stock market.

### **Equal treatment of target company shareholders**

One of the basic underlying concepts in the Recommendations is that shareholders in the target company must be treated in the same manner. No

shareholder or shareholder group may be unduly favoured in relation to other shareholders, for example as regards the compensation offered.

### **Rapid processing**

A public offer ranges over a given time period in which, for example, the bidder must announce a decision to make an offer, hold a general meeting of shareholders if required, draw up a prospectus, and distribute the prospectus or an information brochure to shareholders in the target company. Target company shareholders must submit acceptances during the registration period if they decide to accept the offer, and subsequently, if the offer is completed, the bidder must make payment. The measures which must be taken and the circumstances which apply for various offers vary from case to case to such an extent that it is not appropriate to state any specific maximum period for completion of an offer. Since a protracted process may not only lead to problems in the target company's operations but may also have a negative impact on trading in the target company's shares, the Recommendations stress the importance of rapid processing. The offer may not extend over a period that is longer than necessary.

### **Simplicity and clarity in the provision of information**

Shareholders in the target company must be given sufficient time and information to enable them to make a soundly based decision concerning the offer. As a result, the Recommendations stipulate a certain minimum duration for the registration period and for the provision of full information to shareholders, both when the offer is made public and in the prospectus. The terms of the offer must be clearly specified and must permit interpretation of complex aspects. The Recommendations also contain detailed provisions regarding the mandatory contents of the prospectus, and are largely based in this respect on the NBK Recommendations for Preparing Prospectuses (1999).

## **Respect for the decision of target company shareholders**

A public offer is addressed to shareholders in the target company. It is important that they are able to arrive at a decision regarding the offer without interference from a third party. The board of the target company must indicate its opinion of the offer in writing, but may not take any step which might be expected to have a negative impact on the announcement or implementation of the offer, unless such action is approved by the shareholders.

## **I. GENERAL PROVISIONS**

### **Area of application of the Recommendations**

**I.1 These Recommendations apply to a public offer by a Swedish or foreign physical person or legal entity (the bidder) to shareholders in a Swedish company (the target company) that has issued shares listed on a stock exchange or authorized market place to transfer shares to the bidder on terms with general application. The Recommendations also contain rules regarding the obligation to make a public offer of this nature in certain cases.**

**The provisions in Sections I, II and IV also apply if a party makes a public offer to shareholders in a company in a foreign country whose shares are listed on a Swedish stock exchange or authorized market place to transfer shares to the bidder on terms with general application.**

**Unless stated to the contrary in the Recommendations, references to shares also apply, to the extent applicable, to convertibles, warrants, participating debt instruments, issue rights and corresponding financial instruments issued by a company referred to in the first and second paragraphs. Holders of such financial instruments are to be regarded as shareholders in this connection.**



**Comments**

The Recommendations apply to a public offer involving financial instruments issued by a Swedish company whose shares are listed on a Swedish stock exchange or authorized market place. This is indicated in the *first paragraph* and implies, for example, that an offer for shares in a Swedish company whose shares are exclusively listed in a foreign market place are not covered by the Recommendations. On the other hand, the Recommendations do apply to an offer for shares in a Swedish company whose shares are listed both on a Swedish stock exchange or authorized market place and in a foreign market place.

The *second paragraph* stipulates that certain aspects of the Recommendations apply to a public offer for foreign shares or depository receipts listed on a Swedish stock exchange or authorized market place. This applies to Sections I, II and IV. On the other hand, the provisions in Section III regarding mandatory offers and Section V on the content of a prospectus do not apply to an offer for foreign shares or depository receipts. Obviously, if a foreign company has its shares listed in one or more countries in addition to Sweden, conflicts between the rules in the various countries may occur. In such cases, the bidder or the target company may apply under Item I.2 for exemption by the Securities Council from the relevant provisions in the Recommendations. Generally speaking, there is greater scope for exemption in this context if the proportion of shares traded in Sweden is limited.

Application of the Recommendations does not depend on the bidder's national domicile. Similarly, it also irrelevant if the bidder is a physical person or a legal entity.

In parallel with growing foreign ownership of shares in Swedish stock market companies, a bidder making a public offer to shareholders in

such companies is increasingly obliged to take into account the regulations in one or more foreign countries, in addition to compliance with the NBK rules. Drawing up an offer to meet the requirements in all the countries concerned may sometimes prove to be very time-consuming and expensive. Since circumstances may vary in different situations, it is not possible to stipulate principles for the resolution of such regulatory conflicts in recommendations of this type. The extent to which the offer is to be addressed to shareholders in all countries and whether the Recommendations are to be applied in full in all respects must be determined on an ad hoc basis, for example in the light of international practice.

These Recommendations not only apply to offers for all the shares in the target company, but also to partial offers. Certain provisions in Item II.13 apply exclusively to partial offers.

In accordance with the *final paragraph*, the Recommendations stipulate that, unless stated to the contrary, references to shares also apply, to the extent applicable, to convertibles, warrants, participating debt instruments, issue rights and corresponding financial instruments issued by a company referred to in the first and second paragraphs. Holders of such financial instruments are to be regarded as shareholders in this context. As a result – with two exceptions (Item II.9 concerning premiums and Section III concerning mandatory offers) – the Recommendations refer solely to share(s) and shareholders, even in situations which involve other financial instruments which are equated in these Recommendations with shares, and holders of such instruments.

The Recommendations do not cover public offers exclusively addressed to holders of call options, although this does not mean that the forms for an offer of this nature may not be reviewed by the Securities Council in the light of the principles expressed in these Recommendations.

## **The Securities Council's right to interpret and grant exemptions from the Recommendations**

### **I.2 The Securities Council may issue rulings regarding interpretation of the Recommendations. The Council may also grant exemptions from the Recommendations. The Council may stipulate conditions for such exemptions.**

#### ***Comments***

A regulatory framework for public offers cannot cover in detail all the issues that may arise in practice in connection with such offers. As a result, it is of considerable importance that there is a body which can provide authoritative and final rulings on the manner in which the provisions are to be interpreted and applied. This task has been allotted to the Securities Council which, in common with NBK, is assigned to promote good practices in the Swedish stock market.

The provisions in the Recommendations are to be interpreted and applied in a manner which is compatible with their aims. In many instances, the provisions explicitly stipulate that the Securities Council should be consulted in order to eliminate uncertainty regarding the implications of a rule in a specific case. This applies, for example, to Items II.5-7 and II.16, but it may, of course also apply to other provisions in the Recommendations.

Certain provisions stipulate that special reasons may justify exceptions from the rule. If the comments do not provide sufficient guidance, the Securities Council should be consulted in such cases.

The circumstances in various public offers are seldom identical. It is impossible to take such differences into account fully when making general recommendations. As a result, it is necessary to combine the Recommendations with a provision permitting exemptions from the

Recommendations as a whole, or from specific provisions. This is another task performed by the Securities Council.

### **Measures taken by parties related to the bidder**

#### **I.3 Where stated in Items in the Recommendations and to the extent stipulated, measures taken by the bidder are equated with measures taken by:**

- a) a company in the same corporate group as the bidder,**
- b) the bidder's spouse, registered partner or cohabitant,**
- c) a minor for whom the bidder has custody,**
- d) any party with whom the bidder has concluded an agreement as a result of coordinated exercise of voting rights to adopt a long-term joint position as regards management of the target company, or**
- e) any party cooperating with the bidder on the basis of an agreement, or for other reasons, in respects covered by the Recommendations.**

#### ***Comments***

This provision lists the parties that are to be equated with the bidder in certain cases. This applies in cases where this is specifically stated in the Recommendations (see Items II.10-12, III.1 and III.3).

Under this provision, the consequences of measures taken by one or more of the parties listed are the same as if the bidder had taken the steps in question.

In *category a)*, the bidder is equated with a company which is a member of the same corporate group as the bidder. The definition of corporate group is in accordance with the definition employed in the Swedish Companies Act (1975:1385), although the statutory provisions regarding parent company also apply in this context to

physical persons and legal entities other than limited companies. This means, for example, that this provision may also apply if the bidder is part of a corporate group in another country.

In *category b)*, the bidder is equated with the bidder's spouse, registered partner or cohabitant. The definition of a cohabitant complies with the definition employed in the Cohabitees (Joint Homes) Act (1987:232) and the Homosexual Cohabitees Act (1987: 813). In *category c)*, the bidder's children who are minors and in the bidder's custody are equated with the bidder.

The prerequisite for a related party relationship stipulated in *category d)* is a written or oral agreement between the bidder and another physical person or legal entity to adopt a joint and long-term position for management of the company, as the result of a coordinated exercise of voting rights. This provision may apply, for example, if there is an agreement to coordinate the exercise of voting rights during an extended period (i.e. several fiscal years) to ensure the election of a number of directors which is sufficient, at any rate, to constitute a majority on the board. On the other hand, this provision is not designed to prevent cooperation prior to board elections or other decisions taken by a general meeting of shareholders that are of a temporary or ad hoc nature.

In *category e)*, it is not assumed that the parties agree on a specific joint position as regards management of the target company. This provision may, for example, apply to a situation in which two or more parties cooperate in the acquisition of shares prior to a planned public offer.

The Securities Council should be consulted if there is doubt as to whether a given relationship is to be regarded as having related party status in accordance with the Recommendations.

**Publication in accordance with the Recommendations**

**I.4 Information which is to be made public in accordance with the Recommendations must be submitted in the form of a press release to at least two well-established news agencies and at least three daily newspapers with national circulation. The corresponding information is to be simultaneously submitted to the stock exchange or authorized market place on which the target company's shares are listed. If the bidder has a website on the Internet, the information must also be made available on the website as soon as possible, unless there are special reasons for not doing so.**

***Comments***

It is stipulated in several places in the Recommendations that information is to be made public. This provision indicates the manner in which this is to be accomplished. The information in question is to be submitted in the form of a press release to at least two well-established news agencies and at least three daily newspapers with national circulation. The information must also be submitted to the stock exchange or authorized market place on which the target company's shares are listed not later than the time at which the information is submitted for publication.

If the bidder has a website on the Internet, the information made public must, as a rule, also be made available on the website as soon as possible. However, there may be special reasons – for example the fact that the offer is not addressed to shareholders in certain countries – which may cause the bidder to refrain from making the information universally available in this manner.

## **II RULES FOR PROCEDURES, DRAWING UP THE OFFER, ETC.**

### **Prerequisites for making an offer**

#### **II.1 A public offer may only be made after preparations have been made which indicate that the bidder is capable of implementing the offer.**

##### ***Comments***

A public offer normally has an impact on the target company's share price. In some cases, it also affects the price of shares in the company making the offer. As a result, a public offer has considerable impact on share trading, but it is also relevant for the target company's board and senior management, and it may also have an impact on operations conducted by the company.

In this context, it is important that the offer is only made public if the bidder seriously intends to implement the offer and has made careful preparations for implementation. Normally, this means that the bidder has utilized the services of experts who are familiar with the Swedish stock market and the regulations that apply.

This provision indicates that the preparations made must indicate that the bidder has the capacity to implement the offer. In the case of an offer wholly or partly in cash, this means for example that the bidder must ascertain that there are sufficient financial resources to complete the offer. The offer may be financed by borrowing. If the bidder is relying on payment of a loan or corresponding sum in order to implement the offer and if the lender has stipulated conditions for such a loan, Item II.4 indicates that the offer must be made conditional on receipt of such a payment.

It is assumed that the bidder will subsequently be able to provide evidence of the manner in which the preparatory process has been carried out – for example by means of written documentation.

This provision should not be interpreted to mean that the bidder has ascertained that the requisite official permits, where applicable, will be granted or that the bidder has ensured that approval by a general meeting of shareholders will be forthcoming, if this is required.

### **The bidder's obligation to refrain from trading in the target company's shares after commencement of a due diligence investigation**

**II.2 If a person/entity intending to make a public offer carries out a due diligence investigation of the target company and, in this context, receives information from the target company that is likely to materially affect valuation of the company's shares, such a person/entity must not buy or sell shares in the target company before the corresponding information has been issued to shareholders and the stock market.**

#### ***Comments***

A potential bidder sometimes conducts a due diligence investigation of circumstances in the target company as part of preparations for a public offer. This may give the bidder information which is not available to other shareholders and the stock market and which is likely to affect valuation of the company's shares to a significant extent. As a result, in order to uphold the principle of equal treatment of shareholders and public confidence in the functioning of the stock market, if the bidder has commenced a due diligence investigation and received information of this nature, the bidder must refrain from buying and selling shares in the target company until the corresponding information has been issued to shareholders and the stock market.



The requirement in this provision stating that the information received “is likely to materially affect valuation of the company’s shares” is less stringent than the corresponding requirement in the Insider Penalties Act (2000:1086). As a result, the Recommendations’ prohibition on trading is more far-reaching than the Act in this respect.

Item II.15 states that if the target company supplies the bidder with information that has not been made public in connection with a due diligence investigation and this information is likely to materially affect valuation of the company’s shares, the target company must ensure that this information is supplied to shareholders and the stock market.

### **The bidder’s obligation to make an offer public**

**II.3 Following a decision to make an offer as defined in Item I.1, the bidder must immediately make the offer public by means of a press release containing the following information:**

- **the bidder’s identity,**
- **the number of shares in the target company held by the bidder or controlled by the bidder in some other manner, and the corresponding proportion of the equity and votes for all shares in the target company,**
- **financial instruments covered by the offer,**
- **the main terms of the offer, including the price, premiums if any, and the basis for calculation of such a premium,**
- **the manner in which the offer is to be financed,**
- **possible conditions for fulfilment of the offer (fulfilment conditions),**
- **the extent to which the bidder has received information indicating that shareholders in the bidding company intend to vote for the requisite approval of the offer at the general meeting of shareholders of the company making the offer,**

- **the extent to which the bidder has received binding or conditional undertakings regarding acceptance of the offer by target company shareholders or whether shareholders have expressed favourable opinions concerning the offer,**
- **the reasons for the offer in brief and, to the extent that this is feasible in practical terms, the impact of acquisition – immediately and in the future – on the bidding company’s earnings and financial position if payment is to consist of shares or share-related instruments issued by the bidder. Where relevant, the financial impact should also be expressed on a per-share basis, and**
- **the anticipated publication date of a prospectus and a schedule for implementation of the offer that is as precise as possible.**

### ***Comments***

Following a decision to make a public offer, it is of the utmost importance that the offer is made public immediately, in view of the impact on share prices, for example. This takes the form of a press release that contains objective information which is relevant for the share price, to the extent that this is feasible.

The press release must provide information about the *bidder’s identity*. If the bidder is a Swedish stock market company, it is normally sufficient to indicate the bidder’s name. In other cases, the bidder must be presented in a manner which is relevant for target company shareholders and the stock market. The presentation must, for example, indicate the bidder’s national domicile, overall ownership factors and the nature and scope of operations. The latter requirement also calls for reporting of certain important key financial ratios.

The press release must also indicate *the number of shares in the target company held by the bidder or controlled by the bidder in some other*

*manner*, for example under option agreements, and the proportion of the equity and total votes in the target company that this represents.

The press release must also contain information about *which financial instruments are covered by the offer*. If, for example, the offer covers all shares in the target company, and also warrants or convertibles issued by the target company, this must be stated in the press release itself.

The press release must also indicate the *main terms of the offer*, for example the form of compensation and the amount. If there is a premium, this must be stated, including the basis for calculation. This means, for example, that the calculation period for the share price with which the offer price is to be compared must be stated.

In addition, the press release must provide information as to *the manner in which the offer is to be financed*. This means, for example, that the press release must indicate the extent to which the offer is financed from the bidder's resources or by borrowed funds. If the bidder's fulfilment of the offer depends on additional funds or financing by shareholders or other parties, this must be stated. Information about financing is particularly important if the offer is made by a company established specifically for this purpose.

If the bidder stipulates *conditions for fulfilment of the offer*, such conditions must be stated in the press release. Fulfilment conditions of this nature should normally be covered in detail. In accordance with the last paragraph of Item II.4, the press release should also indicate that the bidder may, in principle, only withdraw the offer in the light of an explicit fulfilment condition if failure to fulfil the condition is of material importance for acquisition of the target company by the bidder. If the bidder is relying on external financing for implementation of the offer and the lender stipulates conditions for payment of the loan or corresponding sum, the fourth paragraph of Item II.4 indicates that the offer must be made conditional on receipt of such a payment. The conditions for payment of the loan must be

stated in full in the press release. As pointed out in the comments on Item II.4, the purpose of the requirement for making the financing conditions public is that the market must be in a position to assess the prerequisites for implementation of the offer. This rule must be interpreted in the light of its purpose. Accordingly, conditions of a largely formal nature – for example the drawing up of final credit documentation – do not need to be stated in the press release.

Very extensive conditions may apply – based on practices in other countries – particularly in the case of cross-border offers. Fulfilment conditions of this nature may be stated in a summarized form, providing that the essential meaning is clear.

If the bidder *makes the offer conditional on a specific decision by shareholders in the bidding company concerning the offer* – for example that a new share issue is to constitute compensation in the offer – the press release must contain information regarding the extent to which the bidder has received information indicating that shareholders intend to vote in this manner at the general meeting of shareholders.

If the bidder has obtained assurances regarding conditional or unconditional *acceptances by target company shareholders*, this must be indicated in the press release. If this is not the case, no specific statement is required. One example of a conditional acceptance is a declaration by a shareholder that he will accept providing no other party makes a more favourable offer. If questions posed to shareholders regarding the offer have only resulted in favourable opinions, this should be indicated. In this case, it is important that the press release clearly states that such expressions of opinion are not binding undertakings.

This provision does not prevent the bidder from issuing a special press release to clarify the bidder's views if the bidder suspects that information about the offer has been, or may be, leaked to the market prior to the mandatory issue of a full press release in accordance with

this Item. On the contrary, such action may be appropriate in order to eliminate a possible information advantage due to a leak. A special press release of this nature should clearly state that the press release in question is not a formal announcement in accordance with this Item, and should indicate when a formal press release is to be expected.

Item IV.2 contains provisions regarding supplementary information in the press release if a target company board member or senior executive makes or participates in the offer.

### **The bidder's possibilities to stipulate conditions for fulfilment of the offer**

#### **II.4 The bidder may stipulate conditions for fulfilment of the offer (fulfilment conditions).**

**A fulfilment condition is to be drawn up in a manner which makes it possible to determine objectively whether or not the condition has been fulfilled. The condition may not be drawn up in a manner which gives the bidder a decisive influence over its fulfilment.**

**Notwithstanding the first sentence of the second paragraph, a condition for fulfilment of the offer may be that the bidder receives the requisite official permits on terms which are acceptable to the bidder.**

**If the bidder is relying on external financing for implementation of the offer and the lender stipulates conditions for payment of the loan or corresponding sum, the offer may be made conditional on the provision of such funds. The conditions stipulated for payment of the loan must be drawn up to fulfil the requirements of the second paragraph and are to be reproduced in full, both in the press release and in the prospectus.**

**The bidder must state, in connection with the fulfilment conditions stipulated, that the offer may only be withdrawn on the grounds of failure to fulfil a condition of this nature if failure to fulfil the condition is of material importance for the bidder's acquisition of the target company. However, this does not apply to conditions regarding achievement by the bidder of a given level of acceptance for the offer or that the general meeting of shareholders of the bidding company or the target company takes certain decisions in connection with the offer or conditions stipulating that no other party announces an offer to acquire shares on terms which are more favourable for the holder than the bidder's offer.**

### **Comments**

Public offers in the stock market have considerable implications for price trends for the shares of the companies concerned and, as a result, considerable implications for share trading. By definition, an offer is addressed to a wide group of shareholders with varying ability to assess the offer. As a result, it is desirable that the offer is characterized by simplicity and clarity, as far as possible. On the other hand, a decisive factor in the bidder's interest in, and ability to complete, the offer may be the fulfilment of certain requirements when the offer is completed and, as a result, the bidder may need to stipulate fulfilment conditions for the offer. The *first paragraph* states that such conditions are permitted, as a basic starting point. This may, for example, involve conditions stating that a specific level of acceptance of the offer must be achieved, that the requisite official permits are obtained, that no other party announces an offer to acquire shares on terms which are more favourable for the holder than the bidder's offer, or that the target company does not take measures covered by Item II.16.

The question of whether the bidder is free to stipulate fulfilment conditions without restriction or whether only certain types of

conditions are to be permitted is a key issue. Arguments may be advanced in support of both viewpoints. NBK has decided not to stipulate any restrictions in the Recommendations in this respect, but may revise its opinion if fulfilment conditions are introduced in the market which run counter to the simplicity and clarity requirement and which, as a result, make it more difficult for shareholders to assess future offers.

The *second paragraph* states that a completion condition must be drawn up in a manner which makes it possible to determine objectively whether or not it has been fulfilled. Hence, determination of this question is not a matter for the bidder's subjective judgement. The aim should be that verification of whether or not the condition has been fulfilled is feasible, for example by an auditor. In accordance with the second sentence of this paragraph, a condition may not be drawn up in a manner which gives the bidder a decisive influence over its fulfilment. This means that the bidder may not stipulate conditions that, in practice, entitle the bidder to determine fulfilment of the condition. The bidder must obviously endeavour to ensure that the conditions stipulated are fulfilled, for example by applying for a permit from the competition authority if such a condition is stipulated in the offer.

A due diligence investigation is sometimes carried out in connection with a public offer. In this context, the bidder may stipulate fulfilment conditions stating that the bidder is entitled to withdraw the offer if, after the offer has been made public, information concerning the target company emerges which differs in more than minor respects from what the bidder had reason to expect. A condition of this nature must also be formulated sufficiently precisely to permit objective determination of whether or not the condition has been fulfilled. This type of condition is also sometimes employed in cases where no due diligence investigation is carried out.

A certain degree of subjective assessment must be accepted for some types of conditions where it is not possible to rely solely on objective criteria. An official permit for which the bidder has stipulated a proviso may entail requirements with regard to which only the bidder can determine whether or not the prerequisites for completing the offer still apply. This may be the case concerning a decision by the competition authority, for example. As a result, *the third paragraph* makes an exception to the principle stated in the second paragraph, specifically relating to official permits.

If the bidder is relying on external financing for implementation of the offer and the lender stipulates conditions for payment of the loan or corresponding sum, the offer may be made conditional on the provision of such funds, in accordance with the *fourth paragraph*. The conditions stipulated for payment of the loan must be expressed in a form which complies with the requirements in the second paragraph and are to be reproduced in full, both in the press release and in the prospectus. The aim is to inform the market of the conditions that apply, thus permitting it to assess the prerequisites for implementation of the offer. This does not mean that the conditions which are virtually of a formal nature – for example the preparation of the final credit documentation – need to be reproduced.

Item II.5 indicates that, with certain specific exceptions, the bidder may only withdraw an offer on the grounds of failure to fulfil a condition that has been stipulated if failure to fulfil the condition is of material importance for the bidder's acquisition of the target company. It follows from the *fifth paragraph* that this must be stated in the press release and the prospectus in connection with the fulfilment conditions that are stipulated.



## **The bidder's obligation to fulfil the offer**

### **II.5 The bidder may not withdraw an offer which has been made.**

**However, notwithstanding the first paragraph, the bidder may withdraw the offer if:**

- **the bidder has stipulated, for fulfilment of the offer, that the bidder achieves a given level of acceptance for the offer or that the general meeting of shareholders of the bidding company or the target company takes certain decisions in connection with the offer, and it is clear that this condition has not been, or cannot be, fulfilled,**
- **the bidder has stipulated for fulfilment of the offer that no other party announces an offer to acquire shares in the target company on terms which are more favourable for the holder than the bidder's offer, and an offer of this nature has been made public, or**
- **the bidder has stipulated some other condition for fulfilment of the offer and it is clear that this condition has not been, or cannot be, fulfilled and that this is of material importance for the bidder's acquisition of the target company.**

**If the bidder decides to withdraw the offer in accordance with the second paragraph, this must be made public immediately.**

#### ***Comments***

The Recommendations are based on the bidder's adherence to the offer. As a result, the *first paragraph* stipulates, as the main principle, that the bidder may not withdraw an offer that has been made.

Three exceptions are made from this rule in the *second paragraph*, based on conditions for fulfilment of the offer stipulated by the bidder. Firstly, the offer may be withdrawn if the bidder has stipulated a

condition requiring a specific level of acceptance of the offer, or approval of a matter relating to the offer by the general meeting of shareholders of the company making the bid or of the target company, and it is clear that this condition has not been fulfilled or cannot be fulfilled.

Secondly, the bidder may have stipulated that no other party should announce an offer to acquire shares in the target company on terms which are more favourable for the holder than the bidder's offer. If a competing offer of this nature is made public, the bidder is no longer bound by the offer.

The bidder is also entitled to withdraw the offer if the bidder has stipulated some other condition for completion if it is clear that this condition has not been fulfilled, or cannot be fulfilled. The right of withdrawal is not unlimited in this case, however. The bidder must consider carefully whether developments justify withdrawal of the offer. The offer may only be withdrawn if failure to fulfil the condition is of material importance for the bidder's acquisition of the target company. What is considered to be of material importance may be determined in the light of the type of condition involved and the circumstances in the case in question. However, higher demands are normally made on the bidder's ability to show that failure to fulfil the condition is of material importance for acquisition of the target company if the condition is formulated in relatively general terms. The bidder should request the Securities Council for a ruling if there is doubt about whether a completion condition that has been stipulated may be cited as a basis for withdrawal of an offer.

Situations may occur which justify exemption from the "material importance" requirement. Under certain circumstances, this may apply, for example, to negotiated offers and offers which take the form of a merger between two companies. The Securities Council is the appropriate body for advance or post hoc decisions regarding whether

the circumstances justify remission of the “material importance” requirement without neglecting the interests of shareholders.

It follows from the purpose of this provision that the bidder must always actively endeavour to implement the offer. An active approach of this nature on the bidder’s part is particularly important if withdrawal of the offer would be to the disadvantage of target company shareholders. It may, for example, be considered that a bidder who has stipulated receipt of a specific official permit as a condition for the offer must submit or supplement an application for such a permit. On the other hand, the bidder cannot be required to take steps which would have more than a marginal effect on the cost of implementation. The bidder is never obliged to pay a higher price for the shares or buy shares in the market in order to fulfil a condition requiring a specific level of acceptance for the offer.

If the bidder decides to withdraw the offer, the *third paragraph* states that this must be made public immediately. The forms for such an announcement are indicated in Item 1.4.

### **The bidder’s obligation to issue a prospectus**

**II.6 The bidder must rapidly prepare and issue a prospectus, following announcement of the offer in the form of a press release. The prospectus must be published not later than five weeks after the offer has been made public. The bidder must announce the date of publication of the prospectus.**

**The bidder may prepare an information brochure to supplement the prospectus. Provisions concerning the contents of the prospectus and the information brochure are presented in Section V.**

**The prospectus must be made available in the manner stated in the Finansinspektionen<sup>10</sup> regulations for prospectuses. The prospectus or information brochure is to be dispatched to all shareholders covered by the offer with known postal addresses. If the bidder has only distributed the information brochure to shareholders, the prospectus must be dispatched to shareholders who so request, free of charge. The prospectus and the information brochure are to be sent to the stock exchange or authorized market place on which the bidder's and the target company's shares are listed, and to the news media, to the appropriate extent.**

**The period for acceptance of an offer must be not less than three weeks and may not commence before the prospectus has been made public in the manner stated in the Finansinspektionen regulations for prospectuses. The registration period may be extended if the bidder has reserved the right to do so, or if an extension does not delay payment to those who have already accepted the offer. Payment may only be postponed if the prospectus contains a proviso to this effect.**

**If any major event occurs prior to conclusion of the registration period, or circumstances or errors in the prospectus emerge which may affect assessment of the offer, a supplement to the prospectus must be prepared and distributed in accordance with the third paragraph. Information to this effect must be made public immediately.**

### ***Comments***

In accordance with the first paragraph, the bidder is obliged to prepare and issue a prospectus. The prospectus is to be produced promptly, and the prospectus must be presented not later than five weeks after the offer is made public. The bidder may apply to the Securities

---

<sup>10</sup> Swedish Financial Supervisory Authority

Council for exemption if specific circumstances make it impossible to issue the prospectus within five weeks, for example in the case of an offer in which payment is to consist of a new share issue or an offer that involves markets in other countries.

The final sentence in the *first paragraph* stipulates that the bidder must announce the date of publication of the prospectus. The aim is to ensure that all shareholders and the stock market as a whole have simultaneous access to the prospectus. Normally, this means that the bidder announces the date of publication of the prospectus in the form of a special press release.

In accordance with the *second paragraph*, the bidder may prepare a shorter information brochure as a supplement to the prospectus in order to facilitate the dissemination of information concerning a public offer and make the contents of the offer more accessible. The brochure is distributed to all shareholders covered by the offer whose postal addresses are known, instead of the prospectus. Provisions concerning the contents of the information brochure are presented in Item V.4. If the bidder has only dispatched the information brochure to shareholders, the prospectus must be sent to shareholders who so request, free of charge. A form for acceptance of the offer may accompany both the prospectus and the brochure.

In accordance with the *third paragraph*, the full prospectus and an information brochure, where applicable, must be sent to the stock exchange or authorized market place where the bidder's and the target company's shares are listed and, to an appropriate extent, to news media.

The registration period for acceptances must not be less than three weeks, in accordance with the *fourth paragraph*, and may not commence before the prospectus has been made public in the manner stated in the Finansinspektionen regulations (FFFS<sup>11</sup> 1995:21) for

---

<sup>11</sup> Finansinspektionen Regulatory Code

prospectuses. The Recommendations do not specify any specific limit for the duration of the registration period. Circumstances vary from case to case to such an extent that it is not considered appropriate to state a maximum acceptance period. It is important, however, to ensure that the offer is not unduly protracted and that the bidder endeavours to make payment as soon as possible.

### **Shareholders' obligations to honour their acceptances of the offer**

#### **II.7 A shareholder who has accepted the offer may not withdraw his acceptance in circumstances other than those specified in this Item.**

**If, as a prerequisite for fulfilment of the offer, the bidder has stipulated conditions which the bidder has reserved the right to utilize, the shareholder is entitled to withdraw acceptances until the bidder announces that all conditions of this nature have been fulfilled or, if no such announcement is made, until the time stated in the offer as the deadline for acceptances. If conditions in accordance with the first sentence continue to apply in the event of an extension of the offer, the right to withdraw acceptances applies in the corresponding manner during the extension period.**

**If an offer involving payment in the form of shares or share-related financial instruments issued by the bidder has been reviewed by a competition authority and the authority's permit requires major changes in the target company's or the bidder's operations, the shareholder is entitled to withdraw his acceptance. The bidder must confirm by means of publication and an announcement in a least two daily newspapers with national circulation that entitlement to withdrawal applies, stating the period within which withdrawal may take place. The withdrawal period may not be less than one week from the date of the announcement.**

**Comments**

The main principle is that a shareholder who has accepted the offer is bound by his acceptance. This always applies if the offer does not contain any conditions which the bidder has reserved the right to utilize (i.e. renounce or modify). If, on the other hand, the bidder has stipulated conditions which the bidder has reserved the right to utilize, shareholders should be allowed to withdraw their acceptances (see *first and second paragraphs*). One example of a condition of this nature would be if the offer applies on condition that the bidder achieves a holding of more than 90 per cent of the shares and votes in the target company, but that the bidder also reserves the right to complete the offer in the event of a lower level of acceptance.

In order to avoid any uncertainty as regards the obligation to honour an acceptance, the bidder must, if conditions of this nature are stipulated, clearly indicate in the prospectus the prerequisites for withdrawal of acceptances by shareholders (cf. Appendix 1, main heading 2).

An acceptance may normally be withdrawn until the deadline for acceptances stated in the offer. In certain cases, however, the right to withdraw expires prior to this deadline; in other cases, it continues to apply after the deadline. If the bidder's conditions are fulfilled prior to expiry of the acceptance period and the bidder has announced this, it is not reasonable for a shareholder to continue to be able to withdraw his acceptances after this date. The *second paragraph* has been drawn up with this in mind. For the sake of clarity, it should be emphasized that a shareholder's right to withdraw his acceptances does not cease simply because the bidder has announced during the acceptance period that he is renouncing or modifying a condition stipulated by the bidder.

The right to withdraw acceptances also continues to apply after the deadline for acceptances stated in the offer if the bidder's conditions and the proviso regarding the utilization of the conditions also continue to apply during an extension of the acceptance period.

Obviously, this provision does not prevent the bidder from giving shareholders the right to withdraw acceptances in cases other than those indicated in this context.

A competition authority may sometimes require undertakings in connection with a public offer regarding divestment of certain operations or similar measures as a condition for granting a permit for the acquisition. If a requirement of this nature is so far-reaching that fulfilment of the requirement would result in a material change in the target company's or the bidder's operations but the bidder nonetheless wishes to complete the offer, it is reasonable for shareholders who have accepted the offer to be given an opportunity to reconsider their decision. A rule of this nature is stated in the *final paragraph*. If there is doubt as to whether the authority's requirements may be considered to constitute a material change in operations, the Securities Council should be consulted.

The bidder must provide information in the form of publication in accordance with Item I.4 and an announcement in at least two daily newspapers with national circulation concerning the right of withdrawal and the main features of the competition authority's requirements. The period during which withdrawal may be made must not be less than one week from the date of the announcement. This also applies if the registration period has expired.



**Bidder's obligation to treat all shareholders with identical terms in the same manner****II.8 The bidder must offer all shareholders with identical terms identical compensation per share. If special reasons apply for certain shareholders, however, they may be offered compensation in another form but with the same value.*****Comments***

The principle that the bidder must treat all shareholders with identical terms in the same manner is of fundamental importance for public confidence in the stock market and the rules governing public offers. The expression "identical terms" primarily refers to the rights conveyed by shares in economic terms and in terms of influence, in accordance with legislation or the company's articles of association. Typically, this involves the dividend entitlement and the right to participate with a given voting entitlement in decisions taken by the general meeting of shareholders.

Exceptions from the overriding principle under which all shareholders with identical terms are to be offered identical compensation may be made in special cases. One example is when certain shareholders are unable to receive the compensation which the bidder has decided to offer to other shareholders, for legal or similar reasons. There may also be important practical reasons that justify an exception from the main principle. In the case of companies with a very large number of shareholders, for example, it may be appropriate to offer cash payment for small blocks of shares, despite compensation in some other form in other cases. Reference is also made in the Comments on Item I.1 to certain special problems which may occur if the target company has owners in another country.

**The bidder's right to treat shareholders with non-identical terms differently**

**II.9 The bidder may give shareholders with non-identical conditions offers which differ in terms of the form and value of payment. If the bidder offers a premium in relation to the market value of the shares, the premium must be equivalent for all shares in percentage terms, unless there are special reasons which justify different premiums.**

**If the offer also covers other financial instruments issued by the target company, payments for such instruments must be reasonable. Reference to the premium amount in the first paragraph does not apply to such instruments.**

**The bidder may refrain from making an offer to holders of a given type of share or financial instrument issued by the target company. However, this does not apply if the price trend for such shares or instruments might be materially influenced if listing of the shares or other instruments covered by the offer ceases.**

**If an offer applies to both shares and call options on shares covered by the offer, the joint compensation for the call options and shares may not exceed the compensation for the corresponding shares not covered by the call options.**

***Comments***

An offer may be addressed to holders of different types of shares and financial instruments that are regarded as equivalent to such shares. Such differences may involve the type of instrument (for example shares and warrants), but may also involve shares of different classes, for example. In view of such differences, it is not unnatural for different owner categories to be offered compensation which differs both in form and value, although this does not mean that there is

unlimited scope for such differentiation. Each owner category should receive fair and reasonable treatment.

As regards the amount of compensation for shares, the basic starting point should be the market value if the shares have a market listing. If the share is unlisted or the market for the share is not particularly well developed and, as a result, the market value is not representative, an estimated or adjusted market value may be employed as the starting point. In this connection, in accordance with generally accepted principles, estimates must be based on the share price for other shares issued by the target company which are more widely traded.

Where applicable, premiums (i.e. percentage mark-ups on the current or estimated market value) must in principle be the same for all shares. However, since circumstances vary so much from case to case, strict and consistent application of this rule is not possible. Apart from rounding off of a practical nature, which is always permissible, deviations may be justified for commercial and market reasons. In certain cases, for example, shares carrying a higher proportion of votes may justify a higher premium than other shares. However, differences in the treatment of various categories of owners may never be unreasonable.

To summarise, the *first paragraph* states that value differences in the payment offered to holders of shares of various kinds may be due to the same percentage premium for different market values, different premiums based on the same market values or a combination of the two. Appendix 1 contains provisions for the contents of the prospectus in such cases.

The *second paragraph* deals with a situation in which the offer also covers other financial instruments issued by the target company which are not shares, for example convertibles or warrants. Compensation for such instruments must be reasonable. The

compensation offered for shares, the conditions for the instruments concerned and their market value, and other relevant factors should be taken into account. Since the price trend for financial instruments other than shares normally differs from the trend for the underlying share, depending on the terms for the instrument in question, the Recommendations do not require that the principle of an equal premium in percentage terms should apply for such instruments. Appendix 1 contains provisions for the contents of the prospectus in such cases.

The *third paragraph* states that an offer must always cover listed or unlisted instruments issued by the target company which are related to another type of instrument if the price trend for the former is affected by the price trend for the latter. This type of impact normally occurs if listing of the instrument which is the primary aim of the offer were to cease.

As a result, the offer must cover, for example, instruments which may be converted into shares, or which entitle the holder to a subscription to shares, for which listing may cease as a result of the offer. This also applies to instruments whose yield is related to the return on shares which may cease to be listed.

The bidder's total payment for a share and an outstanding call option on the share in question may not exceed payment for other shares of the same type which do not constitute the underlying asset in the call option. Removing obstacles to acceptance of the offer may be considered to be the shareholder's responsibility. A call option that has been issued constitutes an obstacle of this nature, and means that the shareholder must be free from the option commitment if the shareholder is to be in a position to accept the offer for the share without committing breach of contract. If the bidder eliminates this obstacle on the shareholder's behalf by also addressing the offer to holders of call options, the cost of this operation – the amount offered for call options – is to be paid by the shareholder in the form of a

corresponding reduction in the price offered for his shares. The *final paragraph* has been drawn up in the light of the above.

### **Acquisitions prior to the offer**

**II.10 If the bidder has acquired shares in the target company within six months of making the offer public in some other manner than by means of a previous public offer (prior transaction), the terms of the offer may not be less favourable than those which applied for the prior transaction. If the prior transaction involved shares with non-identical terms, the first paragraph of Item II.9 applies as regards compensation under the offer.**

**Notwithstanding the first paragraph, when determining the conditions for the offer the bidder may take into account a downturn in the price of the target company's shares that occurs in the period between the prior transaction and publication of the offer and which is substantial and not merely temporary. However, if the bidder has paid a premium in relation to the target company's share price in the prior transaction, an equivalent premium in percentage terms must be paid in the offer.**

**If a party other than the bidder announces an offer to acquire shares in the target company during the period referred to in the first paragraph on terms which are less favourable for the holder than the terms in the prior transaction, the bidder is no longer bound by the prior transaction when drawing up the offer.**

**If, during the period referred to in the first paragraph, the bidder acquires more than 10 per cent of all shares in the target company for cash payment and in a manner which differs from that employed in a previous public offer, the offer must contain a compensation alternative under which shareholders are entitled to receive payment in cash.**

**In applying this Item, prior transactions carried out by a party related to the bidder in accordance with Item I.3 are to be equated with prior transactions conducted by the bidder.**

### **Comments**

The principle that shareholders in the target company are to receive equivalent treatment means that the terms of a public offer must comply, in certain cases, with the terms of other acquisitions of shares by the bidder. Thus, in accordance with the *first paragraph*, an offer which is made public after an acquisition of shares must be at least as favourable for recipients of the offer as the previous acquisition (prior transaction) if the interval between the prior transaction and the public offer is less than six months.

The adjustment requirement means that a comparison must be made between the terms of the prior transaction and the terms of the offer. This comparison is based on the value of the compensation paid and the compensation offered. In this connection, the payment made in the prior transaction should normally be evaluated in accordance with circumstances on the contract date in the prior transaction. This means, for example, that if payment in the prior transaction consists partly or entirely of shares and the value of the shares has increased, the offer price must correspond to at least the share price paid on the contract date in the prior transaction, and the increased value of the shares should be disregarded. If the bidder considers that the price paid for shares on the contract date does not reflect the value of the payment, as a result of special circumstances, the bidder may apply to the Securities Council for exemption from this provision.

The equal treatment requirement does not necessarily apply in all situations. The *second paragraph* indicates that the equal treatment requirement may be ignored if the price of the target company's shares when the offer is made public is substantially lower than the price

which applied on the prior transaction date, and that this decline in the share price is not merely temporary but has a certain permanence. Clearly, a downturn in the share price should be ignored if the decline is a result of the prior transaction.

In the case of an exception to the rule, the circumstances in question may be taken into account when the terms of the offer are determined, although this does not mean that all links with the previous acquisition cease to apply. A percentage markup in relation to a quoted price in the prior transaction must be followed up by a markup of at least the same size in percentage terms in relation to the share price when the offer is made public.

Another situation when the main principle of equal treatment does not necessarily apply is discussed in the *third paragraph*. In this case, a party other than the bidder announces an offer to acquire shares in the target company during the period referred to in the first paragraph on terms which are less favourable for the holder than the terms in the prior transaction. In a situation of this nature, it is not reasonable for the bidder to continue to be bound by the prior transaction when drawing up conditions for the offer – otherwise bidders would not be competing on equal terms. Thus, in a situation of this nature, the bidder is free to offer terms that differ from those in the prior transaction.

The provisions apply irrespective of whether the prior transaction took the form of trading on the stock market or was conducted in some other manner. An acquisition which has been implemented is equated with an agreement concerning future acquisition. This also applies to the issue of an option that entitles the bidder to acquire shares in the target company.

The adjustment requirements primarily involve shares with identical terms. However, the question of adjustment also arises in other cases, as a result of application of the first paragraph of Item II.9.

When comparing compensation in the prior transaction and the offer, dividends that have fallen due must be taken into account. Interest to compensate for the time factor is not required. Brokerage commission or corresponding transfer costs should not be taken into account.

If an offer provides for alternative forms of compensation, the bidder may choose which alternative is to constitute the basis for comparison. The simplest option is probably to select the alternative which, at the time when comparison is made, appears to be most favourable for shareholders who accept the offer.

The *fourth paragraph* stipulates, in line with the fundamental principle of equal treatment of target company shareholders, that if the bidder has acquired, within six months prior to the publication of an offer, more than 10 per cent of all shares in the target company for cash payment, and in a manner which is not the result of a previous public offer for all shares in the target company, the offer must contain a compensation alternative which entitles the shareholders to receive payment in cash.

### **Acquisitions during the offer**

**II.11 If the bidder acquires shares in the target company after an offer has been made public (side transaction) on terms which are more favourable for the holder than the terms of the offer, the terms of the offer are to be adjusted to the corresponding extent. If the side transaction involves shares with non-identical terms, the first paragraph of Item II.9 is to apply as regards compensation in the offer.**

**The first paragraph applies to side transactions undertaken outside the offer prior to commencement of payment in accordance with the offer. Item II.12 applies to subsequent acquisitions.**



**Changes in the terms in accordance with the first paragraph are to be made public without delay, and information to this effect is to be dispatched to all shareholders covered by the offer whose postal addresses are known.**

**If, during the period referred to in the first and second paragraphs, the bidder acquires shares for cash and in a manner which differs from that employed in a previous public offer for all shares in the target company which, together with shares acquired in the manner stated in the fourth paragraph of Item II.10, represent more than 10 per cent of all shares in the target company, the offer must contain a compensation alternative under which shareholders are entitled to receive payment in cash.**

**In applying this Item, side transactions carried out by a party related to the bidder in accordance with Item I.3 are to be equated with side transactions conducted by the bidder.**

### ***Comments***

If the bidder acquires shares on terms which are more favourable for the holder than the offer, after the offer has been made public, the terms of the offer are to be modified in a corresponding manner. A comparison must always be made between the terms of the offer and the terms for acquisitions during the period covered by the offer (side transactions). The cash value of the offer and of side transactions should normally be established in accordance with market circumstances at the time of the side transaction. This means, for example, that if compensation in the offer wholly or partly consists of shares, or if shares are one of several alternative forms of compensation, and the value of the shares has appreciated, side transactions may be concluded at the new share price without the need to compensate holders who have accepted the offer.

The provisions apply irrespective of whether side transactions take the form of trading in the stock market or are conducted in some other manner. An acquisition which has been implemented is equated with an agreement regarding future acquisition. This also applies to the issue of options that entitle the bidder to acquire shares in the target company.

The adjustment requirements primarily involve shares with identical terms. However, the question of adjustment also arises in other cases, as a result of application of the first paragraph of Item II.9.

When comparing compensation in the offer and the side transaction, dividends that have fallen due must be taken into account. Interest to compensate for the time factor is not required. Brokerage commission or corresponding transfer costs should not be taken into account.

If an offer provides for alternative forms of compensation, the bidder may choose which alternative is to constitute the basis for comparison. The simplest option is probably to select the alternative which appears, to be most favourable at the time when comparison is made for those who accept the offer.

In cases where side transactions call for an adjustment of the terms of the offer, this must be made public and the requisite information dispatched to shareholders.

The *fourth paragraph* stipulates, in line with the fundamental principle of equal treatment of target company shareholders, that if, during the period referred to in the first and second paragraphs, the bidder acquires shares for cash and in a manner which differs from that employed in a previous public offer for all shares in the target company which, together with shares acquired in the manner stated in the fourth paragraph of Item II.10, represent more than 10 per cent of all shares in the target company, the offer must contain a

compensation alternative under which shareholders are entitled to receive payment in cash.

### **Acquisitions after the offer**

**II.12 If the bidder acquires shares in the target company within a period of nine months after payment has commenced in a public offer (subsequent transaction) on terms which are more favourable than the terms of the offer, the bidder must pay compensation to those who have accepted the offer. If the acquisition involves shares with non-identical terms, the first paragraph of Item II.9 is to apply as regards the terms of the offer.**

**The first paragraph does not apply if a party other than the bidder has announced an offer to acquire shares in the target company on terms which are more favourable for the holder than the offer.**

**As regards application of this Item, subsequent transactions conducted by a party related to the bidder under Item I.3 are to be equated with subsequent transactions undertaken by the bidder.**

### ***Comments***

If the bidder has acquired shares within a period of nine months after payment has commenced in a public offer on terms which are more favourable for the holder than the terms of the offer, a corresponding change must be made in the terms for the offer, in accordance with the *first paragraph*. In other words, the terms of the offer and the terms of the subsequent transaction must be compared.

Payment in the offer and acquisition payments should normally be evaluated in accordance with market circumstances at the time when it was announced that the offer would be fulfilled. This means, for example, that if compensation in the offer wholly or partly consists of

shares, or if shares are one of several alternative forms of compensation, and the value of the shares has appreciated, the increase in the share price must not be taken into account. In other words, the terms of a subsequent transaction may not be more favourable than the terms of the offer when fulfilment of the offer is announced.

This provision focuses on transactions conducted after implementation of the offer. As a result, it does not prevent the bidder, in connection with one or more extensions of the acceptance period in an offer in which compensation wholly or partly consists of shares, from paying compensation at different times in accordance with the original exchange ratio, notwithstanding any increase in the price of the share concerned.

Deviation from the principle of valuation in accordance with circumstances which apply when payment is made under the offer may be justified in the case of parallel acquisition during the compulsory purchase<sup>12</sup>, for example.

The provisions of this Item apply irrespective of whether subsequent transactions take the form of trading in the stock market or are conducted in some other manner. An acquisition that has been implemented is equated with an agreement concerning future acquisition. This also applies to the issue of an option that entitles the bidder to acquire shares in the target company.

The adjustment requirements primarily involve shares with identical terms. However, the question of adjustment also arises in other cases, as a result of application of the first paragraph of Item II.9.

When comparing compensation in the offer and the subsequent transaction, dividends that have fallen due must be taken into account. Interest may, but need not, be taken into account. Brokerage

---

<sup>12</sup> Sw.: Tvångsinlösen

commission or corresponding transfer costs should not be taken into account.

If an offer provides for alternative forms of compensation, the bidder may choose which alternative is to constitute the basis for comparison. The simplest option is probably to select the alternative that, at the time when comparison is made, appears to be most favourable for those who accept the offer.

### **Certain provisions regarding partial offers**

#### **II.13 A public offer may involve less than all the shares in the target company (partial offer) if**

- a) as a result of the partial offer, the bidder cannot directly, or in cooperation with a related party as described in Item I.3 a)-d), achieve ownership of shares representing 40 per cent or more of the votes for all shares in the target company, or**
- b) at the time when the offer is made public, the bidder owns directly, or in cooperation with a related party as described in Item I.3 a)-d), shares representing 40 per cent or more of the votes for all shares in the target company, and there is no obligation to make a mandatory offer under Item III.1.**

**When a partial offer is made public, the maximum number of shares which the bidder wishes to acquire under the offer must be stated in the press release referred to in Item II.3, and also whether the bidder reserves the right to acquire additional shares as a result of the offer.**

**If the maximum number of shares stated in the offer is exceeded and the buyer has not reserved the right to acquire the additional shares, the buyer must institute a proportional reduction of the share lots covered by acceptances submitted. In assessing whether a given minimum number of shares has been acquired,**

**shares covered by acceptances submitted as a result of the offer are to be added to shares which the bidder has acquired outside the offer, after the offer was made public.**

### ***Comments***

A public offer normally involves all shares in the target company not already held by the bidder. However, offers are sometimes made for more limited acquisitions of shares. Offers involving less than all the shares in the target company and not already held by the bidder are referred to as partial offers. Unless otherwise stated in the Recommendations, the provisions also apply to partial offers. Certain provisions which solely apply to partial offers are presented in this Item.

The rules for mandatory offers in Section III restrict the scope for partial offers. As a result, in accordance with the *first paragraph*, a partial offer may not be made if, as a result of the offer, the bidder and related parties as described in Item I.3 a)-d) would hold shares representing 40 per cent or more of the votes for all shares in the company. Hence, a partial offer amounting to less than the mandatory offer level is permitted. But the bidder may already hold shares representing 40 per cent or more of the votes for all shares in the company, directly or in cooperation with a related party as described in Item I.3 a)-d), and is not subject to the mandatory offer requirement, for example because the holding occurred prior to the mandatory offer rules. In this case, a partial offer for a proportion of the remaining shares in the company may be made.

In the case of a partial offer, the bidder must indicate in a press release referred to in Item II.3 how many shares in the target company are covered by the offer. This is covered by the *second paragraph*. There is nothing to prevent the bidder from reserving the right to acquire additional shares as a result of the offer if it proves that interest in transferring shares is sufficient to permit this.

This provision does not preclude a situation in which the bidder announces a price range within which the bidder offers to acquire shares and shareholders state the minimum price at which they are prepared to sell, and the bidder subsequently eliminates surplus acceptances on this basis, providing this is done in a predictable, fair and consistent manner.

**The target company board's obligation to state its views regarding the offer**

**II.14 The board of directors of the target company must announce its opinion of the offer in reasonable time before expiry of the acceptance period, stating the reasons for its attitude. If the board concludes that it can neither approve nor reject the offer, it must explain the reasons for its attitude.**

**In its statement, the board must report whether a member of the board has not participated in handling the matter on the grounds of conflict of interest or for some other corresponding reason, or whether any members of the board has tabled reservations.**

***Comments***

In many cases, the views of the board of the target company concerning the offer are of considerable interest to shareholders when they have to reach a decision. The board's views on the offer are of value to shareholders since the board normally has useful insights in the matters concerned. As a result, in accordance with the *first paragraph*, the board of the target company must announce its opinion of the offer and explain its attitude. If the board does not consider that it can provide definite information, it must indicate the reasons why it cannot present a clear position.

The board must act in the interest of all shareholders. As a result, the board may not be influenced by special considerations with regard to a

specific owner or certain shareholders when preparing its statement and, of course, may not allow itself to be influenced by the impact of the offer on the board itself. The Recommendations do not stipulate that the board must employ independent expertise to provide a basis for its statement, although this is normally appropriate.

The board needs a certain amount of time to be able to evaluate the offer and issue a statement. As a result, the board cannot be required to make a statement immediately after the offer is made public. A statement must, however, be made in reasonable time prior to expiry of the acceptance period, thus giving shareholders who decide to wait for the statement reasonable time to evaluate the board's statement.

In accordance with the *second paragraph*, if a member of the board has not participated in handling the matter due, for example, to a financial interest in the company making the bid, or if there is a conflict of interest for some other reason, this must be noted in the statement. Similarly, if any member of the board has made reservations, this must be noted, together with the reasons, if stated.

If the target company board has expressed its opinion concerning the offer in sufficient time to permit inclusion in the prospectus, this statement must be reproduced in the prospectus in its entirety, in accordance with Appendix 1, fourth main heading. If the board's statement is not available in time for inclusion in the prospectus, the prospectus must indicate when it is expected to be available. In this case, the bidder is responsible for subsequently ensuring that the statement is dispatched to target company shareholders.

### **Target company's participation in a due diligence investigation**

**II.15 If the bidder requests a due diligence investigation of the target company, the board of the target company must decide whether the company can, and should, participate in such an investigation and, in that case, on what terms and to what extent. The board**



**should endeavour to restrict the investigation to factors relevant to making an offer and implementing it.**

**If the target company supplies the bidder with information which has not been made public and this information is likely to materially affect valuation of the company's shares, the target company must ensure that this information is supplied to shareholders and the stock market, if possible before commencement of the acceptance period and not later than one week before expiry of the acceptance period.**

### ***Comments***

In connection with a public offer, the bidder may sometimes ask the target company for permission to conduct a due diligence investigation in order to obtain more information about the company. In accordance with the *first paragraph*, the board of the target company is responsible for determining the extent to which a request of this nature can and should be met in view of the circumstances of the specific case, and taking into account, first and foremost, the scope allowed for such participation under the relevant legislation, in particular the Swedish Companies Act, and the listing agreement for the market place concerned. The board must also take the insider trading rules into account. The board should only agree to participation by the target company in a due diligence investigation if the board considers that the offer envisaged is of interest for a decision by shareholders and if the bidder has presented a request in writing for implementation of the investigation in question as a condition for making the offer.

When making its decision, the board must obviously take the risk of harm to the company into account – the disclosure of corporate secrets for example. In view of such risks, the board should ensure that the investigation does not extend beyond the requirements of the offer. Furthermore, the board should ensure that a confidentiality

agreement is drawn up which, for example, places limitations on the bidder's right to use and disseminate the information, and that the company has documentation concerning the information supplied, the persons who have received it and when this occurred. The board should also endeavour to ensure that the investigation is as rapid as possible in order to avoid unnecessary disruption of the target company's operations.

If, in the course of the due diligence investigation, the target company supplies the bidder with information which has not been made public and this information is likely to materially affect valuation of the company's shares, the target company must ensure that this imbalance in the provision of information is rectified before shareholders have to reach a decision about the offer. This may take the form of information – at least in summarized form – supplied in a press release, and included in the prospectus. If no public offer is made after the due diligence investigation, the target company's obligation in accordance with these Recommendations to make public the information supplied does not apply.

If more than one bidder plans to make an offer for the target company, it is of the utmost importance that the target company applies the Recommendations in the same manner vis-à-vis all bidders. As a result, if information has been supplied to one bidder and another bidder requests the corresponding information, the target company must comply with this request, providing the circumstances are similar in other respects. Obviously, the board must also consider the risks to the company which the provision of information may entail as regards the other bidder. Circumstances may differ from one bidder to another, depending on the competition situation, for example.

The above comments apply to due diligence investigations which start before the offer is made public. The question of whether an investigation of this nature may also be conducted after the offer has been announced is quite a different matter. NBK considers that this

should only occur if required to determine whether or not the fulfilment conditions stipulated in an offer have been fulfilled.

### **Measures taken by the target company**

**II.16 If the board or senior management of the target company has good reason to assume that a serious offer is imminent, due to information received from a person/entity that intends to make a public offer to shareholders, or if an offer of this nature has already been made, the target company may not take any measure which would normally be likely to have a negative impact on the prerequisites for making the offer or its implementation, unless such measures are approved by a general meeting of shareholders.**

#### ***Comments***

A public offer is addressed to shareholders in the target company, and it is important that they should be able to make up their minds about the offer on the basis of information which is as relevant and complete as possible. This is why the Recommendations contain provisions regarding the bidder's obligation to draw up and issue a prospectus with specific contents and the target company board's obligation to make a statement about the offer. It is equally important to ensure that the target company does not take steps to oppose the offer, unless shareholders support such measures. As a result, this provision prescribes that the target company may not take any measure which would normally be likely to have a negative impact on the prerequisites for making the offer or its implementation, unless such measures are approved by the shareholders.

The target company's obligation to refrain from such measures does not apply until the target company's board and management team have reason to assume, based on information from the potential bidder, that a serious offer is imminent. If an offer is made without any

prior information on the part of the bidder, the crucial time is when the offer is made public by means of a press release. The target company's management team is defined in this context as the chairman of the board or the deputy, the company's chief executive officer or the managing director or the deputy managing director.

The requirement that information about the offer, if it is to circumscribe the target company's scope for action, must give "good reason to assume that a serious offer is imminent" implies, for example that the information must be reasonably definite, that it may be anticipated that the bidder will behave in a professional manner, and that the bidder may be assumed to have sufficient financial resources to implement the offer. On the other hand, an assessment by the board that the offer will not be sufficiently attractive for shareholders does not entitle the board to take measures on its own accord to oppose the offer.

It is not possible to provide an exhaustive list of the kind of measures the company may not take in situations in which this provision applies. Such measures may involve, for example, a directed issue, an issue in kind, buying back shares in the company, the transfer or acquisition of assets, or an offer to shareholders in the bidding company or some other company to acquire their shares. Inducing a subsidiary to take such measures is a further example. However, the question of whether the provision applies to these or other measures depends on whether the measure would normally be likely to undermine the basis for making or implementing the offer.

Measures which are normally likely to undermine the prerequisites for making or implementing the offer may only be taken as the result of a decision by the general meeting of shareholders. This means that such action cannot be taken on the basis of a prior authorization, and it also means that a measure approved by the board on the assumption that it will be subsequently approved by the general meeting may not be implemented until such approval has been obtained.

If, in view of its concern for the company or shareholders, the board considers that the company must take rapid action which, in accordance with this provision, requires approval of the general meeting of shareholders, the company may apply to the Securities Council for exemption from the requirement of approval by the general meeting.

In view of the specific circumstances, the board of the target company may have reason to consider other measures designed to safeguard the interests of shareholders which may be appropriate in an offer situation. This may involve, for example, negotiations with the bidder or with other potential bidders. In a situation of this nature, the board may employ external advisers or negotiators to an appropriate extent.

### **The bidder's obligation to announce the outcome of the offer**

#### **II.17 After expiry of the acceptance period, the bidder must declare, as soon as possible:**

- **how many shares in the target company are covered by acceptances in the offer and what proportion of the target company's share capital and the total number of votes this represents,**
- **how many shares in the target company the bidder has acquired outside the offer and what proportion of the target company's share capital and the total number of votes this represents,**
- **whether the fulfilment conditions stipulated have been fulfilled and, where applicable, whether the bidder has decided to complete the offer despite failure to fulfil all requirements,**
- **how many shares in the target company are held by the bidder or controlled in some other way, and what proportion of the target company's share capital and the total number of votes this represents, and**

- **when payment of compensation is expected to commence.**

**Where applicable, information must also be provided regarding a decision to:**

- **extend the acceptance period,**
- **reduce share blocks covered by acceptances received,**
- **require compulsory purchase of the remaining shares, or**
- **acquire additional shares on the market.**

### ***Comments***

After expiry of the acceptance period in the offer, shareholders and the stock market have a material interest in ensuring that the bidder provides information about the outcome of the offer as soon as possible (i.e. as soon as counting has been completed). This is to take the form of publication as specified in Item I.4. The *first paragraph* indicates that the bidder must firstly provide information about the number of shares in the target company for which acceptances have been received, and also regarding the proportion of the target company's share capital and the total number of votes these shares represent. This indicates how successful the offer has been. In addition, the bidder must provide information about the number of shares in the target company which the bidder has acquired outside the offer, and the proportion of the target company's share capital and the total number of votes these shares represent. If the bidder has stipulated conditions for fulfilment of the offer – for example achievement of a specific level of acceptance – the bidder must state whether these conditions have been fulfilled or, where applicable, that the bidder has decided to complete the offer despite failure to fulfil all the conditions. The bidder must also indicate the number of shares in the target company held by the bidder or controlled by the bidder in some other manner, and the proportion of the target company's share capital and the total number of votes this represents. Finally, the date

on which payment of compensation is expected to commence must be indicated.

The *second paragraph* covers information requirements concerning, for example, an extension of the offer. A bidder may decide to extend the acceptance period at the end of the period. The bidder, for example, may not have achieved the level of acceptance stated in the fulfilment conditions (normally 90 per cent), and therefore wishes to extend the acceptance period in order to achieve a higher level of acceptance. There is nothing to prevent the bidder from renouncing a condition of this nature. The bidder may also achieve more than 90 per cent when the acceptance period expires, but nonetheless extend the offer.

If the bidder has made a partial offer and interest in transferring shares to the bidder is so great that a pro rata reduction is required, information to this effect must be provided in the press release.

Finally, where applicable, it must be stated that the bidder has decided to require compulsory purchase of minority shares or has decided to buy target company shares in the market.

### **III RULES REGARDING MANDATORY OFFERS**

#### **Prerequisites for an obligation to make a mandatory offer**

- III.1 A holder of shares representing less than 40 per cent of the votes for all shares in a company (the target company), and who obtains 40 per cent or more of the votes for all shares in the company as a result of purchase, subscription, conversion or some other form of acquisition of shares in the company, either alone or together with a party to whom he is related as indicated in Item I.3 a)-d), must make a public offer both for the acquisition of all the remaining shares in the company not held by the company or its subsidiaries and for other financial instruments issued by the**

**company whose price might be materially affected if listing of shares covered by the offer were to cease (mandatory offer).**

**An obligation to make a mandatory offer also applies if a holder of less than 40 per cent of the votes for all shares in a company obtains 40 per cent or more of the votes for all shares in the company as a result of measures taken by the company or any other shareholder and subsequently acquires one or more additional shares in the company.**

**If related party status in accordance with Item I.3 a)-d) is established and, as a result, the parties jointly achieve a holding of 40 per cent or more of the votes for all shares in a company, a mandatory offer requirement applies if one of the parties subsequently acquires one or more additional shares in the company.**

**If a company (the parent company) acquires shares or participation rights in a company (the subsidiary) to an extent that results in the establishment of a corporate group and the subsidiary, in its turn, already holds shares in another company (the target company), the subsidiary's shares are to be combined with the parent company's shareholding in the target company, giving rise to an obligation on the part of the parent company to make a mandatory offer, if the parent company and the subsidiary jointly hold shares which represent 40 per cent or more of the votes for all shares in the target company.**

**In this context, Swedish and foreign physical persons and legal entities other than limited companies are equated with parent companies.**

**If there is an obligation to make a mandatory offer and the person/entity under such an obligation or a related party in accordance with Item I.3 a)-d) divests shares within four weeks of**



**acquisition so that the holding amounts to less than 40 per cent of the votes for all shares in the company, the obligation to make a mandatory offer no longer applies.**

**An obligation to make an offer does not apply if the buyer has obtained 40 per cent or more of the votes for all shares following completion of a public offer for all shares in the company.**

**Acquisition of financial instruments issued by the company which are not shares does not give rise to an obligation to make an offer.**

### ***Comments***

The mandatory offer rules give shareholders an opportunity to transfer their shares to the owner who has a controlling interest, following a change in ownership control. On the basis of experience of participation in general meetings of shareholders in Swedish stock market companies, the threshold in the Recommendations for the point at which ownership control applies has been set at 40 per cent of the votes for all shares in the company. Thus, the obligation to make a mandatory offer in accordance with the *first paragraph* occurs when a person/entity, alone or together with a related party in accordance with Item I.3 a)-d), achieves a holding which amounts to at least 40 per cent of the votes for all shares in the company. The number of shares acquired is of no significance in this context. The decisive factor is whether the total holding attains the above level after the acquisition.

The wording of the provision implies that if a person/entity held shares representing 40 per cent or more of the votes on 1 July 1999 – the date of entry into force of the provisions regarding mandatory offers – and then subsequently acquires additional shares, a mandatory requirement does not apply. If, on the other hand, the holder concerned sells sufficient shares to result in a holding of less than 40 per cent, the obligation to make a mandatory offer applies if

the holder subsequently acquires shares in the company to an extent that results in attaining 40 per cent or more of the votes.

The aim of the mandatory offer rule – to give shareholders an opportunity to divest their shares in the company following a change in ownership control – implies that a mandatory requirement does not arise until it is clear that the acquisition is final and the acquirer can exercise voting rights for the shares in question. This means, for example, that in the case of acquisition as a result of subscription for shares in a Swedish CSD registered company<sup>13</sup> the mandatory offer requirement does not apply until the issue has been registered by the Swedish Patent and Registration Office and the shares are entered in the share register maintained by the CSD<sup>14</sup>. This also means that if an acquisition is to be reviewed by a competition authority and voting rights for the shares cannot be exercised until the competition authority has issued its ruling, the mandatory offer requirement does not apply until a ruling has been made.

When computing the total number of votes in the company, shares owned by the company itself are to be included. In other words, the number of shares that an external party can acquire without triggering a mandatory offer is not affected if the company buys back its own shares.

When determining whether a holding gives rise to an obligation to make an offer, only shares are to be taken into account – not, for example, warrants or convertible debt instruments issued by the company, or call or put options. However, an obligation to make a mandatory offer does apply if exercise of a warrant/option or convertible results in a voting entitlement for the holder of 40 per cent or more.

---

<sup>13</sup> Sw.: Avstämningsbolag

<sup>14</sup> Central Securities Depository

When determining the acquirer's participation in the company, shares held by a related party in accordance with Item I.3 a)-d) are to be included. Related party status in accordance with I.3 e) is not to be taken into account. The offer must be made by the owner who makes an acquisition of shares that results in entitlement to 40 per cent or more of the votes in the company, together with a related party. It makes no difference whether the acquirer or a related party has the highest ownership participation. However, the Securities Council may permit another member of the group or someone who is not a member of the group to make the offer, thus releasing the buyer who gave rise to the obligation.

A mandatory requirement may be triggered not only by a purchase but also as a result of other forms of acquisition, for example conversion or subscription. On the other hand, a mandatory requirement is not triggered by measures taken by the company – for example redemption of shares – that result in an increase in a shareholder's voting rights to 40 per cent or more of the total. In a case of this nature, the shareholder in question has not taken any measures that resulted in a greater voting entitlement. On the other hand a mandatory requirement applies under the *second paragraph* if the shareholder subsequently acquires one or more shares in the company. A corresponding situation applies in the case of certain actions by other shareholders. This may involve circumstances in which the shares held by one or more shareholders are converted to shares with a lower voting entitlement, thus giving other shareholders higher voting participation in the company. If such measures were to result in a shareholder attaining or exceeding the 40 per cent threshold, a mandatory requirement applies if the shareholder subsequently acquires one or more additional shares in the company.

The *third paragraph* is concerned with the special situation which occurs when related party status is established in accordance with Item I.3 a)-d) and the combined holding of the parties concerned results in attainment of 40 per cent or more of the votes. This

provision indicates that this does not, per se, give rise to an obligation to make a mandatory offer, but that an obligation of this nature does occur if any of the parties subsequently acquires one or more additional shares. This rule always applies for acquisition from an external party. On the other hand, in view of the purpose of the mandatory offer rules, the rule should not apply, in principle, to acquisition within the related party group since an acquisition of this nature does not result in any increase in the group's total holding. A mandatory obligation does apply, however, if a member of the group achieves 40 per cent or more of the votes as the result of one or more such acquisitions.

The obligation to make a mandatory offer means that an offer must be addressed to all holders of shares and must cover all shares in the target company, with the exception of shares held by the target company itself, or by its subsidiaries. The offer must also cover other financial instruments issued by the company whose price might be materially affected if listing of the shares covered by the offer ceased (cf. the third paragraph of Item II.9).

The *fourth paragraph* is concerned with indirect changes in ownership control. If a company acquires shares or participation rights in another company to an extent that results in the establishment of corporate group status and the subsidiary, in its turn, already holds shares in another company (the target company), the subsidiary's shares are to be combined with the parent company's shareholding in the target company, giving rise to an obligation on the part of the parent company to make a mandatory offer, providing that the parent company and the subsidiary jointly hold shares which represent 40 per cent or more of the votes for all shares in the target company. In this case, the parent company is considered to have obtained an indirect controlling interest in the target company. In this context, Swedish and foreign physical persons and legal entities other than limited companies are equated with parent companies. As a result, this provision also applies when, for example, a company in another

country acquires shares representing more than half the votes in a Swedish or foreign company which owns shares representing 40 per cent or more of the votes for all shares in a Swedish stock market company.

A buyer may find that he is inadvertently covered by the obligation to make a mandatory offer, or that he does not have the financial resources to make an offer to the other shareholders. As a result, the *fifth paragraph* stipulates that the buyer or, where applicable, another member of the related party group has an opportunity to reduce the shareholding to less than 40 per cent of the votes within four weeks of acquisition, thus eliminating the mandatory requirement. The Securities Council may extend this period, if there are special reasons.

In accordance with the *sixth paragraph*, a public offer which covers all the shares in the target company and which would result in a holding of 40 per cent or more if completed, does not give rise to a mandatory offer requirement, irrespective of whether compensation is paid in cash, shares or other instruments. This is because all shareholders already have an opportunity to sell their shares as a result of the offer.

If a bidder first makes a voluntary public offer and then subsequently, during the acceptance period, acquires a shareholding which results in attainment of the mandatory offer threshold by purchasing shares in the market or by some other means, the offer must be adjusted to comply with the rules for mandatory offers.

The Securities Council may grant exemptions from the provisions of the Recommendations, in accordance with Item 1.2. This opportunity has proved to be particularly relevant in the case of mandatory offers. The question of exemption may be reviewed in each specific case, based on the purpose of the mandatory offer rules, which are designed to permit other shareholders to divest their holdings when a change of ownership control has occurred. In some cases, it may not be appropriate to say that a de facto change in ownership control has

occurred, despite the emergence of a new owner with 40 per cent or more of the votes. This may apply, for example, to certain intra-group restructuring operations and in connection with measures to facilitate an ownership generation shift.

Presumably, exemption is also normally justified when a holding has arisen as the result of an acquisition in which the shareholder in question has not actively participated, for example as the result of inheritance or a gift.

Other reasons which may justify exemption from the mandatory offer requirement include a holding which arises as the result of a share issue as compensation for purchase of a company or some other property, or which is a necessary step in the reconstruction of a company in considerable financial difficulties. In cases of this nature, the Securities Council must determine, in an overall assessment, whether exemption is in the interest of the shareholder community as a whole, and if this interest carries more weight than an opportunity for shareholders to divest their holdings in the company as the result of a mandatory offer. In a review of this nature, the Council may, for example, take into account the extent to which the share issue has received support from shareholders or if it is presumed that it will receive such support in a general meeting of shareholders. As in the case of other types of exemptions, the Securities Council may stipulate conditions in this context.

A further reason for granting exemption may be clauses in the company's articles of association which limit the number of votes that each shareholder can exercise at a general meeting of shareholders. If a clause of this nature stipulates that, irrespective of the size of his holding, a shareholder cannot exercise voting rights for 40% of the shares in the company, this may justify granting exemption from the mandatory offer requirement.

Exemption from the mandatory offer requirement does not mean that the shareholder in question can subsequently acquire additional shares in the company without triggering the mandatory offer requirement.

The Securities Council may also grant exemptions from the mandatory offer requirement if the 40 per cent threshold is attained or exceeded as a result of the acquisition of shares which are subject to restrictions on transfer. A further situation for consideration by the Securities Council may occur if the shareholding reaches or exceeds this threshold but shares held by other shareholders include shares covered by pre-emption clauses or other restrictions on transfer. The Securities Council may grant full exemption from the mandatory offer requirement in such cases, or from the obligation to make an offer for shares covered by restrictions on transfer.

### **Obligation to announce attainment of the threshold for a mandatory offer**

**III.2 If a holding of 40 per cent or more of the votes for all shares in the target company is attained as a result of the acquisition of shares, the shareholder concerned must immediately make public the extent of his holding in the target company by issuing a press release and must state his intentions as regards a subsequent offer to all shareholders. If the shareholder cannot provide definite information as regards his intentions, he must indicate the reasons.**

**Unless shares are divested in accordance with the fourth paragraph of Item III.1, or the Securities Council decides otherwise, the shareholder must issue a press release within four weeks of an acquisition in accordance with the first paragraph, announcing that an offer will be made and containing the information stipulated in Item II.3. In addition, the shareholder must prepare and issue a prospectus, as indicated in Item II.6.**

**The provisions in Section V regarding the contents of the prospectus are to be observed.**

**If the shareholder has divested shares within four weeks of an acquisition covered by the first paragraph and hence an obligation to make an offer no longer applies, this must be made public immediately.**

### ***Comments***

It is important for the market to receive information that a shareholder has attained or exceeded the 40 per cent voting entitlement threshold in a stock market company and that the shareholder in question intends to make a public offer as a result of the mandatory offer requirement, or that the holding will be reduced to less than 40 per cent within four weeks of the acquisition and consequently the mandatory offer requirement will no longer apply. If the shareholder considers that he cannot immediately provide definite information regarding his intentions, he must indicate the reasons. The *first paragraph* has been drawn up to achieve this aim.

In addition, in accordance with the *second paragraph*, a press release announcing that an offer is being made must normally be made public not later than four weeks after the previous announcement. As in the case of voluntary public offers, a prospectus must be issued not later than five weeks after the press release. Item II.3 and Section V apply to the contents of the press release and the prospectus.

If the shareholder in question or, where applicable, a person/entity with related party status divests shares after the acquisition to the extent that a mandatory offer requirement in accordance with the fifth paragraph of Item III.1 no longer applies, this will continue to be of considerable interest to the market, and information to this effect must be made public immediately. The *final paragraph* has been drawn up in accordance herewith.



On occasion, there may be uncertainty as to whether or not a mandatory offer requirement applies, for example as regards whether the holdings to which related party status may apply are to be combined. Such questions should be submitted to the Securities Council. In this case, the periods indicated in Item III.1 and Item III.2 apply from the date when the Securities Council makes a ruling.

**Procedures, drawing up terms for the offer, etc.**

**III.3 Unless stated to the contrary, other provisions of the Recommendations – including the rules concerning compensation and acquisition outside the offer – also apply to mandatory public offers, to the extent they are relevant. The following applies to such offers:**

- **the offer must cover all shares in the target company,**
- **the offer must contain a compensation alternative under which all shareholders are entitled to payment in cash,**
- **a prerequisite for extension of the acceptance period is that payment of compensation to those who have already accepted the offer is not delayed, and that**
- **the bidder is only entitled to stipulate conditions for fulfilment of the offer on the grounds of receipt of the requisite official permits.**

**In accordance with Item II.10-12, the terms of a mandatory offer in accordance with the first, second and third paragraphs of Item III.1 must comply with the terms for other acquisitions of shares made by the bidder, or a related party as defined in Item I.3, prior to, during or after an offer. If the bidder acquires shares by means of convertibles, warrants, call options or other financial instruments, thus achieving a holding representing 40 per cent or more of the votes for all shares in the target company, the price stipulated in the offer may, however, not be less than the average**

**market price for the share in question during the 20 stock exchange working days prior to the date of announcement of the holding. This also applies to a mandatory offer in accordance with the fourth paragraph of Item III.1.**

### ***Comments***

In most respects, the provisions contained in the Recommendations also apply to mandatory offers. However, in view of the purpose of an obligation of this nature, certain exceptions must be made. In addition to previous indications in this Section, these special rules are presented in this Item.

The mandatory offer rules are designed to give shareholders in a company which has a new controlling owner an opportunity to divest their holding in the company in its entirety in a specific manner. As a result, it is reasonable to expect that a mandatory offer must always give shareholders an opportunity to receive cash payment for their shares. Compensation in this form gives shareholders maximum freedom of action. In addition, the bidder has an opportunity to offer alternative compensation in another form, but with the corresponding value.

As indicated in the comments on Item III.1, the mandatory offer requirement applies to all shares held by all shareholders. This differs from the rules for voluntary offers, which stipulate that holders of certain types of shares may be excluded from the offer in certain circumstances. Correspondingly, the provisions for voluntary offers under Item II.9 also apply to mandatory offers in relation to holders of financial instruments whose price might be materially affected if listing of shares covered by the offer were to cease.

The acceptance period must also be at least three weeks in the case of a mandatory offer, and may be extended (Item II.6). Such an extension

may not result in the postponement of payment to owners who have already accepted the cash offer.

In a mandatory offer, the bidder may not stipulate conditions for an offer obligation other than a proviso regarding receipt of the requisite official permits (cf. the third paragraph of Item II.4). This means, for example, that the buyer cannot stipulate conditions to the effect that the target company may not take counter-measures or regarding a more favourable competing offer. If the target company takes counter-measures which have a negative effect on the buyer's offer, the Securities Council may grant exemptions from the mandatory requirement in accordance with Item I.2.

In the corresponding manner, the Securities Council may grant exemptions from the mandatory requirement if a competing offer is made which is more favourable for the holder and, as a result, implementation of a mandatory offer does not appear to be meaningful. In this connection, it is assumed that the competing offer involves a cash alternative and that conditions are not stipulated for fulfilment of the offer – for example a certain level of acceptance – which would not apply to the mandatory offer.

Apart from the above, the provisions in the Recommendations concerning voluntary offers also apply, where applicable, to mandatory offers. Since determination of the compensation amount may be particularly important in mandatory offers, this aspect calls for special comment, however.

The link with previous provisions in the Recommendations means, for example, that, in accordance with Item II.10, the terms of the offer may not be less favourable than for a prior transaction conducted within six months of the offer. Normally, this implies that the buyer must offer the highest price which he or, where applicable, a related party as defined in Item I.3 paid for the shares in question during the six months prior to announcement of the offer. Items II.11-12

concerning side transactions and subsequent transactions also apply to mandatory offers. If an acquisition which results in a mandatory offer requirement is subject to review by a competition authority and permission for the acquisition is granted more than six months after the date of the contract, the value of the compensation in the prior transaction at the contract date continues to be the determining factor for the price offered.

The threshold for a mandatory offer may, for example, be exceeded if warrants are exercised for subscription for shares, or convertible debt instruments are exchanged for shares. Such measures by the buyer should affect the terms of the resultant mandatory public offer. Consequently, the *second paragraph* states that, in such cases, the price in the offer may not be less than the average market price for the share in question during the 20 stock exchange working days prior to the date of announcement that the threshold for a mandatory offer has been exceeded. If, however, the buyer has acquired shares in the six-month period prior to announcement of the offer at an even higher price, this price is the determining factor, and the terms must then comply with the terms of the prior transaction.

The provision under which the market price during the preceding 20 days constitutes the lower limit for the compensation amount also applies to a mandatory offer requirement as a result of indirect acquisition in accordance with the fourth paragraph of Item III.1.

If the target company has several classes of shares, price levels and the form of compensation in a mandatory offer are primarily determined by Items II.8-9. If, for example, the buyer has only acquired Class A shares in a company which has also issued Class B shares, the buyer must offer holders of A shares at least the maximum price he paid for such shares during the six-month period in question. In addition, holders of B shares must receive fair and reasonable treatment. If a premium is offered in comparison with the market

value, this must be of equal size, unless there are special reasons to the contrary.

Finally, in applying the rules for mandatory offers, there is reason to recall what is stated in the Comments to Item I.1 regarding the special problems that may arise in connection with foreign ownership of the target company.

#### **IV RULES THAT APPLY IF TARGET COMPANY BOARD MEMBERS OR SENIOR EXECUTIVES PARTICIPATE IN A PUBLIC OFFER, OR IF A PARENT COMPANY MAKES A PUBLIC OFFER FOR SHARES IN A SUBSIDIARY**

##### **Participation by board members or senior executives in an offer**

**IV.1 The provisions in this Section (IV) apply if a board member or a deputy board member of the target company or of a subsidiary of the target company makes or participates in a public offer. They also apply if a senior executive of the target company or a person equated with a senior executive of the target company participates in a public offer.**

**In this context, a senior executive is defined as:**

- a) the managing director or deputy managing director of the target company or its subsidiaries,**
- b) holders of other senior executive positions in the target company or its subsidiaries,**

**The provisions in this Section also apply to:**

- a) the spouse, registered partner or cohabitant of a person covered by the first and second paragraphs,**

- b) children who are minors and in the custody of a person covered by the first and second paragraphs,**
- c) persons who have recently held positions referred to in the first and second paragraphs,**
- d) legal entities over which a person covered by the first, second, third or present paragraphs has a decisive influence, alone or together with another person covered by these paragraphs.**

### ***Comments***

In the case of a public offer for the acquisition of shares made directly or indirectly by one or more board members or senior executives in the target company, several problems arise which do not normally apply to public offers. One problem is that, in such cases, the bidder may often be assumed to have a considerable advantage in information terms in comparison with shareholders as regards the target company and, as a result, is able to make a more reliable assessment of the value of the company's shares.

In order to limit the effects of this imbalance in the information position, provisions are presented in this Section of the Recommendations stipulating that a valuation opinion must be obtained regarding the target company's shares if a target company board member or senior executive, or a person equated with such an executive, makes or participates in a public offer.

The category of persons involved largely complies with what is stated in the Stockholmsbörsen (Stockholm Exchange) listing agreement concerning certain buyouts of businesses or shares which, in its turn, is based in this respect on the Act concerning Certain Directed Issues in Stock Market Companies, etc (1987:464) ("Lex Leo"). In contrast

with Lex Leo, the provision in the listing agreement also covers persons who have recently held a senior executive position or who have recently resigned from the board. This provision does not include any specific time limit, other than the expression “recently”.

Interpretation of this expression in a specific case should be made in the light of the purpose of the provisions – to eliminate any possible information advantage.

The provisions apply if a member of the board or senior executive in the target company makes or participates in a public offer. The expression “makes” refers to a situation in which a member of the board or a senior executive is the main bidder, alone or in cooperation with others. The expression “participates in” primarily refers to a situation in which a board member or senior executive has a position with the bidder or a relationship to the bidder – without being the principal actor – which enables him to influence the terms of the offer. An opportunity to exert an influence of this nature may be based on a shareholding or some other financial involvement in the company making the offer, but it may also, for example, be because the person in question is also a member of the board of the company making the offer, holds some other prominent position, or is advising the bidder in connection with the offer.

Not all holdings of shares or some other financial involvement in the company making the offer call for application of these provisions, however. A shareholding which is of the nature of a capital investment in a listed company making a public offer hardly implies that the senior executive concerned is to be regarded as “participating” in the offer. The decisive criterion is whether the senior executive in question is able to influence the terms of the offer, due to his holding or his position.

## **Additional information in press releases**

**IV.2 In a press release issued by the bidder in accordance with Item II.3 as the result of a decision to make an offer, information must also be provided, where applicable, regarding board members or senior executives making the offer or participating in the offer, and the manner in which this occurs.**

### ***Comments***

When a bidder has decided to make a public offer, the offer must be made public in the form of a press release, in accordance with Item II.3.

If a senior executive in the target company makes or participates in a public offer, the bidder must include information to this effect in the press release, indicating which senior executives are involved and the form their participation in the offer takes. This information should also be included in the prospectus (see Appendix 1, main heading 1).

If a valuation opinion has been obtained in accordance with Item IV.3, it may also be appropriate to include the conclusions drawn in the press release.

### **Valuation opinion**

**IV.3 The target company must obtain a valuation opinion from an independent expert regarding shares in the company. If the compensation offered is in a form other than cash, the opinion must also include a valuation of the compensation offered.**

**This statement of opinion, or a summary thereof, must be included in the prospectus.**



**If another person/entity is also making a public offer for the target company's shares and if there is no participation by a board member or senior executive of the target company in that offer, there is no obligation to obtain a valuation opinion.**

### ***Comments***

If a target company board member or senior executive, or a person equated with such an executive in the target company, makes or participates in a public offer, there is a considerable risk of an imbalance in the information position in comparison with shareholders. As a result, the *first paragraph* stipulates that a valuation opinion must be obtained regarding the target company's shares. The board of the target company is primarily responsible for ensuring that this is done.

There is no stipulation requiring more than one valuation opinion, although it may be appropriate to obtain several valuation opinions in certain situations. However, irrespective of the number of valuation opinions obtained, it is important to ensure that any expert employed for this purpose adopts an impartial and independent position.

Both the board and senior executives of the target company, including persons who are participating in the public offer on the bidding side, are responsible for ensuring that an expert who undertakes a valuation receives all the relevant information concerning the company.

No deadline for presentation of the valuation opinion is indicated in this provision. This question must be determined from case to case, although generally speaking it is desirable that the valuation is available in sufficient time to permit inclusion of the opinion or a summary in the prospectus. If the valuation opinion is made public in some other form than inclusion in the prospectus, this must take place in sufficient time prior to expiry of the acceptance period.

The *second paragraph* stipulates that a valuation opinion or a summary must be included in the prospectus (see Appendix 1, main heading 17).

The *final paragraph* indicates an exception to the valuation opinion requirement. In a situation in which several bidders are competing, it is considered unreasonable to require one of them to obtain a valuation opinion.

In the context of these Recommendations, a “fairness opinion” (i.e. a statement regarding the reasonableness of an offer for shareholders in the target company, from a financial viewpoint) is also regarded as a valuation opinion. This applies even if the fairness opinion or a summary thereof which is included in the prospectus, does not contain direct information regarding the cash value of shares in the target company or, where applicable, the value of the compensation.

#### **Offer by a parent company for shares in a subsidiary**

#### **IV.4 If a parent company makes a public offer for shares in a subsidiary, the requirements regarding a valuation opinion in accordance with Item IV.3 apply in the corresponding manner.**

##### ***Comments***

If a parent company makes a public offer for shares in a subsidiary, a senior executive in the subsidiary usually has a position in the parent company of a nature which means that he may be considered to “participate” in the offer, and hence the valuation opinion requirement already applies under Item IV.3. This is not necessarily the case, however. Nonetheless, a parent company obviously has an information advantage compared with other shareholders. This imbalance with regard to information justifies application in the corresponding

manner of Item IV.3 regarding the valuation opinion requirement if a parent company makes a public offer for shares in a subsidiary.

## **V RULES CONCERNING THE PREPARATION OF A PROSPECTUS, ETC.**

### **Responsibility for the prospectus**

- V.1 The prospectus is to be drawn up by the bidder. If the bidder is a Swedish company, this task is normally the responsibility of the board of directors of the company making the offer.**

**The prospectus is to be drawn up after consultation with the board of the target company. If cooperation on the part of the target company cannot be achieved, the prospectus must state this and contain information concerning the manner in which information about the target company has been obtained.**

#### ***Comments***

The bidder must prepare a prospectus in accordance with Item II.6. If the bidder is a Swedish limited company, the board is normally responsible for this process and for ensuring that the contents comply with statutes, other legislation and recommendations. However, in exceptional situations in which the offer is considered to involve an acquisition of a marginal nature, the managing director may assume responsibility for the prospectus.

The prospectus must include, for example, certain information about the target company and, as a result, must be drawn up after consultation with the board of the target company, to the extent this is feasible. If cooperation on the part of the target company cannot be achieved, information to this effect must appear in the prospectus, and also information concerning the manner in which information

about the target company has been obtained. In this context, the bidder may have to rely on public documents issued by the target company.

If the description of the target company includes comments made by the bidder, in order to comply with the Recommendations' requirements for prospectuses, this must be made clear.

Lack of cooperation on the part of the target company board must not result in postponement or withdrawal of the offer.

### **General requirements regarding the contents of the prospectus**

- V.2 The prospectus must contain the information needed for an overall assessment of the offer. Appendix 1 to the Recommendations indicates the information required. Deviations from these requirements may be made in specific cases if justified in view of the nature of the industry concerned, rules and practices in other stock markets on which the bidding company's or the target company's shares are listed, or other specific circumstances.**

#### ***Comments***

The prospectus must contain the information required for an overall assessment of the offer. As a result, reporting all information and judgements which are of material importance for a market evaluation of the offer must be a fundamental aim. Irrespective of the form in which compensation is offered, the selection of information must be governed by its importance in the specific case in question. As a result, the structure and contents of the prospectus depend on the industry in which the companies operate, and specific factors relating to the companies concerned.

The contents of the prospectus must facilitate analysis and be characterized by objectivity, transparency and problem-orientation. They must also be sufficiently detailed to provide a basis for overall assessment of the offer in the specific case in question.

Appendix 1 specifies the contents of the prospectus. However, even a prospectus which fulfils all the requirements in the Appendix may give a misleading overall picture of the offer. In practice, it is important that there is an emphasis on the specific factors required for evaluation of the offer by the stock market. As a result, items in the Appendix which are unimportant or of limited importance in this respect may be omitted if there is no statutory or regulatory requirement which makes inclusion in the prospectus mandatory.

In addition, deviations from the requirements stipulated in the Appendix may, for example, be justified if the shares of the target company or the company making the offer are listed on market places in other countries and are subject to other regulations and practices concerning information requirements.

There may be special reasons for omitting certain types of information in a given situation, for example if the disclosure of information would be prejudicial to the companies concerned. A risk assessment in this respect may be made.

Omission of information listed in the Appendix must not lead to a situation in which the prospectus gives an incorrect impression of the companies concerned or other aspects of the offer, or is incomplete in some material respect.

In some cases, the information provided in the prospectus may deviate from the information presented in the companies' annual reports. However, the accounting principles and the principles governing other types of information employed in the annual reports should be employed in the prospectus, as far as possible.

### Forecasts and other future-oriented information

There is normally a considerable need for forecasts and other future-oriented information about the companies concerned. In this context, the prospectus may contain information at various quantification levels, for example:

- Quantified earnings forecasts (normally short-term).
- Forecast earnings range (normally short-term).
- Information regarding the anticipated earnings trend in comparison with the most recently completed financial year (normally short-term).,
- General assessments of an unquantified nature.

The two final points may involve assessments of both a short-term and long-term nature. If they are of a long-term nature, such assessments sometimes involve a forecast, sometimes merely a target. A target is not the same thing as a long-term forecast, even if the goal is supposed to be realistic. There must be a clear indication of whether a forecast or a target is involved.

The assumptions on which forecasts and other statements about the future are based must be indicated. Sensitivity analyses indicating how earnings are affected by changes in key factors are also often of considerable value.

Assessments of the future involve uncertainty. Sometimes there is so much uncertainty that meaningful forecasts cannot be made – although the prospectus should always contain future-oriented discussion. Discussion of factors which are of material importance for future profit trends may be more relevant than an earnings forecast for the same period which is based on uncertain information. In any event, it is important that the prospectus does not include statements which are more far-reaching than can be substantiated. The

regulations and practices which apply to markets in other countries may sometimes justify special restraint as regards forecasts and future-oriented discussion.

### **Contents of the prospectus for various types of compensation**

**V.3 The contents of the prospectus must be adapted to comply with the form of compensation employed. The following applies, depending on the form of compensation:**

#### **Compensation in the form of shares or share-related financial instruments issued by the company making the offer**

**A description of the target company and the company making the offer is required. Information concerning the new corporate group that is to be established as a result of the offer must also be provided. These descriptions are to be formulated on the basis of the contents of Appendix 1. For the most part, however, the description of the target company may be less detailed than the description of the company making the offer.**

**Financial and other effects of the acquisition on the company making the offer must be reported.**

#### **Compensation in the form of cash**

**In addition to the requirements of Appendix 1 under main headings 1-4, the prospectus must include a brief description of the target company, in accordance with main headings 7 and 11-13, together with a summary of the points appearing under main heading 8. In addition, an auditor's report in accordance with main heading 15 must be included.**

**Compensation in the form of promissory notes not classified as share-related financial instruments**

**The contents of the prospectus must comply with the above requirements for compensation in the form of cash. In addition, a description of the company that issued (or will issue) the promissory notes must be included in accordance with Chapters 8 and 9 of the Finansinspektionen regulations (FFFS 1995:21).**

**Compensation in the form of shares or share-related financial instruments issued by a company other than the company making the offer**

**The contents of the prospectus must comply with the above requirements for compensation in the form of cash. In addition, a description of the company that issued (or will issue) the instruments that constitute compensation under the offer must be included in accordance with the NBK Recommendations for Preparing Prospectuses (1999).**

***Comments***

In addition to the requirements stipulated in Item V.2, the contents of the prospectus are also governed by the form of compensation offered. Item V.3 indicates the basic principles regarding the contents of the prospectus for various types of compensation. The Swedish Companies Act (1975:1385) and the Finansinspektionen regulations (FFFS 1995:21) also contain provisions concerning the treatment of various forms of compensation in prospectuses.



Compensation in the form of shares or share-related financial instruments issued by the company making the offer

In the case of compensation in the form of shares or share-related financial instruments issued by the company making the offer, there must be a description of the *company making the offer* and also information about the *new corporate group* that is to be established as a result of the offer. These descriptions are to be prepared on the basis of Appendix 1. In addition, the rules for prospectuses in Chapter 4, Sections 18-25 of the Swedish Companies Act and Chapters 3, 8, 9 and 17 of the Finansinspektionen regulations (FFFS 1995:21) concerning prospectuses also apply to the company making the offer.

In order to facilitate assessment of the compensation offered, the prospectus must also include the descriptions of the *target company* stipulated in the Appendix, since the target company will be part of the new group.

Compensation in the form of cash

In the case of compensation in the form of cash, the only description required of the *company making the offer* is covered under main heading 17 in the Appendix.

The description of the *target company* may be simplified to a considerable extent since implementation of the offer will mean that target company shareholders cease to have any financial relationship with the company. In addition to the requirements of the initial main headings in the Appendix (main headings 1-4), the prospectus must include a brief description of the target company in accordance with main headings 7 and 11-13, together with a summary of the points appearing under main heading 8. The prospectus must also include an auditor's report in accordance with main heading 15. This report is normally submitted by the target company's auditor. If the target

company board does not assign its auditor to participate in this manner, the auditor's report is to be prepared by the auditor of the company making the offer.

Compensation in the form of promissory notes not classified as share-related financial instruments

In the case of compensation in the form of promissory notes not classified as share-related financial instruments, the contents of the prospectus must comply with the requirements for compensation in the form of cash. In addition, a description of the company that issued (or is due to issue) the promissory notes must be included in accordance with Chapters 8 and 9 of the Finansinspektionen regulations (FFFS 1995:21). This applies irrespective of the term of the promissory notes.

Compensation in the form of shares or share-related financial instruments issued by a company other than the company making the offer

In the case of compensation in the form of shares or share-related financial instruments issued by a company other than the company making the offer, irrespective of whether or not the other company is a subsidiary of the company making the offer, the requirements for the contents of the prospectus are the same as for compensation in the form of cash. In addition, the prospectus must include a description of the company that issued (or is due to issue) the instruments that constitute compensation under the offer. This description must be formulated in accordance with the NBK Recommendations for Preparing Prospectuses (1999). The rules for prospectuses in the Swedish Companies Act also apply, and this may also be the case as regards the Finansinspektionen regulations concerning prospectuses.

### Other forms of compensation

Forms of compensation other than those indicated above may also apply. In such cases, the prospectus should be drawn up in a manner which complies with the aims of the rules for prospectuses.

### **Information brochure**

#### **V.4 If the bidder prepares an information brochure to supplement the prospectus, the following applies:**

- **The information brochure should not give the impression that it replaces the prospectus.**
- **The front cover of the brochure must clearly indicate that a prospectus is available and how it may be obtained.**
- **The brochure must contain basic information presented in the prospectus concerning the companies and the offer.**
- **The brochure must be objective and impartial.**
- **The brochure may not contain information that is not included in the prospectus.**

### ***Comments***

Basic information about a public offer must always be presented in the prospectus. The bidder may also prepare a somewhat shorter information brochure to supplement the prospectus, facilitate the dissemination of information and make the contents more readily accessible (see Item II.6).

The information brochure does not replace the prospectus, and should not give the impression that this is the case. This means, for example that the brochure may not be described as a “mini prospectus”, etc. The front cover of the brochure must also clearly indicate the manner in which the prospectus may be obtained. Obtaining the prospectus

must be simple and free-of-charge. It is not sufficient for the bidder to state that the prospectus is available on the company's website or to offer to transmit the prospectus in a digital format.

The brochure must contain basic information presented in the prospectus concerning the companies and the offer, and must be formulated in an objective and impartial manner. This means, for example, that if the compensation offered consists of shares or other financial instruments and these instruments entail special risks, these risks must be indicated in the brochure.

The brochure may not contain information that is not included in the prospectus. However, this does not prevent the inclusion of graphic illustrations, etc. that make it easier to understand technical aspects of the offer.

\* \* \*

## **ENTRY INTO FORCE AND TRANSITIONAL PROVISIONS**

**These Recommendations enter into force on 1 March 2003, thus replacing the 1999 NBK Recommendations concerning Public Offers for the Acquisition of Shares. However, the previous provisions apply to offers that are made public prior to entry into force of these Recommendations.**

## **APPENDIX 1**

### **CONTENTS OF THE PROSPECTUS**

#### **Main headings, etc.**

This Appendix lists the points – referred to as “main headings” – that a prospectus should contain. Where considered appropriate, the main headings may be presented in an order other than that employed in the following. In most cases, each main heading is followed by general instructions and detailed instructions.

This Appendix has been drawn up on the assumption that the bidder is a limited company. Hence the expression “companies” is consistently employed to describe both the bidder and the target company. It is considered that the meaning of such expressions is clear in the context.

In principle, a prospectus should be published as a single document<sup>15</sup>, although in certain situations it may be appropriate to include one or more separate annual reports as part of the prospectus. If the prospectus consists of a number of documents, this is to be clearly stated in the prospectus, and the documents included must also be specified.

References to “shares” in the Appendix also apply, where relevant, to convertibles, warrants, participating debt instruments, issue rights and corresponding financial instruments.

---

<sup>15</sup> The expression "document" does not exclude the possibility of distribution via digital media. In such cases, it should be noted that the document will be universally accessible. As a result, possible restrictions in other countries as regards distribution via digital media should be taken into account.

The main headings are as follows:

1. The offer
2. Terms and instructions for acceptances
3. Background, reasons and consequences
4. Statement by the target company board
5. The new corporate group
6. Brief presentation of the companies
7. Financial trends in brief (key ratios and data per share)
8. The companies' operations
9. Comments on developments
10. Financial objectives and future outlook
11. Shares and ownership
12. Board of directors, senior executives and auditors
13. Tax issues
14. Accounting documents
15. Auditors' reports
16. Additional information about foreign shares
17. Presentation of the bidder in certain cases. Other information

## **1. The offer**

### ***General instructions***

**Under this main heading, the prospectus must state firstly who the bidder is and the date of the decision to make an offer. If the bidder is not presented in more detail under subsequent main headings, a brief presentation is called for in accordance with the instructions for main heading 17.**

**The offer is to be specified. If compensation is to be paid in a form other than cash, compensation is to be described in a manner which makes evaluation feasible. If alternative forms of compensation are offered, the description must permit a comparison of the alternatives. If the offer applies to more than one class of share or several types of financial**

**instruments, comments on the compensation offered for the various share classes and instruments are to be included.**

**Information regarding the manner in which the offer is financed must be provided. The total value of the offer must also be indicated.**

**If a board member or senior executive in the target company is making or participating in the offer, this must be stated.**

**If the offer is made in accordance with the provisions requiring mandatory offers, this is to be indicated. The factors which have given rise to an obligation to make a mandatory offer must also be stated.**

**Statements of opinion obtained from the Securities Council must be mentioned if they are relevant for issuing the offer or formulation of the offer.**

#### ***Detailed instructions***

If the bidder offers **compensation** in the form of shares in the bidder's company, **the bidder and the bidder's operations** are to be described in the manner following from the rules for prospectuses stipulated by statutes, regulations and recommendations. In other cases, information concerning the bidder is sufficient. If the bidder is a Swedish stock market company, it is normally sufficient to indicate the bidder's name. In other cases, the bidder must be presented in a manner which is relevant for target company shareholders and the stock market. See also the instructions for main heading 17.

Information is to be provided concerning the **number of shares in the target company held by the bidder or controlled by the bidder in some other manner**, for example as the result of an option agreement, and the proportion of the share capital and the total votes in the target company these holdings represent. In addition, information is to be provided, where relevant, concerning binding or

conditional **undertakings, declarations of intent, or other favourable opinions by shareholders in the target company** regarding acceptance of the offer.

Information is to be provided concerning the **number of shares the bidder has acquired or has gained control over in some other manner, for example as a result of option or forward agreements**, during the six-month period immediately prior to announcement of the offer, and the highest price paid for such shares. Where applicable, information is to be provided separately for each share class involved.

Information is to be provided concerning what **premium** the compensation offered represents **in comparison with the quoted share price**. The premium is to be stated both in comparison with the share price immediately prior to announcement of the offer and in comparison with the average share price during an appropriate period immediately prior to announcement. The manner in which the premium is calculated must be explained.

If there are **differences in the compensation offered for shares of various classes**, this must be clearly stated. Such differences may be due to the same percentage premium for different market values, different premiums based on the same market values, or a combination of the two. The reason for such differences must be stated and explained. If the offer covers both listed and unlisted shares or shares whose market value is adjusted in relation to the quoted share price, the estimated and the adjusted market value must be stated, and the basis for calculation.

If the offer is not confined to shares but also applies for **warrants/options, convertibles or other financial instruments** related to the target company's shares, information regarding the principal terms for these instruments must be provided. This may take the form of a reference to the information provided under main heading 11 ("Shares and ownership"). The compensation paid for such



instruments is to be stated, and also the basis for calculation of compensation.

If an offer is made as a result of the provisions requiring **mandatory offers**, this must be pointed out to target company shareholders. The share acquisitions or other measures that have resulted in a mandatory offer requirement must also be reported.

If the bidder has obtained a **Securities Council ruling** in connection with the offer and this ruling has affected the issuing of the offer or the form the offer takes, the conclusions drawn by the Securities Council are to be stated.

## **2. Terms and instructions for acceptances**

### ***General instructions***

**The terms in the offer for transfer must be clear and unambiguous. In addition, the manner in which target company shareholders are to proceed if they accept the offer must be stated, and the date and manner of payment.**

### ***Detailed instructions***

Clear information must be provided about the **acceptance period**, and the manner in which shareholders should proceed if they accept the offer.

If the bidder stipulates **conditions for completion of the offer**, these conditions must be stated and accompanied, where applicable, by information concerning shareholders' rights concerning the **withdrawal of acceptances**. The requisite practical instructions for a possible withdrawal are to be provided, for example the person/entity to whom notice of withdrawal is to be submitted and the manner in which this is to be accomplished, and also the deadline for receipt of a

request for withdrawal. Information must also be provided regarding the steps to be taken by a shareholder who wishes to withdraw his acceptance for shares registered with a nominee.

Information is to be provided concerning **when and how compensation for shares that have been acquired is to be paid**, and the manner in which this is to be notified.

Where applicable, information is to be provided concerning **the bidder's right to extend the acceptance period**, and also **the right to postpone payment of compensation and notification**.

If compensation consists of shares in the company making the offer, information must be supplied concerning **the market place or market places on which the bidder's shares are listed or due to be listed**. This information must clearly indicate the class of share listed or due to be listed, the form for trading, the proposed trading block and the estimated date for commencement of share trading. Information must also be provided concerning the first financial year for which the shares entitle the holder to a dividend.

In the case of **partial offers**, information regarding the number of shares that the bidder wishes to acquire must be stated and, where applicable, whether the bidder reserves the right to acquire additional shares as a result of the offer. In addition, the principles for reduction of the acceptances received are to be stated and, if a fixed price is not stipulated in the offer, how the price is to be determined.

### 3. **Background, reasons and consequences**

#### *General instructions*

**The considerations and reasons underlying the offer are to be stated. This also applies to the anticipated financial and other effects of the offer on the bidder and the target company. This information may be reported briefly if more detailed information is provided under main heading 5 (“The new corporate group”) or under some other main heading.**

#### *Detailed instructions*

Information is to be provided concerning the **background** to the offer and the **consequences of the offer for the companies concerned**, both from a financial perspective and in other respects.

If compensation consists of shares in the company making the offer, the board of the bidding company must provide an **assurance** indicating that, as far as the board is aware, the information in the prospectus regarding the company and the new corporate group is in accordance with the actual circumstances, and that nothing of material importance has been omitted which might affect the picture of the company or the new corporate group given by the prospectus. A corresponding assurance is to be provided by the target company board regarding information concerning the target company. In some cases, participation by the target company board in the assurance regarding the description of the new group may be justified.

If the compensation offered consists of cash, the board of the company making the offer must provide an assurance indicating that, as far as the board is aware, the information in the prospectus regarding the company is in accordance with the actual circumstances. In addition, a statement by the board of the target company must be reproduced, to the effect that the description of the target company has been drawn up or scrutinized by the target company board, and that, in the

board's opinion, the brief description of the target company provides a fair and accurate impression of the company, even if it does not provide a complete picture.

If the target company board has not participated in preparation of the prospectus, the person/entity responsible for the description of the target company must be indicated, and also the documentation on which the description is based.

If the compensation consists of promissory notes, shares in a company other than the company making the offer, etc., the wording of the assurance and the statement may need to be adapted accordingly.

Each assurance and statement is to be signed by the person making the assurance or statement concerned.

#### **4. Statement by the target company board**

##### ***General instructions***

**If the board of the target company has expressed its opinion of the offer in accordance with Item II.14 in the Recommendations in sufficient time to permit reproduction of this statement of opinion in the prospectus, the statement must be reproduced in its entirety. If the statement is not available in sufficient time to permit inclusion in the prospectus, the date on which it is anticipated that the statement will be available must be indicated. In this case, it is the bidder's responsibility to subsequently ensure that the statement is dispatched to all target company shareholders.**

## 5. The new corporate group

### *General instructions*

**If the target company's shareholders are offered shares in a company which is intended to be the target company's parent company, the new corporate group which is to be established as a result of the acquisition must be described. To some extent, this also applies if the offer is designed to achieve minority participation in the target company. Pro forma income statements and pro forma balance sheets – based on historical accounting documents – must be reported. Plans to change the business concept and strategies, the new group's market position, and coordination measures which are planned and their financial impact must also be presented, as far as possible.**

**A presentation of "The new corporate group" is particularly important in the case of a merger between companies of approximately the same size. If a presentation of this nature is extensive, the descriptions covered by main heading 8 ("The companies' operations") may be summarized, in order to avoid repetition. If, on the other hand, the target company is very small in comparison with the company making the offer, description under the present heading may be brief. The following detailed instructions are primarily concerned with a situation in which acquisition of the target company constitutes a significant addition to the bidding company's operations.**

### *Detailed instructions*

The **overall business concept** should be presented and, where appropriate, specified for the main business areas. The board's opinion concerning **market demand for the company's products or services, growth potential and the ability of the new group to exploit this potential** should be stated for each of the main business areas.

**Major products and services, markets, customer categories and competitors** are to be described in an introductory section, and developed in more detail under the above heading, or under main heading 8 (“The companies’ operations”).

**Plans for the organizational structure** of the new group should be reported, possibly including a breakdown by business areas and by geographical and legal structure.

**Pro forma income statements and balance sheets** for the new group must be included for one or more of the most recent financial years and, where appropriate, for an interim period within the current year of operations. **Cash flow analyses** should also be provided for the pro forma period. If possible, pro forma information should be supplied for **major business areas**. Pro forma accounting involves presentation of the accounts as if the new group had been in operation throughout the period in question. Pro forma accounting must always include **explanatory comments on the assumptions** applied when preparing such accounts. **All relevant factors and transactions** implemented in connection with the merger are to be included and analysed – for example goodwill amortization, provisions for restructuring, new share issues and special dividends. There are frequently grounds for indicating that certain assumptions in the pro forma accounting are preliminary, and that they may be modified in future year-end financial statements.

Pro forma accounts must refer to historical information, without taking synergy effects and other aspects of forecasting into account, since this gives rise to considerable risk of misinterpretation.

The **financial benefits and costs of a merger** should be discussed, and quantified where feasible, possibly in the form of a range of values. The date when such benefits and costs are expected to be realized or incurred must also be indicated.

**Financial objectives** should be indicated, including equity/asset ratios and profitability targets, other financial policies such as the fixed-interest term policy and liquidity planning, and a discussion of the manner in which future capital requirements are to be met, etc. The new group's prerequisites for achieving these targets should be discussed.

The most important **assumptions on which forecasts or other short-term assessments are based** should be presented. This also applies to **long-term evaluations**. This is particularly important if circumstances outside the new group's control may have a considerable impact on earnings – for example cyclical processes (affecting the geographical areas or industries concerned), energy prices, foreign exchange rates, raw material prices, interest rates and the rate of inflation.

Long-term evaluations may be presented as **opportunities**, on the one hand, and as **threats and risks**, on the other. If the risk factor is considered to be particularly great, this should be indicated in a prominent position.

If possible, **sales and profit forecasts** should be presented for the current year. In some cases, the prerequisites for such forecasts for the next year of operations may also be presented. Reference is made in this context to previous stipulations under the "Forecasts and future-oriented information" heading in the comments on Item V.2 in the Recommendations.

In certain cases, it may be desirable to indicate a hypothetical forecast for the new group, based on the assumption that the merger, and the associated new issues, divestment of units, etc was already implemented at the beginning of the period covered by the forecast. A hypothetical forecast of this nature may represent the subsequent years better than actual forecasts. There is a risk, however, that the

stock market will confuse such a hypothetical forecast with actual forecasts. As a result, clear presentation is essential and, in addition, the actual forecast must also be presented if a hypothetical forecast is employed.

A hypothetical forecast may only include synergy gains and merger costs which can be quantified with a satisfactory degree of precision and which occur during the period covered by the forecast. Items of this nature, which are often difficult to determine in advance, may be indicated and commented on in connection with the forecasts provided.

Information should be provided concerning the **new group's foreign exchange policy** regarding currency hedging, etc. In addition, the key currencies for the new group's revenues and expenses should be indicated. This also applies to the impact of fluctuations in foreign exchange rates on the group's earnings.

A **sensitivity analysis** presenting the impact on earnings of changes in major external factors normally provides information of considerable value. An explanation of the extent to which the sensitivity analysis is affected by possible hedging measures is often called for.

Information is to be provided concerning **key ratios and data per share**, based on the pro forma accounts. This information may be selected from the list in the detailed instructions for main heading 7.

Information regarding the new group's **dividend policy** should be presented, where possible.

The **operations of the new group** are to be described. Such descriptions are also covered under main heading 8 ("The companies' operations"), which also stipulates what may be included in a description of this nature. Repetition should be avoided; the question



of under which heading the main emphasis is to be placed in the description of operations may be determined on an ad hoc basis.

Information must be provided concerning the **share capital structure** and **ownership status** after establishment of the new group. If formation of the new group leads to changes other than those indicated for the company making the offer under main heading 11 (“Shares and ownership”), this must be stated.

**Plans regarding composition of the board, senior executives and auditors** are to be reported, to the extent this is feasible. Facts regarding the persons involved, with the same content as for main heading 12 (“Board of directors, senior executives and auditors”), should be reported under the present heading, to the extent that they are not covered under main heading 12.

## **6. Brief presentation of the companies**

### ***General instructions***

**In certain cases, a brief description of each company should be included in the introduction to the sections describing the companies concerned. Otherwise, such descriptions should be incorporated in the description of the respective company’s operations under main heading 8 (“The companies’ operations”).**

### ***Detailed instructions***

A **brief history** of the company making the offer must be provided.

The **overall business concept** and the business concept for the major areas of operations must be indicated.

The major **business areas, products** and **markets** are to be presented briefly.

## 7. Financial trends in brief (key ratios and data per share)

### *General instructions*

**Key ratios extracted from the income statements and balance sheets are to be reported both for the target company and the company making the offer, and also key ratios derived from income statements and balance sheets covering a full business cycle (normally at least five years). If there are special reasons, some other period may be selected. If major acquisitions or divestments of companies have been implemented during the period, pro forma key ratios may be appropriate – in some cases in parallel with key ratios for the actual outcome. Pro forma key ratios indicate what would have happened if the company concerned had had its present structure during the period in question. The assumptions on which the pro forma key ratios are based must be unambiguous and presented in full.**

**Key ratios are to be defined in accordance with accepted practice in the industry concerned.**

### *Detailed instructions*

**Key ratios are to be reported for a full business cycle**, which is normally five years. Some other period may be selected if there are special reasons. The following information is to be provided if, on the one hand, it is of material importance for evaluation of the company and, on the other hand, it is relevant in view of the industry in which the company operates:

- Summarized income statement or, alternatively, sales, operating profit and profit after net financial items,
- Items affecting comparability and, where appropriate, non-recurring items specified in the notes or in some other manner,

- Operating margin or similar indicator,
- Cash flow,
- Summarized balance sheet or, alternatively, total assets and shareholders' equity,
- Return on average working capital (alternatively total capital),
- Return on average shareholders' equity,
- Equity/assets ratio,
- Debt/equity ratio,
- Interest coverage ratio,
- Information concerning the market value and book value of properties and shares for which there is a market value. The manner in which such market values are determined and the amount of the deferred tax liability must be stated,
- The number of employees,
- Investments,
- Research and development costs charged against income, and also any items of this nature booked as an asset.

If **pro forma accounts** are presented, key ratios must also be based on the pro forma accounts, to the extent this is appropriate.

The principles for calculation of **tax expense, deferred tax liability and deferred tax claims** must be indicated. In addition, unutilized tax loss carry-forwards are to be stated.

**The following per share data** – adjusted for new share issues – are to be stated for the same period as the above key ratios, based on a weighted average of the number of shares:

- Earnings
- Shareholders' equity
- Dividend
- Share price
- Direct return
- P/E ratio
- Average number of shares on which the calculations are based
- Share-price diagrams, showing index comparisons and share trading
- Forecast earnings if an earnings forecast has been issued.

Earnings and shareholders' equity are to be presented both before and after the dilution of outstanding convertibles, warrants, etc. unless dilution only has an insignificant per-share impact. If net worth per share is a relevant factor, information of this nature and the principles employed in calculating this ratio are to be indicated.

## **8. The companies' operations**

### ***General instructions***

**A detailed account of the companies' operations is to be provided, in terms of business areas, divisions, or corresponding units. If the offer is to be followed by a stock exchange listing for the bidder, particularly detailed reporting on certain aspects of operations may be called for.**

**The description of the companies under this main heading is to be coordinated with the descriptions under main heading 5 (“The new corporate group”) and main heading 6 (“Brief presentation of the companies”). See also references to coordination under these headings.**

**The description of the target company’s operations may normally be less detailed than the description of the operations of the company making the offer.**

### ***Detailed instructions***

The detailed instructions for this main heading are relatively extensive. It should be borne in mind, however, that only points which are of major importance must be included in the prospectus (see Item V.2 in the Recommendations). The two companies’ combined circumstances and prospects are presented under main heading 5 (“The new corporate group”). The following points are likely to be of prime importance in describing operations:

A description of the **companies’ operations** must be provided, **indicating their most important products and services**. Special functions and other characteristic features in comparison with other competing products and services should be mentioned, and also correlations between the various products and services.

Any **plans for changes in the range of products or services offered** should be indicated, although this should be done in a manner which is not detrimental to the companies; a risk assessment may be made in this connection.

Special reporting for the **various business areas** is required in accordance with the Swedish Financial Accounting Standards Council’s RR 25 Recommendation “Reporting for segments – operations and geographical areas”. This information is to cover three financial years and take the form of a table with correction entries to

ensure that the total of the sub-items complies with the corresponding item in the group accounts.

Information concerning previous and, if possible, anticipated developments **for the business area concerned** should be provided as regards:

- The size of the market and its nature (technical trends, the impact of political decisions, etc),
- The companies' market shares and market positions in other respects,
- The competitive situation, and also the main competitors and the companies' characteristics in comparison with these competitors.

Presentation of major **associated companies**, including information in accordance with what is stated above regarding business areas, if published information of this nature is available.

The major **customers** should be indicated, where possible. Otherwise, comment should be made on the customer structure, particularly in the following respects:

- Types of customers (indicating whether they are dealers, end-users, etc),
- The number of customers, the number of customers representing a given proportion of sales, etc,
- The development potential of the major customer categories,
- Volatility of customers,
- Sales channels; how the companies market their operations,

- Special comments which may be required if the companies depend on a single customer or a limited number of customers,
- Major suppliers should be indicated, where possible. Otherwise, comment should be made on the supplier structure, particularly in the following respects:
  - ✓ Increase or decrease in the companies' reliance on subcontractors,
  - ✓ The companies' sensitivity to interruption of supplies,
  - ✓ Special comments which may be called for if the companies depend on a single supplier or a limited number of suppliers.

Information concerning the companies' **major operating facilities**, that is to say facilities which represent more than 10 per cent of sales or production. In addition, a brief account of **production plants and other properties** is to be provided, indicating their age, condition, investment requirements and expansion potential. If plants and properties comprise a considerable number of units, this description may be of a relatively general nature.

The focus of **major investments** and the capital invested, including the acquisition of companies, implemented during the current year and the three most recent financial years. Similar information is to be provided for **ongoing and planned investments and acquisitions of companies**, although this should be accomplished in a manner which ensures that publication is not detrimental to the companies; a risk assessment should be made in this connection.

The focus and level of expenditure for **research and development** during the current year and the three most recent financial years is to be stated. Similar information is to be provided regarding the future

orientation, but in a manner which is not detrimental to the companies; a risk assessment may be made in this connection. In addition, comments should be made on the extent to which research and development are conducted in cooperation with customers, suppliers, universities, etc.

Major **raw material assets** owned by the companies, or which are of major importance for the companies in other respects, must be described. Comments are to be made on the extent of such resources, the remaining exploitation period, investment requirements, environmental aspects (see below), availability, etc. If major changes are anticipated, this must also be reported, but in a manner which is not detrimental to the companies; a risk assessment should be made in this connection.

Major **environmental factors** are to be described, including, where possible, the financial impact on the companies and, where applicable, implemented and planned environmental initiatives by the companies. This includes political decisions which are anticipated or have already been implemented that have an environmental impact on the companies.

Comments are to be made on **personnel factors** (in addition to the average number of employees, which is covered by main heading 7). The following factors may, for example, be of interest, depending on the actual circumstances and the nature of the company's operations:

- Breakdown by age, education and sex,
- Personnel turnover,
- Future personnel requirements,
- Availability of personnel, particularly key staff,



- Incentive schemes (personnel categories covered and principal terms).

**Litigation**, arbitration, etc which has had, or may have, a significant financial impact on the companies must be reported.

A report must be provided which primarily covers the following types of **commercial agreements** which are of major importance for the companies:

- Purchasing and supply agreements,
- Leasing and sale-leaseback agreements,
- Cooperation agreements,
- Acquisition agreements,
- Agreements with external parties concerning additional payments and profit sharing.

A brief description should be provided of any **contractual relationships** between the companies concerned and **associated companies or related parties**. This is particularly important if evaluation of the companies' financial results is affected to a significant extent by **agreements and other relationships with related parties** (including senior management personnel).

An account must be provided of major patents, licences and other **intellectual property rights**.

If information which has not been made public has emerged in the course of a **due diligence investigation** which is likely to materially affect a valuation of the target company's shares, this information must be reported. As indicated in Item II.15 of the Recommendations,

there may also be a special information obligation for the target company regarding such circumstances, perhaps as a result of the target company's listing agreement on the stock exchange concerned or some other market place.

**Addresses and telephone numbers** for the companies' head offices, major subsidiaries and operating units must be indicated.

## 9. **Comments on developments**

### *General instructions*

**Special comments are normally required to clarify important factors and to provide supplementary information that provides a basis for evaluation of the companies' earnings and financial position. The boards' comments on the earnings and profitability trend are important in this context, and this also applies to major policy issues, such as foreign exchange and financing policy, unless comment on such matters is made in some other context.**

**The earnings reported in recent years are often an important factor in assessing the future of the companies. As a result, it is essential that the boards comment on and analyse the results achieved. The extent to which coincidences or factors which are no longer relevant have affected these results should be explained. Comments of this nature should be at the business area level.**

**Comments on the target company's development may normally be briefer than comments on trends for the company making the offer (see Item V.2 in the Recommendations).**

***Detailed instructions***

In order to facilitate evaluation of the companies' financial results and position, comments should be presented in the form of an **ongoing comparison** between the three most recent financial years (the two most recent years in the case of the target company), including comments on the relevant key ratios. Obviously, the situation faced by the companies must be taken into account, but such key ratios may include sales, operating profit, operating margin, profitability and investments. Comments should also be made at the business area level, where possible.

Comment should be made on **factors which are important for evaluation of financial results and the position** of the companies which are not apparent in the income statements and balance sheets, including notes on the accounts for the three most recent financial years (the two most recent years in the case of the target company).

Comments should be made on **major events** affecting the companies **after the end of the most recent financial year** for which an annual report is submitted, providing such comments are not made elsewhere in the prospectus.

**10. Financial objectives and future outlook*****General instructions***

**The companies' financial objectives and the boards' assessments of the short-term and long-term financial outcome and the prerequisites for the long-term development of the companies are to be presented. This information may be presented briefly if more extensive information is provided under main heading 5 ("The new corporate group").**

**Detailed instructions**

An account of the **financial objectives** should be provided, including equity/assets and profitability targets, financial policies, other aspects such as fixed-interest term policy and cash flow planning, discussion of the manner in which future capital requirements are to be met, etc. The companies' prerequisites for achieving these targets should be discussed.

Information must be provided concerning the most important **assumptions on which forecasts and other short-term assessments are based**. This also applies to **long-term evaluations**. This is particularly important if circumstances outside the companies' control may have a considerable impact on earnings – for example cyclical processes (for the geographical areas or industries concerned), energy prices, foreign exchange rates, raw material prices, interest rates and the rate of inflation.

Long-term evaluations may be presented as **opportunities**, on the one hand, and as **threats and risks**, on the other. If the risk factor is considered to be particularly great, this should be stated in a prominent place in the prospectus.

If possible, **sales and profit forecasts** should be provided for the current year. In some cases, there may be prerequisites for such forecasts for the next year of operations. Reference is made in this context to previous stipulations under the "Future-oriented information" heading in the comments on Item V.2 in the Recommendations.

Information should be provided concerning the companies' **foreign exchange policies** regarding currency hedging, etc. In addition, the currencies which are most important for the companies' revenues and

costs should be stated, and also the impact on the companies' earnings of various changes in foreign exchange rates.

A **sensitivity analysis**, which presents the impact on earnings of changes in major external factors, frequently provides useful information. An explanation of the extent to which the sensitivity analysis is affected by possible hedging measures is often called for.

## 11. **Shares and ownership**

### *General instructions*

**An account is to be provided of the companies' share capital and number of shares of various classes in the companies, and the number and classes of shares which may result from the exercise of outstanding convertibles and warrants. Information must also be provided concerning the companies' holdings of their own shares.**

**An account must also be provided of major shareholdings in the companies, both in terms of voting rights and the proportion of the equity.**

**In addition, the principal provisions of the companies' articles of association must be reported.**

### *Detailed instructions*

The **amount of the share capital** before and after the offer is to be stated. This also applies to the **number of shares**, broken down by **class of shares**, where applicable. The financial entitlements and the voting rights for shares of various classes must be stated.

The following information is to be provided concerning **convertibles** and **warrants**, including the planned issue of such instruments:

- The number of additional shares in the event of full conversion or new subscription for shares, and the breakdown by share class. The increase in the number of shares is to be stated in absolute and percentage terms, both as regards the share capital and the total number of votes,
- The increase in the shareholders' equity in the event of full conversion or new subscription,
- Time limits for conversion and for new subscription,
- Conversion and subscription prices, respectively,
- The rate of interest.

Information is to be provided concerning the company's holding of its **own shares**, broken down by share class, where applicable. If the company has issued call options for its own shares, information to this effect must be provided, including the number of shares concerned, the exercise price and the period in which the options may be exercised.

Information must be provided concerning possible **authorizations** which entitle the boards of the companies to take decisions regarding **issues** and the **purchase and sale of the companies' own shares**.

Information is to be provided concerning **pre-emption clauses, provisions regarding redemption or the conversion of shares**, and **other similar provisions in the articles of association**. If the company making the offer is not a Swedish CSD registered company, this should be stated.

The **number of shareholders** is to be stated. Major shareholdings are to be specified, including the proportion of ownership and voting rights, taking into account new owners from the bidder's viewpoint

who may become shareholders as a result of the offer covered by the prospectus. In addition to a breakdown of shareholders by name, the distribution of the total number of shares by size categories should also be presented.

**Changes in the companies' share capital** in the preceding five-year period are to be reported. This also applies to the issue of convertibles and warrants.

Issues in the company making the bid within the preceding three years are to be stated, including the date, the amount subscribed and the subscription price.. If there was no **priority for shareholders** in these issues, the persons/entities who subscribed should be indicated.

Information is to be provided about **shareholder associations** and other significant **agreements** known to the board **between major shareholders** or between the company concerned and its shareholders concerning shares in the company.

Information is to be provided concerning **the market places on which the companies' shares are listed**.

An account is to be provided of the provisions of the companies' **articles of association**, including the name of the company, the registered office, the object of the company's operations, the share capital, the various classes of shares, the par value and voting entitlement of the share, voting restrictions at general meetings of shareholders, provisions regarding the board of directors, the financial year, CSD registration and other important items in the articles of association. In this connection, information is to be provided concerning the company's registered corporate number and, where required in respect of the company making the offer, the legal form of business entity, indicating the relevant legislation, the date of corporate registration, and the period during which the company has conducted operations.

## 12. **Board of directors, senior executives and auditors**

### *General instructions*

**Information is to be provided concerning the companies' board members, deputy board members, senior executives, and auditors and deputy auditors.**

### *Detailed instructions*

Information is to be provided concerning **board members** and **deputy board members** in the companies, stating their main occupation and other significant board assignments, the year they became members of the board, their age and their holdings of shares (convertibles, warrants/options, etc) in the companies. In certain cases, corresponding information regarding board members in major subsidiaries may be called for. If changes in the composition of the board of the company making the offer are planned in the immediate future, this should be stated, including information regarding the members or deputies who are expected to join the board.

Information is to be provided concerning **senior executives**, indicating their positions, period of employment, age and holdings of shares (convertibles, warrants/options, etc) in the companies. Where possible, the proposed list of senior executives after a merger should be indicated.

Information is to be provided concerning **auditors and deputy auditors**, including their accounting firm, their age and the year when their assignment commenced.

Information is to be provided about the bidder as regards the **total remuneration and the value of other benefits** paid during the most recently completed financial year, or due to be paid, to members of the



board, senior executives and auditors, and charged against income in the parent company or subsidiaries. A total amount is to be stated for each category. Information concerning remuneration to the auditors is to comprise the total payment for auditing operations in the parent company or, where applicable, in the Swedish group companies. In addition, information regarding remuneration, pension terms and severance payments for the companies is to be stated under this main heading or elsewhere, as indicated in the NBK Recommendations concerning Information about Benefits for Senior Executives (2002).

Information is to be provided concerning the company making the offer as regards the nature and scale of the benefits derived by members of the board, auditors or senior executives from **business transactions** undertaken by the company during the preceding or current financial year which involved unusual features or terms. Information must also be provided concerning transactions in previous financial years if such transactions have not yet been completed.

Information is to be provided concerning any outstanding **loans, guarantees or sureties** made or issued by the companies in favour of board members, senior executives or auditors in the company making the offer.

### **13. Tax issues**

#### ***General instructions***

**An outline description of the Swedish tax rules that apply to shareholders who accept the offer is to be provided. The tax aspects of the holding and divestment of the financial instruments which constitute payment for the offer must also be described. In addition, information is to be provided concerning requests for rulings submitted or due to be submitted to the tax authorities, the manner in which such rulings will be notified and, where possible, when such information may be expected. Mention should**

**be made of current official committees/reports, government bills, etc which may result in changes in tax legislation.**

**14. Accounting documents**

*General instructions*

**Accounting documents are included in the prospectus to provide information about the companies' earnings and financial position. It is assumed that the companies' accounts are prepared in accordance with current legislation and generally accepted accounting standards for stock market companies.**

*Detailed instructions*

**Balance sheets and income statements, including notes and cash flow analyses** for the company making the offer must be provided for the three most recent financial years for which annual reports and audit reports have been submitted. This information is to cover both the group and the parent company. If information about the parent company may be considered to be largely irrelevant for assessment of the value of the company's shares, it is sufficient to provide details of the parent company for the most recent financial year.

In the case of the target company, the corresponding accounting information is to be provided for the two most recent financial years. In this case too, information for both the group and the parent company must be supplied. If information about the parent company may be considered to be largely irrelevant, information for the most recent financial year is sufficient.

Presentation of balance sheets, income statements and **cash flow analyses** must permit **comparison between the years**. As a result, the accounting information is to be based on the accounting principles employed in the most recent financial year. If the accounting principles

have changed during the period covered by the accounting information, this must be reported, together with a clear statement of the effects of such changes. See also the Swedish Financial Accounting Standards Council's RR5 Recommendation.

Specifications for the balance sheets and income statements, and mandatory **additional information**, are to be presented in the notes to the accounts.

**A summary** is to be provided **of the mandatory information** contained in the **administration reports** for the three most recent financial years in the case of the company making the offer, and the two most recent financial years in the case of the target company. This information must include:

- Factors of importance for evaluation of the financial results and position of the group and the parent company which are not indicated by the income statements, balance sheets or the notes, unless such comments appear elsewhere in the prospectus,
- Major events affecting the group and the parent company during the financial years concerned, and also subsequently, unless such comments appear elsewhere in the prospectus,
- The parent companies' foreign branches. Branches are defined as branch offices under independent management. Alternatively, this information may be presented under main heading 8.

If the prospectus is presented more than eight months after the close of the most recent financial year for which an annual report and an audit report have been submitted, **information** is to be provided **corresponding to interim reports**. This information is to cover the period from the end of the financial year concerned to a date not

earlier than four months prior to publication of the prospectus<sup>16</sup>. Interim reports for the target company are not required if the target company is not prepared to cooperate and interim reports have not been published. Interim reports published by the companies must also be included in the prospectus in other respects to ensure that the current year of operations is covered by interim reports as far as possible.

## 15. **The auditors' report**

### **General instructions**

**The prospectus is to be audited by the companies' auditors. FAR<sup>17</sup> has prepared recommendations regarding the manner in which such an audit is to be conducted and reported. Reference is made to these recommendations in this context.**

## 16. **Additional information about foreign shares**

### *General instructions*

**If compensation in the offer consists wholly or partly of shares, or depository receipts for shares in foreign companies, special information concerning compensation and the implications of ownership of such shares or depository receipts must be provided.**

### *Detailed instructions*

The information concerned should primarily cover the following:

The most important **differences** between Swedish **accounting principles** and the principles applied in the prospectus, and the

---

<sup>16</sup> The Swedish Companies Act stipulates that this period is to be three months. The description of the target company is not affected by the Companies Act, however.

<sup>17</sup> The institute for the accounting profession in Sweden.

financial impact of such differences on the company's earnings and financial position.

**Differences** between **Swedish legislation and the legislation which applies to the foreign company** that are particularly relevant for a Swedish investor. In particular, this involves preferential rights for shareholders as regards new issues, etc, procedures for approving changes in the company's share capital, the company's articles of association (or the corresponding document), the rules for the election and dismissal of the board and the auditors, the allocation of authority and responsibilities between the board and the general meeting of shareholders and between the board and executive management, rules for the protection of minority interests, rules concerning mergers, liquidation and bankruptcy, rules concerning public offers (for example mandatory offers), and rules for the compulsory purchase of minority holdings.

The rules for participation in **general meetings of shareholders**.

The **registration procedure** for the shares or depository receipts concerned. The main conditions for depository receipts are to be indicated in the prospectus, or included in extenso as an appendix to the prospectus.

The manner in which shareholders and the stock market are to be informed of major **changes of ownership** in the company.

The procedure for the **distribution of dividends**. Tax issues which affect Swedish investors are covered under main heading 13.

The manner in which **information** is to be communicated to the Swedish stock market.

**17. Presentation of the bidder in certain cases. Other information*****General instructions***

**If the bidder and the bidder's operations are not presented under the main headings previously indicated, the bidder must be presented under a special heading in a manner which is relevant for target company shareholders and the stock market. If the bidder is a Swedish stock market company, it is sufficient to indicate the name of the company, however.**

**A valuation opinion is to be included in the prospectus in certain circumstances, for example if board members or senior executives in the target company make or participate in the offer, or if the offer is made by the target company's parent company.**

**The terms for debt instruments – including convertibles and debt instruments linked with warrants – which constitute compensation in the offer are to be stated.**

**Agreements resulting from the public offer are to be included in the prospectus, in extenso.**

**Finally, where required, the prospectus should include a report by the board of the company making the offer in accordance with Chapter 4, Section 6, of the Swedish Companies Act, and the auditors' statement regarding this report.**

***Detailed instructions***

If the bidder is a Swedish stock market company, it is normally sufficient to indicate the bidder's name in the case of a cash offer or similar offer. Otherwise, the bidder must be presented in an offer of this nature in a manner that is relevant for target company shareholders and the stock market. This presentation must indicate,

for example, national domicile, the main owners and the type and scope of operations, including certain key financial ratios.

If **target company board members, senior executives, etc** are making or participating in the offer, or the offer is made by the **target company's parent company**, a **valuation opinion** (fairness opinion), or a summary of such an opinion, must be included in the prospectus, in accordance with Item IV.3 in the Recommendations.

In other cases too, the board of the target company may have occasion to request a **valuation opinion** or a fairness opinion, depending on the circumstances. A statement of opinion of this nature is to be included in the prospectus.

The full **terms for debt instruments** – including convertibles and debt instruments linked with warrants – which constitute the compensation covered by the offer are to be reported, possibly in the form of an appendix. The key points of such terms should be presented in summarized form under main heading 2 (“Terms and instructions for acceptances”).

**Agreements resulting from the public offer**, for example “merger agreements”, must be included in the prospectus in their entirety. If such agreements contain information that might be to the detriment of the companies if made public, the Securities Council may grant exemption from this rule.

-----

## **FÖRETAGSJURIDIK**

*NORD & CO AB*

Besöksadress: Kungsträdgårdsgatan 12  
Postadress: Box 1435, 111 84 Stockholm  
Telefon: 08-678 11 11, Telefax: 08-678 12 20