

Decisions & Statements – 2001

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Decisions and statements – January 2001

1. Publication of price-irrelevant information

A listed company released a stock exchange announcement containing the company's revised forecast of the profit for the year. The announcement contained a copy of the company's shareholder magazine, which would be distributed to the company's shareholders on the same day.

In the interest of the transparency of the market, it is very important that only price-relevant information is published through the Copenhagen Stock Exchange, and it is important that recipients of information are able to form a quick idea of the information provided. Distribution of price-irrelevant information to the Copenhagen Stock Exchange makes it impossible to establish what is relevant information and what is not, thus blurring the overall picture.

The Copenhagen Stock Exchange therefore pointed out to the company that when releasing announcements to the Copenhagen Stock Exchange, the company must establish what information is price-relevant and thus only include that information in the announcement.

2. Change of financial year

The Copenhagen Stock Exchange was asked whether an additional preliminary announcement of annual results had to be published in connection with a change of financial year of a listed company when the transitional accounting period would be 17 months – from 1 August 2000 to 31 December 2001. The Stock Exchange stated that since the Danish Commerce and Companies Agency had approved the 17-month accounting period, the company did not have to publish an additional preliminary announcement.

The company also asked whether its first interim report could cover eight months (1 August 2000 to 31 March 2001), with the following reporting periods expiring end-June, end-September and end-December 2001. The Stock Exchange agreed, because that would secure the comparability of future 3-month and 6-month reports. It was a condition for the Copenhagen Stock Exchange's acceptance that the company published a business calendar for the likely dates of publication of preliminary announcements for the transitional accounting period 2000/2001.

Decisions and Statements – February 2001

1. Proposed clauses contrary to a company's stock exchange listing

The Copenhagen Stock Exchange received an announcement from a listed company from which it appeared that the majority shareholder of the company, who already had a controlling influence, had acquired more shares and was now holding more than 90 per cent of the shares and votes in the company. It appeared from the announcement that the company's board of directors was going to convene an extraordinary general meeting with a view to moving an amendment of the Articles forcing the remaining shareholders to have their shares redeemed. The company's board of directors would then have the company's shares delisted.

The Copenhagen Stock Exchange subsequently received the agenda for the company's extraordinary general meeting. Among other things, the board of directors proposed the introduction of clauses regarding right of pre-emption and right of redemption into the Articles.

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The proposal for right of pre-emption was to the effect that no shareholder should be allowed to sell its shares to a third party, unless those shares had been offered to the majority shareholder first. The price at which the shareholder should offer his shares to the majority shareholder should be determined by the company's accountant.

The proposal for a right of redemption was to the effect that the majority shareholder could demand that the remaining shareholders had their shares redeemed by the majority shareholder. The redemption price should be the price that the majority shareholder had just paid for the shares that had increased his holding to more than 90 per cent.

As regards the right of pre-emption, the Exchange reminded the company that the shares of a listed company should be freely negotiable, which means that neither the Articles nor other restrictions must obstruct the negotiability.

The board's proposal for a right of pre-emption would obstruct the negotiability of the company's shares and that would be incompatible with being a listed company. Consequently, a listed company can not adopt such a proposal and the Exchange reprimanded the company for moving such an amendment of the Articles. Moreover, the Exchange informed the company that the Exchange expected the company to take the necessary measures to ensure that the proposal would not be adopted at the extraordinary general meeting or otherwise as long as the company was listed on the Stock Exchange.

At the company's extraordinary general meeting it was adopted to incorporate a clause stipulating that there would be no restriction of the negotiability of the shares, and thus the clause regarding the right of pre-emption was not incorporated into the company's Articles.

As regards the proposal for a right of redemption to be stipulated in the Articles, the Exchange informed the company that basically such a clause is incompatible with being a listed company. However, the Exchange could accept a right of redemption stipulated in the Articles where a majority shareholder holds more than 90 per cent of the shares and votes in the company and where the introduction and exercise of the right of redemption stipulated in the Articles are purely to replace a compulsory redemption with a view to seeking a delisting of the company's shares. Moreover, such a clause should contain a redemption price which should be fixed under normal market conditions. Moreover, it must be declared that the right of redemption is exercised immediately after the adoption and a time-limit must be set within which the clause must have been exercised.

At the extraordinary general meeting it was adopted to introduce the right of redemption into the company's Articles. In this connection the basis on which the redemption price was fixed was stated as the fact that the redemption price was the highest price at which the majority shareholder had acquired shares within the last six months. Moreover, it was stated that the majority shareholder would exercise the right of redemption immediately after adoption and that the company's board of directors would subsequently ask the Copenhagen Stock Exchange to delist the company's shares.

2. Share capital of at least DKK 15 million – floatation – request for exemption granted

In connection with a company's application for admission to listing on the Copenhagen Stock Exchange the company asked the Exchange to exempt it from the rule requiring that a company must have a share capital of at least DKK 15 million at the time of listing.

At the time of the application the company's share capital amounted to nom. DKK 6.3 million distributed on shares of DKK 1. Prior to the listing of the company new as well as existing shares would be offered for sale. At the time of the application the size of the offering had not yet been decided, but it was expected that the share capital would be

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increased to nom. DKK 9 million. The offering was expected to raise some DKK 500 million – DKK 300 million from new shares and DKK 200 million from existing shares.

On the basis of the expected future market cap and the expected proceeds, the Copenhagen Stock Exchange did not find that the company's nom. share capital of DKK 9 million would hinder the company's admission to listing on the Copenhagen Stock Exchange.

3. Trading in own shares prior to publication of preliminary announcement of annual results

The Copenhagen Stock Exchange received an announcement from a listed company stating that the company had acquired its own shares. The day after, the Exchange received the company's preliminary announcement of annual results for 2000.

Listed companies must draw up internal rules governing transactions executed in the company's own shares, cf. rule 15 of the Rules governing issuers of securities listed on the Copenhagen Stock Exchange A/S. Such internal rules shall contain a time-limit within which the company is not allowed to trade in its own shares. The Exchange recommends that this time-limit shall be fixed at three weeks prior to the publication of the company's preliminary announcement of annual results, interim report or other announcements regarding accounting records, since a company and its management will obtain inside information in connection with the preparation of announcements of financial results.

When asked by the Exchange, the company announced that they were of the opinion that they had informed the market of the company's results and plans through an announcement sent to the Exchange some three weeks prior to the publication to the preliminary announcement of the annual results in which the company had made an upward adjustment of its expectations for the financial result for 2000. Consequently, the company should be allowed to buy its own shares immediately before the publication of the preliminary announcement of the annual results. Moreover, the company's internal rules regulating transactions in own shares did not contain a time-limit within which the company is not allowed to trade in its own shares.

The Exchange informed the company that "other announcements regarding accounting records" mean announcements providing an overall view of the company's activities and results. An announcement containing information on an upward adjustment of the company's expectations for the annual results does not qualify as an announcement regarding accounting records.

The Copenhagen Stock Exchange reprimanded the company for failing to have a time-limit within which the company is not allowed to trade in its own shares. Moreover, the Exchange regretted that the lacking time-limit had enabled the company to trade in own shares immediately before the publication of the preliminary announcement of the annual results.

The Exchange requested the company to incorporate a time-limit within which the company is not allowed to trade in the company's own shares into the internal rules as soon as possible and immediately thereafter send the internal rules to the Exchange.

4. Request to extend the 6-month accounting period to seven months – exemption granted

A company, which had applied for a suspension of payments order, asked the Copenhagen Stock Exchange to extend the six-month accounting period to seven months. The publication of the extended semi-annual report would take place within the previously announced time-limit.

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Based on the financial position of the company and in the interest of the investors, the Exchange found that this was a special situation that would justify an extension of the 6-month accounting period to seven months so that it would cover 1 July 2000 to 31 January 2001.

5. Parent company's accounts for three years – floatation – exemption granted

In connection with a company's admission to listing on the Copenhagen Stock Exchange, the company asked the Exchange to exempt it from the rule requiring that a prospectus should contain the consolidated accounts and the parent company's accounts for the last three years. The reason for the request was that the company in connection with the decision to go public had adopted a change of accounting policies. The change meant that as from the 2000 accounting year the consolidated and annual accounts would be presented according to the new accounting policies.

The company had prepared the consolidated accounts according to the new accounting policies with comparative figures for one year for the latest annual and semi-annual accounts. The accounts had been audited by the company's auditors. The company had not prepared the parent company's accounts according to the changed accounting policies.

The Copenhagen Stock Exchange may allow a company to present either the own or the consolidated accounts, on condition that the accounts which are not included do not provide any significant additional information, cf. Schedule A, 5.1.1. of the Executive Order regulating the publication of prospectuses.

Against this background, the Copenhagen Stock Exchange found no reason why the prospectus should contain the consolidated accounts and the parent company's accounts for the last three years prepared according to the formerly applied accounting policies, since the prospectus contained the consolidated accounts prepared according to the new accounting policies with comparative figures for one year for the last annual and semi-annual accounts. The exemption was granted on the condition that the prospectus would contain the financial highlights of the group for the last five years as well as the financial highlights of the parent company for the last five years prepared according to the formerly applied accounting policies, since it must be assumed to be relevant to be able to eliminate the company seeking stock exchange listing from the group – also viewed from the accountancy standpoint. In this connection the Exchange found that it would be appropriate to state the reason why the accounting figures of the parent company was not included in the prospectus.

6. Trading in own shares prior to publication of preliminary announcement of annual results

The Copenhagen Stock Exchange received a preliminary announcement of annual results for 2000 from a listed company stating that the company had acquired its own shares that same day.

Listed companies must draw up internal rules governing transactions executed in the company's own shares, cf. rule 15 of the Rules governing issuers of securities listed on the Copenhagen Stock Exchange A/S. Such internal rules shall contain a time-limit within which the company is not allowed to trade in its own shares. The Exchange recommends that this time-limit shall be fixed at three weeks prior to the publication of the company's preliminary announcement of annual results, interim report or other announcements regarding accounting records, since a company and its management will obtain inside information in connection with the preparation of announcements of financial results.

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At the Exchange's request the company submitted a copy of its internal rules from which it appeared that trading in own shares was not allowed within a period of three weeks prior to the publication of the company's preliminary announcement of annual, semi-annual and quarterly reports.

The company announced that the seller of the shares was a professional market player and that he had been fully aware of the time of the publication of the company's preliminary announcement of annual results. Thus the company was not of the opinion that the acquisition was covered by the time-limit laid down in the internal rules.

The Exchange informed the company that the prohibition against insider trading was mandatory, which means that nobody holding inside information must trade in the securities in question. This applies irrespective of whether the other party holds the same information and irrespective of whether the other party should be aware that the counterparty has inside information.

The Copenhagen Stock Exchange reprimanded the company for failing to observe the time-limit of the internal rules within which the company is not allowed to trade in its own shares.

Decisions and statements – March 2001

1. *Outlook – insufficient information*

The Copenhagen Stock Exchange received a company's preliminary announcement of its annual results for 2000. The section on the management's expectations for the future only stated that the company expected profit for the year 2001 to be better than profit for the year 2000. Moreover, the preliminary announcement of the annual accounts did not contain comparative figures for the previous four financial years.

The preliminary announcement of annual accounts shall contain a summary of the information given in the accounts on the future prospects of the company. To enable the market to make an informed assessment of the company, the management's expectations for the future must contain information on expectations for the level of activities and results.

Consequently, the Exchange requested the company to immediately publish an additional announcement to specify the management's expectations for the financial development of the company for the current financial year. Moreover, the announcement should contain comparative highlights for the last four years. Later that day, the company published an additional announcement specifying its expectations for the result for the year 2001 and the financial highlights for the last five years.

Decisions and statements – April 2001

1. Publication of company announcement about postponement of the preliminary announcement of annual results without extension of time limit

A listed company published an announcement from which it appeared that the preliminary announcement of the annual results for 2000 would not be ready until mid-April 2001 due to the company's financial position. The company, which used the calendar year as its accounting year, was thus not able to publish a preliminary announcement of its annual accounts within three months of the closing of the accounting year. Consequently, two listed companies owning significant shareholdings in the first mentioned company announced that they could not release their preliminary announcements of the annual results for 2000 until mid-April 2001.

The Copenhagen Stock Exchange reprimanded each of the three companies for having failed to ask for extension of the time limit before they announced that their preliminary announcements of the annual results could not be published within the current time limit.

2. Spreading of incorrect information about the situation of listed companies

The Copenhagen Stock Exchange was informed that on April Fool's day a financial site had released an announcement about a change in the composition of the management board of a listed company. The Exchange pointed out to the financial site the inadvisability of spreading incorrect information about a listed company or listed securities and reminded the site that it is a criminal offence to spread such information. Moreover, the Exchange pointed out to the financial site that it assumed that in future the site would abstain from exploiting the listed companies in such a way.

3. Prospectus requirements – capital increase – request for exemption

In connection with the acquisition of an unlisted company a listed company made a capital increase and asked the Copenhagen Stock Exchange to exempt it from the rule requiring companies to publish a prospectus, cf. section 5 (iii) of the Executive Order on prospectuses, cf. section 23(3) of the Danish Securities Trading Act.

Approx. 61 per cent of the purchase sum was to be paid in cash, while the rest was to be paid through the issue of new shares. The capital increase amounted to some 27 per cent of the company's total share capital and some 43 per cent of the company's listed share capital.

It appeared from the company's announcement about the acquisition of the unlisted company that the two companies are operating in the same industry and that an amalgamation of the companies would create the basis for a faster consolidation of the industry in question. As regards the unlisted company, it was stated that the company would supply the listed company with a product portfolio with a significant development and earnings potential, that the majority of the company's turnover derives from exports, that the company's foreign subsidiaries cover markets where the listed company has not yet been established, and that the acquisition would strengthen the listed company's growth potential.

Considering the size of the capital increase, including the total purchase price for the acquired company, and the implications for the listed company, the Exchange did not find

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that it could grant the company exemption from the rule requiring companies to prepare and publish a prospectus.

However, the company announcement did contain the information about the unlisted company, its activities and financial data which is normally required in a prospectus. Moreover, the announcement contained information about the financial consequences of the acquisition for the listed company. Therefore, the Exchange decided to deem the obligation to publish a prospectus to be fulfilled, if a supplementary announcement containing the information that the first announcement should have contained would be published.

However, the Exchange made it a condition that certificates and documents prepared in pursuance of the provisions of the Danish Companies Act should be published prior to admission of the new shares to listing.

4. Timing of publication

After the close of the accounting year, a listed company made a downward adjustment of its net result for 2000 from 0 to a loss of DKK 29 million due to extraordinary write-offs. Subsequently, the company announced that the publication of the preliminary announcement had to be postponed since the audit had not been completed yet. It appeared from an announcement released a few days later that the company had started negotiations for a financial and organisational reorganisation of the company. Against this background the Exchange transferred the company's shares to the observation list.

In a subsequent announcement the company once again postponed the publication of its preliminary announcement of the annual accounts. At a later date the company announced that it had applied for a suspension of payments. Again, the company postponed the publication of the preliminary announcement of the annual accounts, however, publication would still take place within three months of the close of the accounting year.

Subsequently, the company asked the Exchange to grant it exemption from the three-month deadline as long as the suspension of payments was in effect. The Exchange informed the company that it cannot grant an exemption indefinitely, consequently, the Exchange assumed that the company would publish a preliminary announcement of its annual accounts, possibly adjusted according to the company's present situation, not later than three months after the close of the accounting year.

Based on the above the Exchange asked the company to specify when the company became aware that it no longer was possible to present the accounts as a going concern and when the board of directors realised that it was necessary to apply for suspension of payments.

Based on the company's review the Exchange reprimanded the company for having failed to publish an announcement informing the market of the financial position of the company prior to the announcement announcing the company's suspension of payments.

The company did not publish a preliminary announcement of the annual results for 2000 within three months of the close of the accounting year and the Exchange reprimanded the company.

Throughout this case the Exchange repeatedly contacted the company with a view to getting more detailed information for the Exchange as well as the market. Often the company did not respond until after repeated reminders. Thus the Exchange found it necessary to point out to the company that communication from the management to the Exchange had been unacceptable.

Moreover, the Exchange found that the company's handling of the publication of company announcements had been most regrettable.

Decisions and Statements - May 2001

1. Directors' remuneration in connection with takeover bid and merger

In connection with a listed company's takeover bid to the shareholders of another listed company and a subsequent merger of the two companies, an agreement had been made to pay the board members of the discontinuing company, who would have to resign prematurely as a result of the merger, remuneration for a period of time after the adoption of the merger.

This did not appear from the takeover bid, the board's review of the takeover bid to the shareholders or the prospectus prepared in connection with the merger.

The Exchange asked the two companies to explain why the companies had not informed the market about the directors' remuneration at the time of the making of the agreement.

It appeared from the companies' account that it had been assessed that the directors' remuneration was such a modest amount compared to the total costs relating to the takeover bid and the subsequent merger that the companies found no reason to inform the market of the agreement. Moreover, the companies were under the impression that such agreements were of common occurrence and consequently gave no rise to information to the market.

The disclosure requirements are laid down in section 27 (1) of the Danish Securities Trading Act and Rule 3 (1) of the Rules Governing Issuers of Securities Listed on the Copenhagen Stock Exchange A/S. The general requirements for the contents of offer documents appear from section 32 (1) of the Danish Securities Trading Act and section 1 (4) of the Executive Order on takeover bids. The general requirements for the contents of prospectuses appear from section 23 (1) of the Danish Securities Trading Act and section 1 (1) of the Executive Order on prospectuses.

On the basis of these rules, listed companies are required to immediately publish any information on essential aspects concerning the company which may be assumed to be of significance to the price formation of the securities. Correspondingly, when preparing offer documents and prospectuses the companies must publish information which may be deemed necessary to enable the shareholders to make an informed assessment of the offer and the prospectus. The board of directors of the target company must also in connection with the review that it publishes after the submission of a takeover bid make sure that the shareholders are given a chance to consider the offer on a satisfactory foundation.

The fundamental principle that all price-sensitive information must be disclosed to the market also applies to the duty to immediately disclose information on the management's incentive schemes and special bonus schemes, changes in the management and transactions between related parties, which are all special aspects which may be assumed to be of significance to the price formation.

In general, information about the company's management is always of significance to the market's and the shareholders' assessment of a company. Moreover, it is in the interest of the market to have knowledge of the facts and incentives on which the management's decisions are based in special situations. And the need for such information is only more pressing if the individual board member may gain a profit depending on which decision he or she makes. Such matters are often price-sensitive even if, viewed separately, the matter is of no significance and has no impact on the company's financial position and therefore they must be published.

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Also, publication of such information helps ensure the market's confidence in the company in question.

Agreements on aspects and incentives that may influence the management's decisions in connection with important events should consequently be disclosed to the market.

Thus the Exchange pointed out to the companies that it found that the agreement on the directors' remuneration which was paid in connection with the offer to the shareholders in the listed company was relevant information to the market, irrespective of the modest size of the amount. Consequently, the Exchange was of the opinion that the companies should have informed the market at the time of the conclusion of the agreement.

2. Internal rules regulating trading in the company's own shares – understanding of the concept “other announcements regarding accounting records”

Confidence is a decisive factor in a well-functioning stock market. It is very important that the listed companies and the managements of these companies contribute to this confidence. The company/management should not arouse suspicion that they abuse inside information for the sake of personal gain. This is the reason why all listed companies must lay down internal rules regulating the company's as well as the management's access to execute transactions in the company's own shares. The internal rules shall lay down procedures and routines with a view to ensuring that trading in shares does not conflict with the ban on insider trading. It is important to stress that the general ban on insider trading also applies to the persons in question during such periods when transactions may be executed.

A common characteristic is that the internal rules, depending on whether we look at the company's or the management's access to execute transactions, shall contain a time-limit within which the persons concerned are not allowed and allowed to execute transactions. Such time-limits must be related to the company's publication of preliminary announcements of annual accounts, interim reports and other announcements regarding accounting records. The preliminary announcements of annual accounts and interim reports do not give rise to doubt concerning the interpretation. However, the sentence “other announcements regarding accounting records” has given rise to a number of questions.

The requirements for the internal rules are laid down in Rules 15 and 16 of the Rules governing issuers of securities listed on the Copenhagen Stock Exchange A/S and have the following wording:

15. - (1) Danish listed companies shall prepare internal rules governing access to execute transactions in the company's own shares and any derivative contracts..

(2) The internal rules shall contain a time-limit within which the company is not allowed to trade in the shares issued by the company.

(3) The internal rules may provide that in certain special cases the time-limits shall not apply and that in specific cases they may be departed from.

(4) Upon request these rules shall be submitted to the Copenhagen Stock Exchange.

16. - (1) Danish listed companies shall prepare internal rules governing the access for board members, directors or other members of the managerial staff and trusted employees to deal for their own or any third party's account in the listed shares issued by the issuer and other derivative financial contracts.

(2) The internal rules shall contain a time-limit within which the persons concerned are allowed to execute transactions.

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(3) The internal rules may provide that in certain special cases the time-limits shall not apply and that in specific cases they may be departed from.

(4) Upon request these rules shall be submitted to the Copenhagen Stock Exchange.

A number of remarks accompany the rules and they are an integral part of the provisions.

The internal rules regulating the company's access to execute transactions in own shares must contain a time-limit within which the company is not allowed to execute transactions in own shares. In its remarks to this rule the Copenhagen Stock Exchange recommends that this time-limit is fixed at three weeks prior to publication of the company's preliminary announcement of the annual accounts, interim accounts or other announcements regarding accounting records containing information about the company's activities and results for a given period and the company's outlook.

The internal rules regulating the management's access to execute transactions in the company's shares must contain a time-limit within which the persons concerned are allowed to execute transactions. It is recommended that this time-limit is fixed at six weeks after publication of an announcement of the said character.

The reason why the internal rules must contain a time-limit is that the company and its management usually hold inside information in connection with the preparation of preliminary announcements of accounts, prospectuses and announcements with information on the company's activities and financial results. Therefore, the company and its management should not immediately before the publication of such announcements execute transactions in the shares of the company. As soon as the announcements are published, all relevant financial data will in general be accessible to all players in the market, consequently, the company and its management should be allowed to execute transactions in the company's own shares immediately after publication.

The same limitations are not deemed necessary in relation to the company's access to execute transactions in own shares since there may be a legitimate need to execute transactions on a wider scale.

To be an "other announcement regarding accounting records" an announcement must contain information about the company's activities and results for a given period and possibly also the outlook. A company announcement which only contains an upward or downward adjustment of the company's expectations for the result for the year does not provide an overall picture of the company's activities and financial results, consequently, it does not constitute an announcement regarding accounting records. This also applies to company announcements stating that the company maintains its expectations for the result for the year. Therefore, a repetition of the expectations for the year given at a general meeting does not constitute an announcement regarding accounting records.

In practice companies publish only a limited number of announcements that open/close trading windows since such announcements must contain the profit and loss account and balance sheet. The reason is that only in such situations has the management of the company had a chance to go through the company's overall financial position and assess its outlook.

The purpose of the internal rules is to maintain a narrow understanding of the concept "other announcement regarding accounting records". Otherwise trading in the company's own shares may be legitimised throughout most of the year, especially considering that the companies are expected to begin publishing quarterly reports.

3. Failure to publish transaction between related parties

The Copenhagen Stock Exchange learned that the managing director, who was also the majority shareholder, of a listed company had sold a personally owned shareholding in an unlisted company to the wholly owned subsidiary of the listed company. The company had not informed the market of this transaction via the Copenhagen Stock Exchange.

The Exchange defined the transaction as a transaction between related parties which was not conducted in the ordinary course of business, consequently, it should have been published immediately after the conclusion, cf. Rule 19 of the Rules governing issuers of securities listed on the Copenhagen Stock Exchange. Such transactions must be published even if they are not likely to influence prices due to the size, character, etc., if the transactions are concluded with a third party.

Thus the Exchange asked the company to explain why the company had not informed the market at the time of the transaction.

The company replied that the board of directors had inadvertently assessed that the transaction was not covered by Rule 19 of the Rules regulating issuers of securities listed on the Copenhagen Stock Exchange, and the company regretted the error.

The Copenhagen Stock Exchange reprimanded the company for having failed to publish an announcement at the time of the transaction with information on the transaction between related parties which was not conducted in the ordinary course of business.

4. Downward adjustment of expectations - imprecise announcement

A company announced irregularities in the statement of accounts for previous periods. In the same announcement the company adjusted its expectations for the accounts for 2000/2001 downwards.

One month later, the company released an announcement from which it appeared that following a thorough examination of the company's reporting and accounting procedures the company had concluded that the consequence of the examination would be another downward adjustment.

The Copenhagen Stock Exchange asked the company to state exactly when the company's management had gained knowledge of the irregularities and the factors which had led to another downward adjustment of expectations. The company was, among other things, asked to disclose the discussions that the company's management had had about the company's financial position as well as the control measures and reporting procedures of the company.

The company gave an account of the factors and stated that following the publication of the first downward adjustment an extraordinary examination of the company's estimates, cost level and so on.

A substantial basis for the trading and the valuation of listed securities is released information from the listed companies. The Copenhagen Stock Exchange thus finds it completely decisive for the function of the securities market that full confidence can be attributed to the announcements released by the listed companies, and that these announcements are accurate, distinct and adequate and contain information on all factors which contribute to the valuation of the information stated.

It was the opinion of the Exchange that the company in its published statement of accounts on irregularities in previous periods and the concurrent downward adjustment of expectations had given the market the impression that the downward adjustment of expectations was a consequence of a thorough examination into the company's financial

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position. The Exchange therefore reprimanded the company for not having included in the announcement in question information that the company would subsequently carry out an thorough examination of the company's reporting and accounting procedures which might further alter the published expectations for the financial year 2000/2001.

Furthermore, the Exchange found it regrettable that the company did not have adequate internal management systems and adequate resources to carry out ongoing economic reporting so that the company could meet its disclosure requirements in a satisfactory way and so that the irregularities in the presentation of the accounts would have been detected by the internal management systems.

5. Failure to publish altered background to published announcement

A listed company announced that the company had carried out a previously announced private placement. It was informed that the issue was fully subscribed and the number of new shares issued and the price were also announced. It was also announced that upon the capital increase only one shareholder would still possess more than 5% of the company's share capital, and the size of that particular shareholding after the capital increase was also announced. The majority shareholder was a company controlled by the company's managing director.

A good two weeks after the company had published its preliminary announcement of the annual results, which was released a few months after the announcement on the issue, the company published a supplement to the preliminary announcement of the annual results. From the supplement it appeared that approximately two weeks after the publication of the issue, the company's board of directors had observed that two subscribers had not paid the promised subscription. The company controlled by the managing director subscribed for the remainder of the new issue at the agreed issue price. The same day, the listed company purchased a little more shares than precisely those shares subscribed for by the company controlled by the managing director. Upon the presentation of the accounts, the company was made aware that the subscription might be contrary to the prohibition on subscription of own shares of the Danish Companies Act.

The Copenhagen Stock Exchange requested the company to account for the missing payment and to account for the reason why the company at the observation of missing payments from particular share subscribers did not inform the market that the background to the announcement concerning the course of the share subscription had changed.

The company explained that when the transactions described were conducted, the information in the announcement concerning the issue was still correct in the company's opinion in that the issue was still fully subscribed and that the company controlled by the company's managing director still had the shareholding stated in the announcement. The company had not found it necessary to publish a supplementary announcement on the occurring events.

When a company publishes an announcement on the course of a share subscription, the Copenhagen Stock Exchange assumes that the company has made sure that the subscription amount has been fully paid, or that it will be fully paid immediately after the publication of the announcement.

The Copenhagen Stock Exchange directed the company's attention to the fact that the Exchange was of the opinion that immediately after the publication of the announcement concerning the issue, the company should have observed that payments were missing from particular share subscribers.

As the company chose to carry out the above-mentioned transactions between related parties, which were not conducted as part of the ordinary course of business, the Exchange further directed the company's attention to the fact that the company subsequently should

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have informed the market hereof. The Exchange reprimanded the company for having failed to publish an announcement at the time of the transaction with information on the transaction between related parties which was not conducted in the ordinary course of business.

6. Downward adjustment of expectations - imprecise announcement

A company announced irregularities in the statement of accounts for previous periods. In the same announcement the company adjusted its expectations for the accounts for 2000/2001 downwards.

One month later, the company released an announcement from which it appeared that following a thorough examination of the company's reporting and accounting procedures the company had concluded that the consequence of the examination would be another downward adjustment.

The Copenhagen Stock Exchange asked the company to state exactly when the company's management had gained knowledge of the irregularities and the factors which had led to another downward adjustment of expectations. The company was, among other things, asked to disclose the discussions that the company's management had had about the company's financial position as well as the control measures and reporting procedures of the company.

The company gave an account of the factors and stated that following the publication of the first downward adjustment an extraordinary inspection of the company's.

Decisions and Statements - June 2001

1. Requirement for additional information regarding merger of activities

The Copenhagen Stock Exchange received an announcement from a listed company from which it appeared that the company had made an agreement with an unlisted company regarding a merger of core activities into one company, in which the listed company was to own two thirds of the share capital.

When listed companies carry out large transactions it is of utmost importance that the company informs the market thoroughly hereof, so that the market can include the information in its assessment of the company's shares. Thus, the market must receive detailed information from the company regarding the transaction in particular and the consequences thereof.

It was the Exchange's opinion that such information had not been included in the company's announcement to a necessary extent. The Exchange therefore requested the company to immediately publish an announcement containing additional information on the transaction.

As a minimum, the announcement was to contain information on the activities of the common company including which activities would remain with the listed company following the transaction, accounting information of the common company, description of future strategies of both the common company and listed company, a description of the competitive situation of both companies and a description of the expectations for this financial year and, if possible, future financial years from both the listed company and the common company. Finally, the announcement was to include a description of any agreements that might have been concluded between the two companies regarding ownership of the common company.

The company subsequently published an announcement containing information regarding the stated circumstances.

Decisions and Statements - July 2001

There are not any decisions and statements in July 2001.

Decisions and Statements – August 2001

1. Stipulated right of redemption – completion of voluntary and mandatory bid

An offeror submitted a voluntary bid to the shareholders in a listed company. A few days after the expiry of the voluntary bid period, the company held an extraordinary general meeting where certain changes in the company's articles of association were adopted. By these means, all of the offeror's conditions for the completion of the voluntary bid were fulfilled, and on the same day, the offeror announced that the voluntary bid would be effected. The offeror thus gained the right to exercise a controlling influence over the company and came to own more than one third of the voting rights in the company. The offeror was therefore under an obligation to, not later than four weeks after this day, submit a mandatory bid to the company's remaining shareholders.

Approximately three weeks later when the offeror owned more than 90 percent of the capital and votes in the company, another extraordinary general meeting was held in the company. Here a mandatory right of redemption was adopted, which enabled the offeror to redeem the remaining shareholders in the company. In addition, it was also decided to remove the company from listing on the Copenhagen Stock Exchange. On the same day the offeror applied to the Danish Securities Council for exemption from the obligation to submit a mandatory bid to the remaining shareholders in the company in pursuance of section 31 of the Danish Securities Trading Act.

In its decision the Danish Securities Council did not find that the stipulated right of redemption in the company's articles of association constituted such special circumstances entitling it to grant exemption from the obligation to submit a mandatory bid. From the decision it also appeared that the Danish Securities Council did not find it possible to apply section 20b of the Danish Companies Act on compulsory redemption or a stipulated right of redemption instead of section 31 of the Danish Securities Trading Act.

A few days later the offeror submitted a mandatory bid to the shareholders in the company. The mandatory bid ran for a period of six weeks.

Some days after the submission of the mandatory bid, the offeror decided to exercise the stipulated right of redemption and submitted a demand to the shareholders in the company of redemption. Pursuant to the demand, the redemption time-limit would expire in the middle of the mandatory bid period, and all of the shareholders would thus receive consideration for their shares in the middle of the offer period.

The Exchange informed the offeror that the offeror's submission of the redemption demand to the shareholders in the company with a redemption time-limit expiring in the middle of the mandatory offer period in the Exchange's opinion in reality meant that the stipulated right of redemption constituted a replacement for the mandatory bid, and that the mandatory bid to the company's shareholders thus had no reality.

The Copenhagen Stock Exchange ensures that the shareholders in connection with mandatory bids are offered identical terms, and that the recipients of the offer are provided with a material that may form a basis for decision in connection with acceptance of the offer. If a mandatory bid is replaced by compulsory redemption or a stipulated right of redemption, the Exchange does not have the possibility of protecting the remaining shareholders.

It was stated that the offeror would demand that the remaining shares be handed over against consideration pursuant to the articles of association later than four weeks after the submission of the mandatory bid.

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Taking into consideration

that the Exchange in connection with the offeror's submission of the mandatory bid had ensured that the company's shareholders were offered identical terms, and that the shareholders had received material which formed a qualified decision basis in connection with acceptance of the bid, that the terms that were applied in the compulsory redemption were identical with the terms that were given to the shareholders in the voluntary and mandatory bid, and that the mandatory bid, in the case in point, in reality would run for a minimum of four weeks, which is the minimum time-limit in connection with mandatory bids, and that the remaining shareholders in the company thus were not worse off than what would have been the case if the mandatory bid had an offer period of four weeks,

it was the opinion of the Exchange that the course of action in the case in point did not violate the considerations behind the rules on mandatory bids, and that the offeror thus could maintain the time-limits stated in the demand concerning compulsory redemption. The company emphasised to the company that it was a concrete decision, and the decision thus could not establish a precedent in other similar situations.

Based on the rules on take-over bids in the Danish Securities Trading Act, it is a general stance of the Exchange that the gain of control in a listed company in connection with the execution of a voluntary bid should be followed by a mandatory bid before redemption in pursuance of the company's articles of association or the Danish Company's Act is initiated, also compare that it is not possible to apply the models of compulsory redemption over the rules on mandatory bids.

The Copenhagen Stock Exchange also informed the offeror that it would have been appropriate if the offeror, before the submission of the voluntary bid to the shareholders in the company, had decided in detail how the take-over of the company was to take place, so that the process could have been prepared more appropriately.

2. Changed expectations for results – time of publication – reprimand

The Copenhagen Stock Exchange received a company's preliminary statement of annual accounts for 2000/2001, from which it appeared that the company's profit for the year amounted to DKK 24 million. The company had most recently in its interim report of 2000 stated its expectations for the full year to arrive at DKK 40-50 million before tax. From the preliminary statement of the annual accounts it appeared that the profit was lower than expected, which was primarily due to three factors of a non-recurring nature, which apparently had emerged on the balance sheet date or earlier.

The Exchange requested the company to give an account of when the company had become aware that the profit before tax for 2000/2001 would not live up to the earlier expectations published by the company.

The company replied that the deviation in relation to the expected result was due to the mentioned three factors of a non-recurring nature emerging on the balance sheet date or earlier.

The Copenhagen Stock Exchange pointed out to the company that the company's disclosure requirements arise immediately when the company becomes aware of essential aspects concerning the company, which may be likely to lead to price movements in the securities issued by the company. If significant changes to the expected development thus arise compared with the material published, such changes must be disclosed immediately to the Exchange. It is emphasised that this requirement arises irrespective of whether at the point in time it is possible to establish the expected result precisely.

The Copenhagen Stock Exchange reprimanded the company for having failed to publish an announcement prior to the publication of the preliminary statement of the annual accounts

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for 2000/2001, in which the company readjusted its expectations for the results for the financial year 2000/2001. In this connection, the Copenhagen Stock Exchange made a note of the company's comment that in future it would publish changes in the expectations for the results at an earlier stage.

3. Internal rules applicable to the management's trading in the company's shares

A company released its interim report for 2001 from which it appeared that according to the company's internal rules for trading in securities etc, members of the company's board of directors and managerial staff were permitted to buy or sell the company's shares during the first 15 days after the publication of a quarterly report as well as after the company's ordinary general meeting.

The Copenhagen Stock Exchange pointed out to the company that pursuant to Rule 16 in the rules governing issuers of securities listed on the Copenhagen Stock Exchange, Danish listed companies must prepare internal rules governing the access for board members, directors or other managerial staff and trusted employees to deal for their own or any third party's account in the listed shares issued by the issuer and other derivative financial contracts. The internal rules must contain a time-limit within which the persons concerned are allowed to execute transactions, and it is recommended that this time-limit is fixed at six weeks after the publication of the company's preliminary announcement of the annual accounts, interim reports or other announcements regarding accounting records containing information about the company's activities and result for a given period and perhaps a description of the company's outlook.

For information to be regarded as "other announcements regarding accounting records" the contents of the announcement must contain a profit and loss account and a balance sheet. The reason for this is that only in such situations has the management of the company had ample opportunity to review the company's overall economic situation and assessed its outlook for the future, which results in an announcement. An affirmation of the expectations for the result for the year expressed at a general meeting is thus not an announcement regarding accounting records.

The Copenhagen Stock Exchange requested to receive a copy of the company's internal rules for the management's dealing in the company's securities, and requested, at the same time, the company to account for the reason why the company's internal rules were phrased in such a manner that the holding of general meetings gave rise to trading windows for the company's management.

The company accounted for this and, at the same time, submitted a copy of its internal rules on the management's dealing in the company's securities. The company informed that the management board, upon request from the Exchange, would recommend to the board of directors at the first board meeting that the Exchange's recommendation should be adopted, and that the company's internal rules on dealing in securities should be adapted such that the open windows in future would solely be fixed on the basis of the publication of the company's preliminary statements of the annual accounts and interim reports.

The Copenhagen Stock Exchange made a note of this and requested the company to submit a copy of the internal rules on dealing in securities etc., as soon as a change in the rules would be made.

4. Time of when the disclosure requirements arise

In connection with a specific approach, the Copenhagen Stock Exchange was requested to make a statement on the relationship between pending negotiations and section 27 of the Danish Securities Trading Act.

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The Copenhagen Stock Exchange stated that pursuant to section 27 of the Danish Securities Trading Act, issuers of securities shall immediately publish information on essential aspects concerning the company which may be assumed to be of significance to the price formation of the securities. Price relevant information must thus be given to the market, when the aspects which are a condition for the disclosure requirement exist in such a way and such a form that the information can serve as a basis for a trading which is as safe as possible and a pricing which is as correct as possible. This clearly means that pursuant to section 27 there is no obligation to disclose pending negotiations. The disclosure requirement does not set in until the negotiations have been concluded. That the disclosure requirements do not arise until after the negotiations have been concluded, naturally presupposes that no information is passed on to unauthorised persons.

The time of publication depend on a balancing of two opposite considerations viz. the consideration that investors should be informed of price relevant factors and the consideration that it is highly probable that a price relevant event will occur.

As specified in Rule 12 of the Rules Governing Issuers of Securities Listed on the Copenhagen Stock Exchange, the disclosure requirements arise as soon as a decision has actually been made. The comments to the rule states that the time, when information covered by the disclosure requirements must be communicated to the Copenhagen Stock Exchange, shall be fixed individually.

Decisions and statements – September 2001

1. A company stated in an announcement to the Copenhagen

Stock Exchange that the company's interim report for the first half of 2001 would be discussed at a board meeting on a specified date and was expected to be released immediately after that date.

When on the subsequent trading day the Exchange noted that the interim report had not yet been published, the Exchange contacted the company, which replied that the interim report had been discussed and approved by the company's board of directors. The interim report was released later that day.

It appears from Rule 24 item 3 in the Rules Governing Issuers of Listed Securities on the Copenhagen Stock Exchange A/S that an interim report shall be published immediately after a board meeting on which it is discussed.

The Exchange requested the company to account for when exactly the board meeting on which the company had discussed and approved the interim report was concluded. If the interim report was not published immediately after the board meeting on which it was discussed, the Exchange requested the company to specify what persons, both internal and external, had had knowledge of the contents of the interim report in the period between approval and publication. The Exchange also requested the company to explain why the company had not released the interim report as announced.

In its reply to the Exchange, the company stated that the board meeting, which began on the evening of the day when the board meeting was announced, had been divided into two stages, and that the final approval of the interim report for different reasons had been postponed to the following trading day.

The Exchange indicated to the company that it is important that the market can be sure that the information from the listed companies is always trustworthy. In its announcement to the Exchange, the company had given the market reason to believe that the interim report would be released on a specific day.

The Exchange found it justifiable to complain to the company that the company had not organised the board discussions in such a way that the company could publish its interim report as announced.

Decisions and Statements - October 2001

There are not any decisions and statements in October 2001.

Decisions and Statements – November 2001

1. Takeover bid - consolidation of control

The Copenhagen Stock Exchange was requested to make a statement on a question regarding a takeover bid under section 31 of the Danish Securities Trading Act.

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According to the submitted information a shareholder, who held just under 32 per cent of the share capital and 64 per cent of the votes in a listed company, was considering to buy a further 2 per cent of the capital, by which the shareholder's total shareholding would exceed a third of the capital and 66 per cent of the votes. In this connection, the Exchange was asked if such an acquisition would trigger a mandatory bid in pursuance of section 31 of the Danish Securities Trading Act.

Section 31(1) of the Danish Securities Trading Act states that if a shareholding in a listed company is transferred, the acquirer shall enable all the shareholders of the company to dispose of their shares on identical terms if the transfer involves that the acquirer

- will hold the majority of the voting rights in the company,
- becomes entitled to appoint or dismiss a majority of the company's members of the Board of Directors.,
- obtains the right to exercise a controlling influence over the company according to the articles of association or otherwise in agreement with the company,
- according to agreement with other shareholders will control the majority of voting rights in the company, or
- will be able to exercise a controlling influence over the company and will hold more than one third of the voting rights.

The reason behind the rules of mandatory bids is that changes in majority generally will result in changes of such a size in the company that minority shareholders should have the option to get out of their investments, and moreover at a price which is not lower than that offered to the majority.

Mandatory bids are thus triggered if a change in majority takes place in connection with the transfer of control in a listed company. As the shareholder already owned more than 64 per cent of the votes and thus already had control of the listed company, a further acquisition of shares in the company would not trigger a mandatory bid under section 31 of the Danish Securities Trading Act.

2. Inadequate indication of outlook for the future

A listed company released its quarterly report for the third quarter of 2001. From the report it appeared that for the year 2001 the company expected a profit on ordinary activities to be on a somewhat higher level than in 2000.

A listed company's indication of its outlook for the future is of great significance to the valuation of the company's shares. With a view to providing the market with the most accurate information, which can be applied to assess the company, the indication of the management's outlook for the future must contain information on expectations to activity level and results.

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This may be done by specifying the size of the expected turnover and the expected profit/loss, by specifying an interval hereof, by indicating the expected percentage change in turnover and result compared with the latest or previous accounting years, by stating the expected profit margin, etc., cf. the comments to section 25 of the Rules Governing Issuers of Securities Listed on the Copenhagen Stock Exchange.

The Exchange therefore notified the company that a verbal indication of the outlook for the future not relating to stated amounts, in the Exchange's opinion, does not fully meet the stipulated demands. The Exchange therefore requested the company to attempt to define the management's description of the company's outlook for the future in its future preliminary statement of accounts.

3. The contents of a press release should have been published as a stock exchange announcement

A listed company published a press release, from which it appeared that a subsidiary had entered into an agreement. From the press release it appeared that the agreement was a milestone achievement for the subsidiary, and the press release was otherwise worded in such a manner that it gave the impression that the agreement was of both great concrete and strategic importance to the development in the subsidiary.

Based on the significance that the subsidiary had for the assessment of the listed company and in the light of the price increase which took place in the company's shares after the publication of the press release, the Copenhagen Stock Exchange requested the company to account for the considerations which were made prior to the company's decision not to publish the contents via the Exchange.

At the same time the Exchange requested the company to consider publishing a stock exchange announcement thereon. The stock exchange announcement should meet the requirements which apply to stock exchange announcements and furthermore include the company's assessment of the consequences of the given information including, if possible, an indication of the consequences on the present and future accounting year.

In its reply to the Exchange the company stated that the press release in the company's opinion did not cover circumstances, which might be assumed to have an influence on prices of the company's shares. The circumstances had therefore been published in the form of a press release and not in the form of a stock exchange announcement.

The Exchange pointed out to the company that it is essential for the operation of the market that listed companies always carefully make an assessment as to whether circumstances which concern the company are

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covered by the company's disclosure requirements, and that the individual company sees to it that there is no uncertainty as to that effect.

The Copenhagen Stock Exchange reprimanded the company for having failed to announce the subsidiary's agreement by way of a stock exchange announcement.

In this connection, the Exchange took note of the company's remark that in future it would publish any similar announcements as stock exchange announcements. The Exchange, however, drew attention to the fact that the company should make an independent assessment of whether the circumstances in question are covered by the company's disclosure requirement.

4. Inside information – leakage of internal information material

The Copenhagen Stock Exchange found that information which seemed to deal with price relevant circumstances in a listed company had been mentioned in an article in a Danish daily newspaper.

The Copenhagen Stock Exchange therefore requested the company to make a statement as to whether the concerned information in the newspaper was correct, just as the company was requested to account for the reason that the concerned information had not been published in an announcement to the Copenhagen Stock Exchange.

In its reply to the Exchange, the company explained that internal information material had been leaked to a journalist. In an interview, the managing director of the company had been confronted with this material, which the managing director commented on to avoid factual mistakes in the interpretation. The company further explained that the reason that an announcement had not been made to the Copenhagen Stock Exchange was that the management was awaiting to clarify whether the initiative in question was to be implemented or not.

The Danish Securities Trading Act prohibits the dissemination of inside information to others than those in need thereof.

The Copenhagen Stock Exchange found grounds to regret that the company had not been able to prevent that inside information was disseminated to unauthorised persons. In this connection, the Exchange recommended the company's management to regularly reassess the contents of the company's internal rules and ensure that the management and other relevant staff members are familiar with the contents of such rules.

Listed companies must ensure that price-relevant information which concerns the company is published immediately to the Copenhagen Stock Exchange so that all investors are ensured the same access to such

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information. Where a company becomes aware that price-relevant information has been leaked, the company must immediately publish a stock exchange announcement containing the information to the Copenhagen Stock Exchange. If publication cannot be made, the company must contact the Exchange with a view to taking the required precautions to ensure that no third party can exploit such information.

The Copenhagen Stock Exchange reprimanded the company for having failed to immediately publish a stock exchange announcement at the time when the company had become aware that price-relevant information had come to the knowledge of unauthorised persons or for having failed to contact the Copenhagen Stock Exchange with a view to taking the required precautions to ensure that no third party could exploit the information.

Decisions and Statements – December 2001

1. Proposed clauses on redemption contrary to the terms of listing - delisting from the Copenhagen Stock Exchange

An offeror submitted a voluntary bid on a listed company. The result of the bid was that the offeror gained control over the company, and the offeror subsequently submitted a mandatory bid to the company's remaining shareholders in pursuance of sections 31 and 32 of the Danish Securities Trading Act. After the implementation of the mandatory bid, the offeror held more than 90 per cent of the share capital and votes in the company.

The company subsequently convened an extraordinary general meeting. From the convening it appeared, among other things, that a shareholder proposed to adopt a clause on right of redemption into the company's articles of association. According to the proposal the company should, upon demand from the majority shareholder, redeem all the company's remaining shares. The demand should be submitted within 14 months after the holding of the general meeting.

Another item on the agenda was a proposal from the company's board of directors that the general meeting should decide whether the company's shares should still be listed on the Copenhagen Stock Exchange. If the general meeting chose to act upon the board of director's proposal to seek the delisting of the company's shares, the board of directors also requested the authorisation from the general meeting to approach the Copenhagen Stock Exchange with a request to have the company's shares delisted from the Copenhagen Stock Exchange.

As regards the submitted proposal for a right of redemption to be stipulated in the Articles, the Exchange informed the company that basically such a clause is incompatible with being a listed company. If the right of redemption is purely implemented to replace a compulsory redemption under the Danish Public Companies Act, the Exchange will accept such a clause provided that it has been declared that the right of redemption is exercised immediately after the adoption, and a time-limit must be set within which the clause must have been exercised. Such time-limit must be short so that it does not collide with the company's stock exchange listing if the right of redemption is not exercised and the listing is maintained.

As regards the other item on the agenda concerning the general meeting's decision as to whether the company's shares should remain listed on the Copenhagen Stock Exchange, the Exchange informed the company that from section 30(3) of the executive order on conditions it follows that where an issuer whose securities are listed submits a request for delisting, such request shall be complied with unless the Exchange finds that such delisting is not in the interests of the investors, borrowers, or the securities market.

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In practice, the Exchange would require that the question be addressed as an independent item on a general meeting in the company, upon which the Board of Directors of the Exchange on the basis of a transcript of the minutes from the general meeting on this particular item could resolve on the matter in question. Apart from taking into account the views and objections which may exist among minority shareholders on the general meeting, the Exchange will, among other things, assess whether a delisting would provide certain shareholders or others with undue advantages to the detriment of other shareholders or the company, and whether a delisting cannot be presumed to be in the interest of the securities market. A company thus cannot be delisted from the Copenhagen Stock Exchange merely by adopting a proposal to be delisted at a general meeting.

The company replied that the board of directors of the company was aware that a proposal to be delisted from the Copenhagen Stock Exchange adopted at the general meeting is not adequate to be delisted. The company furthermore informed that the company's board of directors had decided to withdraw the proposal for a right of redemption at the extraordinary general meeting.

From the published stock exchange announcement concerning the outcome of the extraordinary general meeting it appeared that the proposal for a right of redemption stipulated in the Articles had been withdrawn by the proponent and the company's board of directors, and that the general meeting had authorised the board of directors to request the Copenhagen Stock Exchange to have the shares delisted.

2. Request for delisting without compulsory redemption - conditions hereof

An offeror made a voluntary bid on a listed company. The result of the bid was that the offeror gained control over the company, and the offeror therefore subsequently submitted a mandatory bid to the company's remaining shareholders according to the rules in sections 31 and 32 of the Danish Securities Trading Act. After the implementation of the mandatory bid the offeror came to hold more than 90 per cent of the shares and votes in the company.

The company subsequently held an extraordinary general meeting where one of the items on the agenda was a proposal from the company's board of directors that the general meeting should decide whether the company's shares should remain listed on the Copenhagen Stock Exchange. At the general meeting, where approximately 96 per cent of the company's total share capital was represented, the general meeting unanimously and with all votes authorised the board of directors to request the Copenhagen Stock Exchange to have the company delisted. According to the minutes of the general meeting there were no objections to the company's delisting from the Copenhagen Stock Exchange at the extraordinary general meeting.

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The company subsequently requested the Copenhagen Stock Exchange to have its shares delisted as soon as possible. At this point in time, there were approximately 8 per cent uncalled shares of which just under 5 per cent were employee shares.

It was informed that the majority shareholder did not wish to redeem the remaining shares at that point in time as a redemption at that time would be inconvenient in terms of the tax treatment of the employees' shareholdings in the company. It was furthermore informed that the majority shareholder intended to buy all the shares which might be offered for sale after the delisting, and that the terms of the bid would correspond to those of the two previously submitted bids.

From section 30(3) of the executive order on conditions it follows that where an issuer whose securities are listed submits a request for delisting, such request shall be complied with unless the Exchange finds that such delisting is not in the interests of the investors, borrowers, or the securities market.

Basically a delisting can take place immediately in cases where a company is subject to insolvency proceedings or in situations where a 100% owner concentration has either been obtained or has been provided for as a consequence of a merger or compulsory redemption.

A request for delisting may appear in situations where there are still minority shareholders in the company. There may be situations after the implementation of both a voluntary and a mandatory bid, where a compulsory redemption is possible but where this implies adverse tax consequences for the shareholders. Without connection to a preceding bid situation, there may be other situations, in which there is a considerable concentration of owners, where a wish for a delisting may emerge.

If the Exchange receives a request for a delisting in such cases, it is practice that the Exchange demands that the question be addressed as an independent item on a general meeting in the company in order that the Exchange can subsequently - on the basis of a transcript of the minutes from the general meeting on this item - establish to what extent objections have been made and, if so, assess the nature of such objections. Apart from taking into account the views and objections which may exist among minority shareholders at the general meeting, the Exchange will, among other things, assess whether a delisting would provide certain shareholders or others with undue advantages to the detriment of other shareholders or the company, and whether a delisting may be presumed to be in the interest of the securities market.

Basically it must be assumed that there is a significant concentration in the ownership, so that there is both a limited number of shareholders in the

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company, and that the majority shareholder(s) hold more than 90 per cent of the shares and votes.

The Exchange's board of directors decided to delist the company's shares. With a view to giving the minority shareholders the possibility of taking a position on a similar bid as the one previously submitted with the knowledge that the company might be delisted hereafter, the delisting was conditioned by the fact that prior to the delisting the company would submit and carry through a voluntary bid according to the rules on the obligation to submit an offer on the same terms as those of the two previously submitted bids. The bid to the remaining shareholders in the company should subsist for a further three months after the company's shares had been delisted from the Copenhagen Stock Exchange. From the voluntary bid it should appear that the company subsequently would be delisted from the Copenhagen Stock Exchange, and that the bid towards the minority shareholders would subsist for a further three months after the company's shares had been delisted from the Copenhagen Stock Exchange.

3. Takeover bid - share buy-back programme

The Copenhagen Stock Exchange was requested to consider to what extent the implementation of a structured buy-back of shares in a listed company would trigger an obligation to submit an offer for a broker under section 31 of the Danish Securities Trading Act.

According to an agreement with the company, the broker planned to submit an offer to the shareholders in the company to buy shares in the company equal to approximately 23 per cent of the company's market value.

According to the information provided, the offer would be valid for four weeks. Immediately after the expiry of the offer period, the company planned to hold an extraordinary general meeting, where the company's board of directors would move to adopt that the company should buy from the broker the number of A and/or B shares which the bank had acquired according to the submitted offer, and that the capital in the company should be reduced by the nominal value of those shares. On the same general meeting the company would propose that the existing division into A and B shares be abolished.

Provided that the mentioned proposals were adopted, and the other terms as set out in the offer were fulfilled, the broker would take over the shares in the company according to the received approvals from the shareholders and would at the same time effect settlement with the shareholders. The company should immediately obtain the taken-over shares in connection with the extraordinary general meeting. During the objection period the shares would be pledged to the broker. From the pledge agreement it would appear that the voting rights of the pledged shares would vest in the pledgor.

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It was informed that two possible scenarios could mean that the broker would come to hold more than one third of the votes in the company. This could be brought on if the offer was primarily accepted by holders of A shares, or if the shareholding that the broker might acquire in connection with the offer should be added to the shareholdings which the broker furthermore might hold or acquire in the objection period.

The obligation to make an offer according to section 31 of the Danish Securities Trading Act presupposes that a transfer of shares by which control is established over a listed company takes place, which, among other things, happens where a transfer of shares implies that the acquirer will secure controlling influence over the company and will obtain more than a third of the voting rights.

None of the two scenarios would in the Exchange's opinion trigger an obligation to make an offer under section 31 of the Danish Securities Trading Act. In its decision, the Exchange emphasised that

- according to the information given, the total construction had the sole purpose of reducing the share capital in the company,
- according to the information given, the temporary period in which the broker might hold more than a third of the voting rights in the company could only be the period when the objection period runs in connection with the capital reduction,
- according to the information given, the company and the broker had in the temporary period entered into an agreement concerning restriction in the broker's exercise of shareholders rights, and
- according to the information given, shareholders that had submitted approvals in pursuance of the bid maintained their voting rights at the company's general meetings until the acquisition and the capital reduction had been finally approved and the broker had effected the settlement of the shares.

4. Stock exchange introduction - distribution requirement - fulfilment after first day of listing

A company applied to have its shares admitted to listing on the Copenhagen Stock Exchange. The fund of the company would at the time of listing hold at least 89 per cent of and at most 100 per cent of the share capital in the company.

One of the requirements to going public is that there is public interest in the trading and quotation of the concerned securities. This implies, among other things, that at the time of listing the securities must be distributed to a certain extent. Thus it follows from the executive order on conditions that the shares at the time of listing must be distributed in the public by at least 25 per cent of the subscribed share capital.

The Exchange granted the company's request to have the shares admitted to listing provided that the fund would reduce its shareholding in the company. The share of ownership should be reduced to 75 per cent, and this should take place immediately after the flotation. In this connection, the Copenhagen Stock Exchange found it appropriate that the company entered into a market maker agreement under which the fund committed itself to making shares available to the public at the prices quoted by the market maker. If the agreement was terminated before the fund had reduced its share of ownership to 75 per cent, the listed company would be obliged to enter into another market maker agreement with another supplier.

5. Directed issue under 10 per cent - prospectus requirement - granting of request for exemption

Before the implementation of a directed issue a listed company requested the Copenhagen Stock Exchange to grant exemption from the requirement to prepare a prospectus, cf. section 7 of the executive order on prospectuses.

The company contemplated carrying out a directed issue at an expected market value of up to DKK 900 million, which at the current price level was less than 4 per cent of the market value of the company's share capital.

The issue was primarily expected to be directed at a circle of professional investors including existing shareholders in the company, and the subscription basis would consist of a stock exchange announcement in which an acquisition and the expected issue would be published, the official annual accounts, a stock exchange announcement, which would be released immediately after the closing of the transaction, and a stock exchange announcement after the issue accounting for the outcome thereof including how the proceeds would be spent, number of offered shares, offer price, number of participating investors and their distribution in Denmark and abroad, etc.

Taking into account the size of the issue, the company was granted exemption from the requirement to prepare a prospectus in pursuance of section 7 of the executive order on prospectuses. The Exchange requested to see a draft of the stock exchange announcement which was to be published after the issue, and the Exchange reserved the right to submit comments.

6. Directed issue under 10 per cent - prospectus requirement - granting of request for exemption

A company requested to be granted exemption from the requirement to prepare a prospectus, cf. section 7 of the executive order on prospectuses in connection with a directed issue. The capital increase corresponded to a capital increase in the company of 9.99 per cent. The new shares were to be subscribed for by a limited number of selected investors.

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The reason behind the capital increase was that the company wished to have such capital resources to enable it to finance an internal project with own means. The strategic decision as to that effect would only be made provided that the company could secure the financing via the share capital market. In a previously published stock exchange announcement, the company had made an account of the process of the project.

Taking into account the size of the issue, the Exchange granted the company exemption from the requirement to prepare a prospectus in pursuance of section 7 of the executive order on prospectuses in connection with the above-mentioned issue of new shares.

However, the Exchange made this dependent on the fact that the stock exchange announcement which would be published after the completion of the bookbuilding should state exactly how the proceeds would be spent, include a more specific description of the project, just as any risks should be described. As far as the outcome of the bookbuilding was concerned, the number of offered shares, settlement price, number of participating investors and their distribution in Denmark and abroad as well as types of investors, etc. should be stated.