

Decisions and statements - 2002

DECISIONS AND STATEMENTS - JANUARY 2002	2
1. Issue of subscription rights and options - insufficient disclosure in stock exchange announcement.....	2
DECISIONS AND STATEMENTS, FEBRUARY 2002	2
1. Publication of financial calendar	2
2. Preliminary announcement of annual accounts – inadequate indication of outlook – failure to state a reason for not publishing quarterly reports	3
3. Disclosure of information to individual market participants – public reprimand.	4
4. Annual report available on the company’s website prior to publication through the Copenhagen Stock Exchange.....	5
5. Disclosure of information to the press – public reprimand.....	6
DECISIONS AND STATEMENTS – MARCH 2002	8
1. Failure to publish information in connection with dual listing - reprimand	8
2. Request for postponement of time limit for publication of preliminary announcement of annual results – denial – reprimand.....	9
3. Inadequate indication of outlook – publication of supplementary stock exchange announcement.....	10
DECISIONS AND STATEMENTS - APRIL 2002	11
1. Offer – changed terms	11
DECISIONS AND STATEMENTS, MAY 2002	12
DECISIONS AND STATEMENTS - JUNE 2002	13
1. Belated publication of revised accounting figures – reprimand published	13
2. Offer to buy – shareholders cannot be bound by acceptances given after the expiry of the period during which the offer is open	14
3. Admission to listing – sales literature prepared in connection with the sale of structured bond.....	15
DECISIONS AND STATEMENTS, JULY 2002	16
1. Failure to keep within the time limit for publication of annual report and holding of ordinary general meeting – reprimand published	16
DECISIONS AND STATEMENTS, AUGUST 2002	17
DECISIONS AND STATEMENTS, SEPTEMBER 2002	18
1. Downward adjustment of expectations – time of publication	18
2. Statements to the press.....	18
DECISIONS AND STATEMENTS, OCTOBER 2002	20
1. Company announcement about conversion of warrants into shares	20
DECISIONS AND STATEMENTS, NOVEMBER 2002	21
DECISIONS AND STATEMENTS, DECEMBER 2002	21
1. Companies’ position on Corporate Governance - publication via the Copenhagen Stock Exchange.....	21
2. Directed issue exceeding 10 per cent - fulfilment of the Exchange’s prospectus requirements	22

Decisions and statements - January 2002

1. Issue of subscription rights and options - insufficient disclosure in stock exchange announcement

A listed company published a stock exchange announcement from which it appeared that the board of the company had adopted to issue subscription rights and share options.

With a view to providing the market with equal and accurate information for the assessment of the company's incentive schemes, pursuant to section 19 in the Disclosure requirements for issuers of shares listed on the Copenhagen Stock Exchange A/S, stock exchange announcements about the introduction of share-based remuneration schemes must include the following:

- the types of share-based remuneration covered by the schemes;
- the persons covered by the schemes, broken down by board of directors, board of management, managerial staff and general staff;
- the time of granting;
- the total number of underlying shares of the schemes and the breakdown of these by board of directors, board of management, managerial staff and general staff;
- the objectives on which the granting of share-based remuneration is based;
- the period during which the schemes can be exercised;
- the exercise price;
- the specific terms and conditions that must be met for the schemes to be exercised; and
- the market value of share-based remuneration schemes, including a description of how the market value has been calculated and the most important assumptions for the calculation.

A number of the above details were not included in the company's stock exchange announcement. The Copenhagen Stock Exchange pointed this out to the company and requested it to publish an additional stock exchange announcement containing the missing information about the issue of the subscription rights and share options in the company.

The company subsequently published an additional stock exchange announcement. From the announcement it appeared, among other things, how the allotted subscription rights were broken down by board of management, managerial staff and general staff, the objectives on which the granting of subscription rights to the employees and share options to the board of directors were based as well as what specific terms and conditions had to be met for the subscription rights and share options to be exercised. From the announcement information on the market value of the issue of both subscription rights and share options also appeared, and it was stated how the market value had been calculated and the most important assumptions of the calculation.

Decisions and statements, February 2002

1. Publication of financial calendar

In order to give the market the possibility of adapting to when listed companies publish preliminary statements of financial results, annual reports and the holding of annual general meetings, the market must be informed hereof.

Listed companies must therefore publish a financial calendar before the end of the first month of each financial year listing both the expected dates at which the company is likely to publish preliminary announcements of results as well

Decisions and statements - 2002

as annual report and accounts and the date at which the company is likely to hold the annual general meeting. This follows from rule 24 of the Disclosure requirements for issuers of shares listed on the Copenhagen Stock Exchange A/S.

A listed company published its financial calendar from which it appeared that the company's preliminary announcement and annual report would be published on the same day. Following the publication of the financial calendar, the company immediately published its annual report.

If a company changes the dates listed in the financial calendar of when preliminary announcements of results as well as annual report and accounts are likely to be published, the company must notify the date at which publication is now expected to be made, cf. rule 24 of the Disclosure requirements for issuers of shares listed on the Copenhagen Stock Exchange A/S. As a result the Copenhagen Stock Exchange notified the company that if the preliminary announcement of results or the annual report is published within the end of the first month of the financial year, the company must not later than one week before the preliminary announcement of results or the annual report is expected to be released, publish a financial calendar or at least the dates of when the preliminary announcement of annual results or annual report is expected to be published.

2. Preliminary announcement of annual accounts – inadequate indication of outlook – failure to state a reason for not publishing quarterly reports

In a listed company's preliminary announcement of the annual results in respect of the company's outlook it had solely been stated that the stable development on the ordinary activities was expected to continue and that provisions were estimated to be on level with the year before.

In order to give the most accurate information, which can be used to assess the company, the management's expectations must contain an indication of expectations for the level of the company's activities and results. This requirement may be fulfilled by stating the size of the expected turnover and the expected results, by stating a range for turnover and results, by stating the expected percentage change in turnover and results compared with the latest or previous financial years, by stating the expected operating profit margin, etc.

Since the Copenhagen Stock Exchange found that the company's indication of the outlook did not fulfil the specified requirements, the Exchange requested the company to immediately publish a supplementary stock exchange announcement in which the management's outlook for the present financial year was clarified.

The company, which did not publish quarterly reports, had not in its preliminary announcement of the annual results stated the reason for this. The Exchange therefore requested the company to state the reason, in the supplementary stock exchange announcement, why the company did not intend to publish quarterly reports, cf. the comments to rule 25 of the Disclosure requirements for issuers of shares listed on the Copenhagen Stock Exchange A/S.

Later that day the company published a stock exchange announcement, which clarified the outlook for the present financial year and accounted for the reason why the company had chosen not to publish quarterly reports for the time being.

3. Disclosure of information to individual market participants – public reprimand

The Copenhagen Stock Exchange was contacted by a number of market participants who stated that a listed company had indicated towards some analysts that the concerned analysts' estimates for the company's outlook for 2002 were too optimistic. Two days later the company published its preliminary announcement of the annual results, which contained information on the company's outlook for 2002.

The Exchange requested the company to specify the contacts that had been made with analysts. From the statement to the Exchange it appeared that the company on the day in question had received a consensus estimate on the 2002 EBIT based on a segment of analysts that followed the company. The consensus was substantially spread, which is why the company wanted to know who deviated considerably from it. Against this background the company subsequently contacted a number of analysts immediately.

The company furthermore informed that detailed information had not been given to the analysts, but that the level of the forecast for 2002 in relation to the EBIT consensus was discussed and commented on. The company moreover informed that it had indicated towards a number of analysts that the level of the EBIT consensus was high.

Based on the information from the market participants and the correspondence with the company, the Exchange found that the company had disclosed information about the company's outlook for the financial year 2002 to individual analysts.

All price-relevant information that concerns the company and which may be assumed to be of significance to the price formation of the securities must be published immediately. This follows from section 27 of the Danish Securities Trading Act and from rule 16 of the Disclosure requirements for issuers of shares listed on the Copenhagen Stock Exchange A/S. From section 36 of the Danish Securities Trading Act it follows that unauthorised disclosure of inside information must not take place.

Listed companies have a duty of ensuring that all market participants have simultaneous access to any material information about the company in question that may be assumed to affect the pricing of the company's securities, and companies must ensure that no unauthorised party gains access to such information before it is published, cf. rule 4(1) of the Disclosure requirements for issuers of shares listed on the Copenhagen Stock Exchange A/S. From rule 4 (2) of the same it furthermore follows that information subject to rule 4(1) must not be provided in statements, comments, interviews etc, in connection with investor meetings or in staff magazines, etc, without the information being submitted to the Copenhagen Stock Exchange at the same time at the latest.

In line with these rules, all matters subject to the company's disclosure requirements must immediately be communicated to the Copenhagen Stock Exchange, and publication through the Copenhagen Stock Exchange must always take place not later than simultaneously with the publication of the same information to other parties. In situations where no decision has been made, but where there is a risk that information has come or will come to the knowledge of a third party, companies must, if publication cannot be made, contact the Copenhagen Stock Exchange immediately with a view to taking the required precautions to ensure that no third party can exploit such information.

Decisions and statements - 2002

This follows from rule 11 of the Disclosure requirements for issuers of shares listed on the Copenhagen Stock Exchange A/S.

In respect of listed companies' investor relations activities, companies must organise such activities in observance of the current disclosure requirements and the principle of equal treatment of investors and must ensure a high standard when arranging and performing such activities. Companies must pay particular attention to this aspect in connection with investor meetings and the like held in the run-up to the publication of preliminary announcements of results or other important announcements. The Copenhagen Stock Exchange recommends that companies draw up a policy for investor relations activities that should state, among other things, that investor meetings and the like will not be held in the run-up to the publication of preliminary announcements of results or other important announcements. This follows from rule 5 of the Disclosure requirements for issuers of shares listed on the Copenhagen Stock Exchange A/S.

A company's outlook for the future is important for the market's assessment of the concerned company. Information on a company's outlook can generally always be assumed to be of significance to the price formation of a company's securities. In the opinion of the Exchange, the information about the level of the company's expectations to the financial year 2002, which had been distributed, was of a price-relevant nature.

The Exchange notified the company that the company's statements to individual persons about the level of the expectations for 2002 according to the Exchange violated the duty which listed companies have of ensuring that all market participants have simultaneous access to price-relevant information and violated the rule that all price-relevant information must be published through the Copenhagen Stock Exchange not later than simultaneously with the publication of the same information to other parties.

The Copenhagen Stock Exchange reprimanded the company for having violated the concerned rules. The reprimand was made public.

Listed companies must have internal rules which ensure that the disclosure requirements are met and that inside information is not disclosed to unauthorised persons. The contents of the company's internal directions about how it is ensured that the disclosure requirements are observed, and that inside information is not disclosed to unauthorised persons, did to a significant extent follow a reproduction of the contents of the rules that are summarised above. The Copenhagen Stock Exchange complained that the contents of the internal rules were not as accurate and concrete – or that they were not administered in such a way – that a situation as the one in question was prevented.

4. Annual report available on the company's website prior to publication through the Copenhagen Stock Exchange

A listed company approached the Copenhagen Stock Exchange as the company had become aware that its annual report could erroneously be read on the company's website before the preliminary announcement of the annual results and the annual report had been published through the Copenhagen Stock Exchange. The annual report was accessible on the company's website late in the afternoon on the day prior to the morning when the annual report was published via the Exchange.

The company had noted that only two persons had accessed the internet page concerned in the run-up to the publication of the annual report, and the

Decisions and statements - 2002

company's shares had not been traded in that period according to the Exchange's trading system.

It is decisive for the market participants' trust in the market that all market participants are treated equally and have simultaneous access to price-relevant information, and that individual market participants are not provided with non-published price-relevant information. Listed companies must therefore organise their systems in such a manner that publication via the Copenhagen Stock Exchange always takes place at least not later than simultaneously with the publication of the same information to other parties.

The Exchange reprimanded the company for having made the annual report accessible to unauthorised persons prior to the publication via the Copenhagen Stock Exchange. In this connection the Exchange had noted that the company had initiated a correction of the systems concerned, and that the company had moreover decided not to initiate any procedures for uploading on the website before the concerned stock exchange announcement had been received by the Exchange.

5. Disclosure of information to the press – public reprimand

A listed company submitted a stock exchange announcement after 22.00 concerning a development project. The stock exchange announcement was as usual redistributed from the Copenhagen Stock Exchange the following morning.

The content of the stock exchange announcement was summarised in a daily newspaper the same morning. The article contained an interview with the company's development director just as the managing director of the company was quoted.

The Copenhagen Stock Exchange requested the company to account for how the newspaper could print information on the content of the stock exchange announcement in the concerned newspaper edition. The company was furthermore requested to state what procedures the company possessed to ensure that the Copenhagen Stock Exchange is always informed at least not later than simultaneously with the publication of the same information to other parties.

From the company's reply to the Exchange it appeared that the company on the concerned evening at around 19.00 had contacted two journalists – one of them from the mentioned newspaper. It was agreed under a secrecy statement that these two journalists could receive a workprint of the company's stock exchange announcement. A journalist subsequently contacted and held an interview with the company's development director.

Based on the information from the media and the correspondence with the company, the Exchange found that the company had disclosed information to the two journalists prior to having submitted the information to the Copenhagen Stock Exchange.

Listed companies have a duty to immediately publish information about essential aspects concerning the company that may be assumed to affect the pricing of the securities, which follows from section 27 of the Danish Securities Trading Act and rule 16 of the Disclosure requirements for issuers of shares listed on the Copenhagen Stock Exchange A/S. It follows from section 36 of the Danish Securities Trading Act that unauthorised distribution of inside information must not take place.

Decisions and statements - 2002

In line with this it follows from rule 11 of the Disclosure requirements for issuers of shares listed on the Copenhagen Stock Exchange A/S that all matters covered by the company's disclosure requirement must be communicated immediately to the Copenhagen Stock Exchange, and that publication through the Copenhagen Stock Exchange must always take place not later than simultaneously with the publication of the same information to other parties.

Listed companies have a duty of ensuring that all market participants have simultaneous access to any material information about the company in question that may be assumed to affect the pricing of the company's securities, and companies must ensure that no unauthorised party gains access to such information before it is published. This follows from rule 4(1) of the Disclosure requirements for issuers of shares listed on the Copenhagen Stock Exchange A/S. From rule 4(2) of the same, it furthermore follows that information subject to rule 4(1) must not be provided in statements, comments, interviews etc, in connection with investor meetings or in staff magazines, etc, without the information being submitted to the Copenhagen Stock Exchange at the same time at the latest. This means that companies must not comment on price-relevant information to the press prior to the submission of an announcement containing the same information to the Copenhagen Stock Exchange. This applies irrespective of whether the information has been given to the press in confidence.

In this connection it should be noted that publication of price-relevant information, unless otherwise provided, is considered made when the announcement has been received by the Copenhagen Stock Exchange, cf. rule 12 of the Disclosure requirements for issuers of shares listed on the Copenhagen Stock Exchange A/S and section 27(3) of the Danish Securities Trading Act. This means that companies may only redistribute their stock exchange announcements freely thereafter.

According to the Exchange, the company's statements to the two journalists and distribution of a workprint of the stock exchange announcement that would not be published until the following morning violated the duty which the company has of ensuring that all market participants have simultaneous access to price-relevant information and violated the rule that all price-relevant information must be published through the Copenhagen Stock Exchange not later than simultaneous with the publication of the same information to other parties. It was pointed out to the company that the fact that a company discloses price-relevant information under a secrecy obligation does not change this.

The Copenhagen Stock Exchange reprimanded the company for having violated the concerned rules. The reprimand was made public.

Listed companies must have internal rules which ensure that the disclosure requirements are met and that inside information is not disclosed to unauthorised persons. The Copenhagen Stock Exchange complained to the company that it had failed to comply with its own internal rules. The Exchange informed the company that there seemed to be an apparent need to review the company's internal rules, basically because new disclosure requirements entered into force on 1 January 2002. From this it also follows that the management in a company at regular intervals and at least once a year should review the contents of the internal rules, just as companies must constantly ensure that the management and other relevant employees are familiar with the contents of the internal rules.

Decisions and statements – March 2002

1. Failure to publish information in connection with dual listing - reprimand

A listed company published a stock exchange announcement from which it appeared that the board of directors had decided to convene an extraordinary general meeting on which the board of directors would propose to the shareholders that the board of directors be authorised to apply for and implement a dual listing of the company's shares on the Nasdaq Stock Market under an ADR programme while at the same time maintaining the listing on the Copenhagen Stock Exchange. From the stock exchange announcement it appeared that in connection with the application for the listing on Nasdaq a number of significant details had been given about the company to the Securities and Exchange Commission (SEC), which had not been published to the same level of detail to the Copenhagen Stock Exchange. It was stated that the information would be made available on the website of the SEC.

Upon request from the Copenhagen Stock Exchange, the company published a supplementary stock exchange announcement, which specified the new information that had been given to the SEC in connection with the application for a listing on Nasdaq.

Any price-relevant aspects concerning the company which may be assumed to be of significance to the price formation of the securities must be published immediately. This follows from section 27 of the Danish Securities Trading Act and from Rule 16 of the Disclosure requirements for issuers of shares listed on the Copenhagen Stock Exchange A/S.

Listed companies are under an obligation to ensure that all market participants have simultaneous access to any material information about the company that may be assumed to affect the pricing of the company's securities, and the companies are also required to make sure that no unauthorised party gains access to such information before it is published, cf. Rule 4(1) of the Disclosure requirements for issuers of shares listed on the Copenhagen Stock Exchange A/S.

In line with this it follows from Rule 11 of the Disclosure requirements for issuers of shares listed on the Copenhagen Stock Exchange A/S that all matters subject to the disclosure requirements governing companies shall be communicated to the Copenhagen Stock Exchange immediately, and publication through the Copenhagen Stock Exchange shall always take place not later than simultaneously with the publication of the same information to other parties. From Rule 11(2) it furthermore follows that in situations where no decision has been made, but where there is a risk that information has come or will come to the knowledge of a third party, companies shall, if publication cannot be made, contact the Copenhagen Stock Exchange immediately with a view to taking the required precautions to ensure that no third party can exploit such information.

Information which has been published by a listed company may be of such a nature that any subsequent elaboration thereof may be price relevant and therefore comes under the company's obligation to ensure that all parties have simultaneous access to such information, and the information must therefore be published via the Copenhagen Stock Exchange not later than simultaneously with the publication of the same information to other parties.

The Copenhagen Stock Exchange had to regard the stock exchange announcement in such a way that the company in connection with the application for a listing on Nasdaq had given price-relevant information about the company to the SEC, and that it was the intention that this information should be made available on the

Decisions and statements - 2002

website of the SEC without this information being published simultaneously via the Copenhagen Stock Exchange.

In this connection, the Copenhagen Stock Exchange pointed out to the company that a listed company cannot fulfil its disclosure requirements by referring to a website on which the concerned information is available through an announcement that is published via the Copenhagen Stock Exchange.

The fact that the company had not stated the significant information about the company which the company had given to the SEC in the stock exchange announcement that accounted for its plans for a Nasdaq listing, and which information would be made available on the website of the SEC violated the company's obligation to ensure that all parties have simultaneous access to price-relevant information about the company and violated the rule that any price-relevant information must be published to the Copenhagen Stock Exchange not later than simultaneously with the publication of the same information to other parties.

Prior to the publication of the company's plans for a listing on Nasdaq, the Exchange had pointed out to the company's advisers that any price-relevant information that was given to the SEC should appear from the stock exchange announcement which the company planned to publish. At the same time, the Exchange pointed out to the company's advisers that it was the management's responsibility to assess what areas of the information given to the SEC were covered by the company's disclosure requirements and which should accordingly be published through the Copenhagen Stock Exchange.

The Copenhagen Stock Exchange reprimanded the company's board of directors and management board for violating the concerned rules. The Exchange felt induced to emphasise that the Exchange found it criticizable that the company had acted contrary to the advice that the company's advisers had sought from the Copenhagen Stock Exchange.

2. Request for postponement of time limit for publication of preliminary announcement of annual results – denial – reprimand

On the same day that a listed company according to its financial calendar was to publish its preliminary announcement of annual results for 2001, the same company published a stock exchange announcement from which it appeared that the company had expected to be able to publish an overall plan for the strengthening of the company's capital base simultaneously with the publication of the preliminary announcement of annual results. However, the company's board of directors had on the same day decided to postpone the publication of its preliminary announcement of annual results due to pending negotiations with lenders and investors on the strengthening of the company's capital base.

From the stock exchange announcement it appeared that based on the pending negotiations with the company's lenders and potential investors, it expected to publish its preliminary announcement of annual results at the beginning of April 2002, and that the preliminary announcement of annual results was expected to include an overall plan for the strengthening of the company's capital base.

A listed company must publish its preliminary announcement of annual results within three months after the end of the financial year, cf. Rule 26(3) of the Disclosure requirements for issuers of shares listed on the Copenhagen Stock Exchange A/S. The Copenhagen Stock Exchange may grant an exemption from this time limit in special cases.

The Copenhagen Stock Exchange pointed out to the company that companies that follow the calendar years as financial year as the company in question did must

Decisions and statements - 2002

publish their preliminary announcement of annual results within the month of March. The company subsequently submitted a request to the Exchange to be exempt from the time limit of three months so that the publication of the preliminary announcement of annual results for 2001 could be postponed until April 2002. The grounds for the request were that the time frame of the pending negotiations would be influenced by the forthcoming Easter holidays.

The Copenhagen Stock Exchange pointed out to the company that the Exchange found no reason to assume that the company's pending negotiations with lenders and investors on the strengthening of the company's capital base were of significance to the company's possibility to close and publish a preliminary announcement of annual results for 2001. Based on the present information, the Exchange did therefore not find it satisfied that a special case existed which justified that the company postponed the publication of its preliminary announcement of annual results till after the expiry of the time limit. The Copenhagen Stock Exchange therefore assumed that the company would publish the preliminary announcement of annual results for 2001 within the month of March 2002.

The Copenhagen Stock Exchange reprimanded the company's board of directors and management board for the fact that the company's stock exchange announcement contained information that the company's board of directors had adopted to postpone the publication of the company's preliminary announcement of annual results until after the expiry of the time limit which applies to the publication of preliminary announcements of annual results without the company having been granted exemption from this time limit from the Copenhagen Stock Exchange.

The company published its preliminary announcement of annual results within the month of March 2002.

3. Inadequate indication of outlook – publication of supplementary stock exchange announcement

A listed company's preliminary announcement of annual results contained information on the management's expectations for the results for the present financial year but not on the management's expectations to the activity of the present financial year.

In order to give the market the most accurate information, which can be used to assess a company, the management's expectations for the performance of the company must contain information on the expectations for the level of activities and results. This requirement may be fulfilled by stating the size of the expected turnover and the expected results for the year, by stating a range for turnover and results, by stating the expected percentage change in turnover and results compared with the latest or previous financial years, by stating the expected operating profit margin, etc. This follows from Rule 30 of the Disclosure requirements for issuers of shares listed on the Copenhagen Stock Exchange A/S.

The Copenhagen Stock Exchange therefore requested the company to publish a supplementary stock exchange announcement in which the management's expectations to the turnover for the current financial year were specified. The company subsequently published such a stock exchange announcement.

Decisions and statements - April 2002

1. Offer – changed terms

An offerer submitted a voluntary offer to the shareholders in a listed company. The offer, which ran for four weeks, was conditioned by a number of terms, including that the offerer would acquire more than 90 per cent of the share capital and votes in the company before the expiry of the offer period as well as satisfactory approval from the authorities. Immediately before the expiry of the offer period, the offerer published an announcement from which it appeared that the offerer had decided to extend the offer period for 14 days.

From the announcement it appeared that the offerer would release a new announcement when the offerer had established the required certainty of satisfactory approval from the authorities as well as control of 90 per cent of the share capital and the votes in the company following which the offerer would initiate settlement of the received acceptances. It appeared from the announcement that all other terms and conditions were unchanged relative to the submitted offer.

According to the offer document all acceptances would automatically be cancelled if a competing offer with a higher offer price was published in the offer period, and if the offerer did not offer the same or a higher offer price not later than four trading days before the expiry of the competing offer.

From section 8 of the Executive Order on the Obligation to Submit Offers it follows that at any time until the expiry of the period during which the offer is open the offerer may amend the terms attaching to the offer if this constitutes an improvement of the terms offered for the offerees. If the amendment is effected within the last two weeks of the period during which the offer is open, the said period shall be extended to expire 14 days after the publication of the amended offer.

Any deterioration in the terms of a submitted offer implies that the offerer must recall his offer and submit a new offer.

The fact that the offerer would initiate settlement of the received acceptances in the offer period, in the event that the offerer had established the required certainty of satisfactory approval from the authorities as well as 90 per cent of the share capital and votes in the company meant that the shareholders' acceptances would not automatically be cancelled as described in the offer document, which according to the Exchange was a deterioration in the terms that the offerer had specified in the offer document.

The Exchange requested the offerer to publish an additional announcement in which it was clarified that all of the original terms did still apply, and that all acceptances would thus still be cancelled automatically in the event that a competing offer with a higher offer price was published in the offer period, and in the event that the offerer did not offer the same or a higher offer price not later than four trading days before the expiry of the competing offer. The Exchange pointed out to the company that it ought to appear from the additional announcement that settlement of the shareholders would thus not take place before the expiry of the offer period.

The offerer published an additional announcement from which this information appeared.

Decisions and Statements, May 2002

No decisions and statements in May 2002

Decisions and statements - June 2002

1. Belated publication of revised accounting figures – reprimand published

In mid-March 2002, a listed company announced that due to an agreement about a subsidiary's sale of a division and ongoing negotiations about further disposals there would be a re-evaluation of goodwill and that the goodwill would have to be reduced by more than half of the book value. Moreover, it announced that the results for 2001 would be influenced by extraordinary writedowns of inventory and that the expected change in the group's book goodwill and the extraordinary writedowns of inventory should be included in order to give a true and fair view of the accounts for 2001. Against this background the company asked the Copenhagen Stock Exchange to exempt it from the time-limit for publication of the preliminary announcement of the annual accounts for 2001, so that the publication could be postponed to mid-April 2002. According to the company's financial calendar the preliminary announcement of the annual accounts for 2001 should have been published in mid-March 2002.

Listed companies must publish a preliminary announcement of the annual accounts not later than three months after the close of the financial year. In special cases the Copenhagen Stock Exchange may grant an exemption from that rule.

With reference to the published announcement the company asked the Exchange to exempt it from the time-limit so that the preliminary announcement of the annual accounts could be postponed to mid-April 2002 to ensure a true and fair view of the accounts, especially the items goodwill and inventory.

The Exchange replied that it did not find that the company's sale of a division in a subsidiary and the other ongoing negotiations about further disposals had any influence on the company's ability to publish a preliminary announcement of the annual accounts for 2001. Thus, on the existing basis the Exchange did not find evidence that this was a special case that would justify an exemption from the 3-month time-limit.

A preliminary announcement of the annual accounts shall constitute a brief version of the annual report and accounts and shall be so comprehensive that the annual report and accounts do not provide the market with any new material information that may be assumed to influence pricing. This appears from schedule B of the disclosure requirements for issuers of shares on the Copenhagen Stock Exchange. Moreover, the rules provide that in the event that the auditors' report is qualified or contains additional information or references, it shall be published in full. Consequently, a preliminary announcement of the annual accounts must be based on audited accounts.

Subsequently, the company informed the Exchange that it intended to publish the preliminary announcement of the annual accounts for 2001 on 31 March 2002. The Exchange pointed out to the company that it assumed that the preliminary announcement of the annual accounts for 2001 would be based on audited accounts, and that the auditors' report should be published in full in the event that it would be qualified or contained additional information or references.

The company then issued an announcement from which it appeared that the company would publish a preliminary announcement of the annual accounts on 31 March 2002 that would not be complete, primarily due to unresolved financial matters regarding the subsidiary. It did not appear from the announcement that the preliminary announcement of the annual accounts would not be based on audited annual accounts. Nor was it clear in what way the preliminary announcement of the annual results would be incomplete.

Decisions and statements - 2002

On 31 March 2002, the company published an unaudited preliminary announcement of the annual accounts. From the announcement it appeared that the accounts had not been completed yet and therefore not audited. Moreover, it appeared that certain inventory writedowns and the reasons for these writedowns had not been finally analysed, consequently, the detailed outlook for 2002 would not be published until these analyses had been completed by mid-April 2002.

The Exchange reprimanded the company for having failed to publish a preliminary announcement of the annual accounts containing audited accounting figures and an auditors' report by 31 March 2002. Moreover, the Exchange reprimanded the company for having published a preliminary announcement of the accounts that did not comprise the management's expectations for the future and thus having failed to observe the rules regulating the contents of preliminary announcements of annual accounts.

The reprimand should be seen in the light of the correspondence between the company and the Copenhagen Stock Exchange during the period leading up to the publication of the preliminary announcement of the accounts on 31 March 2002 and in the light of the fact that the company's request to be exempted from the time-limit had been refused. In this connection the Exchange had noted that the company had not attempted to provide further detailed arguments for the Exchange's consideration of the request to be exempted. The fact that the company had acted in contravention of the advice and recommendations that it had sought and got from the Exchange was an aggravating factor.

Finally, the Exchange informed the company that it expected the company to immediately publish the preliminary announcement of the annual accounts for 2001, including audited accounting figures and an auditors' report, and that it would meet the requirements for the contents of a preliminary announcement of annual accounts.

The reprimand was published.

At the beginning of April 2002, the company published the auditors' report concerning the accounts for 2001 and the company's expectations for 2002.

2. Offer to buy – shareholders cannot be bound by acceptances given after the expiry of the period during which the offer is open

The Copenhagen Stock Exchange was asked to what extent it would be possible to bind shareholders who have accepted a bid after the expiry of the period during which the offer is open. The inquiry gave rise to the following comments.

In connection with the submission of an offer the offeror shall draw up and publish an offer document containing the information deemed necessary for the shareholders to make an informed assessment of the offer and subsequently decide whether to accept the offer. The paramount consideration behind the rules regulating offers in the Danish Securities Trading Act and the Executive Order is the protection of the shareholders.

Under the general law of contract a shareholder accepting an offer is bound by his acceptance. Based hereon article 3 (2) of the Executive Order provides that it shall appear from the offer document whether the shareholders who have already accepted an offer may freely accept any subsequent offer made under the rules laid down in article 8 (amended offer) and article 9 (competing offer).

The Executive Order lays down the minimum (four weeks) and maximum (ten weeks) period during which the offer may be open.

The fixing of a period during which the offer is open is based on a weighing of partly the consideration that the shareholders must have a reasonable time to consider the offer made, and partly the consideration that the shareholders and the company should have

Decisions and statements - 2002

clarification of whether the offer is carried out within a reasonable time. In this connection it should be noted that the shareholders should be paid within a reasonable time or be able to dispose of their shares to other investors. Moreover, out of consideration for an orderly securities market there should be consistency between the offer period and the period during which the shareholders are bound by their acceptance.

The Exchange finds that the fixing of a period during which the offer is open reflects how long a shareholder may be bound by his acceptance, and that this period thus sets the limit for how long a shareholder must tolerate uncertainty about the ownership of his shares. As a consequence of the considerations behind the rules governing offers and the fact that the said rules provide how short and how long an offer period may and must be, the possibility of binding the shareholders for longer than the offer period will clash with the fixing of an offer period.

Also, the rules regulating competing offers, including the offeror's possibility of binding the shareholders for the period during which the offer is open in case of competing offers advocate that shareholders should not be bound for longer than the offer period. Thus article 9(1) of the Executive Order provides that a competing offer shall be made before the expiry of the period stipulated for acceptance of the offer among the offers already made, whose period stipulated for acceptance expires the latest. If an offeror could bind the shareholders for longer than the period during which the offer is open and a competing offer was made at a higher price after the expiry of the period the original offeror would 'benefit' from the higher price. However, the shareholders that would be bound would not be paid for their shares and would thus be prevented from reinvesting their money. In the Exchange's opinion this would lead to an unfair legal position.

In conclusion, the consideration for the rules regulating offers, the fixing of a period during which the offer is open and the contents of the other rules of the Executive Order seem to support an interpretation of the rules which means that it is not possible to bind shareholders who have accepted an offer for longer than the period during which the offer is open.

3. Admission to listing – sales literature prepared in connection with the sale of structured bond

In connection with the listing of a structured bond a bank, which was the office of issue, prepared sales literature, the contents of which the Exchange found to be based on a very positive presentation. Moreover, on the bank's web site it was possible to download a subscription form, which was not accompanied by the prospectus.

The Copenhagen Stock Exchange informed the bank that rule 13 of the prospectus requirements and subscription conditions for admitting securities to listing on the Copenhagen Stock Exchange provides that all essential information about the issuer and the bonds must be incorporated into the prospectus. Advertisements, brochures, etc. prepared for the offering of bonds must not contain any invitation to subscribe for the securities on offer solely on the basis of an advertisement or a brochure. Such material must not be misleading or incomplete. Likewise, the documents shall not extol or give the wrong picture of the possibilities of such an investment. Finally, the subscription/sales form must not be included as a part of this material, but shall only form part of the prospectus.

In this connection the Exchange informed the bank that the prospectus and the sales literature should enable investors to make a basis of comparison in relation to other investment alternatives.

The bank replied that in future it would dampen the formulation of their information material, and that the bank would see to it that the subscription forms would form part of the prospectus itself.

Decisions and Statements, July 2002

1. Failure to keep within the time limit for publication of annual report and holding of ordinary general meeting – reprimand published

In mid-May, a listed company, which has the calendar year as its financial year, announced that the company would publish its revised annual report at the end of May, and that the company would hold its ordinary general meeting in mid-June.

The Copenhagen Stock Exchange informed the company that pursuant to the Danish Company Accounts Act a listed company must immediately after adoption and not later than five months after the close of the financial year deliver its annual report to the Danish Commerce and Companies Agency. The annual report must as soon as possible and not later than eight days prior to the general meeting be published via the Copenhagen Stock Exchange, as provided by Rule 29 of the disclosure requirements applicable to issuers of shares on the Copenhagen Stock Exchange. At the general meeting the revised annual report must be presented, and not later than eight days before the ordinary general meeting the revised annual report must be available for inspection by the shareholders at the company's office and at the same time a copy must be sent to any registered shareholder who has requested this, so the Danish Company Accounts Act.

At the end of May, the company had not published a revised annual report via the Copenhagen Stock Exchange, just as the company had not held its ordinary general meeting.

The Exchange informed the company that it was unacceptable in relation to the company's shareholders and other stakeholders that the company had violated the rules regulating listed companies' obligation to publish annual reports and to hold general meetings. In this connection the Exchange reprimanded the company for having failed to meet the duty of disclosure imposed by Rule 29 of the disclosure requirements applicable to issuers of shares on the Copenhagen Stock Exchange.

The Exchange published the reprimand.

Decisions and Statements, August 2002

No decisions and statements in August 2002

Decisions and Statements, September 2002

1. Downward adjustment of expectations – time of publication

A listed company published its interim report, in which it made a downward adjustment of the expectations for the turnover for the financial year 2002 from somewhere between DKK 450 and 650 million to somewhere between DKK 200 and 250 million. At the same time, the company adjusted its outlook for 2002 downwards.

According to the interim report the reason for the downward adjustment was that both existing and new customers had delayed the introduction of the products to which the company was going to supply parts for two to five months. Especially in the second quarter this had resulted in a smaller influx of new customers and orders than originally forecasted. This meant that based on the delayed product introductions the company still expected a significant turnover for the 4th quarter of 2002, but that turnover for the 3rd quarter would become very unsatisfactory and lower than in the 1st and 2nd quarters.

The Exchange informed the company that a listed company's obligation to disclose information to the Exchange and thus the market becomes effective as soon as the company becomes aware of material aspects concerning the company which may be assumed to affect the pricing of the securities. Where the expected development changes significantly compared with the previous forecast this must immediately be published via the Exchange. This requirement must be met even if it is not possible at the time to establish the expected outcome precisely.

The Copenhagen Stock Exchange asked the company to give an account of when it became aware that the expectations for the turnover and thus the results for 2002 did not live up to the company's previous forecasts. In this connection the Exchange requested information on when the company's management had learnt about the aspects that brought about the downward adjustment of the expectations for the turnover and results for the year.

The company gave an account of the background for the change in expectations for the 2002 results and in this connection it stated – as a supplement to the information provided in the interim report – that the company had not been able to establish the facts on which the changed forecast was based until immediately before the preparation of the interim report.

The Copenhagen Stock Exchange took note of the company's account and did not find that it gave rise to further actions.

2. Statements to the press

In a newspaper article, which was based on an interview with the chairman and major shareholder of a listed company, the chairman was quoted as saying:

“In order not to upset the Stock Exchange, I'll say that this is not a plan which has been adopted by the board of directors, however, I haven't mentioned it in public before. But it is our ambition that [the company] shall be a profitable company as from now on. Not just this year. In future [the company] shall make its own money and no longer get capital on the market. We wish to liberate ourselves from the capital jam of the market”.

Against this background the Exchange contacted the company in order to make it assess whether the article and the interview with the chairman contained price-sensitive information about the company which had not previously be published, and which would obviously have to be published immediately via the Copenhagen Stock Exchange.

The company informed the Exchange that in their opinion the article and the interview did not contain price-sensitive information about the company.

Decisions and statements - 2002

The Copenhagen Stock Exchange felt induced to emphasise that all price-sensitive information about a company that may be assumed to affect the pricing of the company's shares must immediately be published. The Copenhagen Stock Exchange must be notified of aspects covered by the disclosure requirements as soon as the decision has actually been made.

Moreover, listed companies must ensure that all market participants have simultaneous access to any material information about the company that may be assumed to affect the pricing of the company's shares, and that companies must make sure that no unauthorised party gains access to such information before it is published. Consequently, price-sensitive information shall not be provided in statements, comments and interviews etc, in connection with investor meetings, in staff magazines etc, without the information being submitted to the Copenhagen Stock Exchange at the same time at the latest. The fact that the plans had not been approved by the board of directors does not change that.

In this connection the Exchange found it regrettable that the chairman of the board via his statements had raised doubts about whether the article contained not previously published price-sensitive information about the company.

Decisions and Statements, October 2002

1. Company announcement about conversion of warrants into shares

A listed company had prepared a warrant programme for the company's employees and in a company announcement it had informed the market about the contents of the programme and the scope hereof. The programme implied that the employees of the company for a period of four weeks after publication of the company's preliminary announcements of semi-annual and annual reports daily had an opportunity to convert warrants into shares. The company asked the Copenhagen Stock Exchange if it would have to publish an announcement each day that warrants were converted into shares as this would result in a corresponding issue of new shares.

All decisions on changes in a listed company's share capital – or proposals to change the share capital – must immediately be published via the Copenhagen Stock Exchange. The reason is that changes in the capital structure of a listed company usually are of significance to the market. The specific case involved the exercise of a warrant programme, which ran for a limited period of time and whose contents and scope was known to the market, consequently, the Exchange decided that if each day merely involved insignificant conversions, one announcement could sum up the conversions.

The Copenhagen Stock Exchange answered the company that if the company assessed that the conversions of warrants into shares that took place on the individual days of the 4-week period after the publication of the company's preliminary announcements of semi-annual and annual reports only resulted in insignificant increases in the company's share capital, the company could sum up these conversions in one company announcement, which was to be published not later than at the expiration of the 4-week period.

Decisions and Statements, November 2002

There are no decisions and statements for November 2002.

Decisions and Statements, December 2002

1. Companies' position on Corporate Governance - publication via the Copenhagen Stock Exchange

The Nørby Committee's report 'Corporate Governance in Denmark' - recommendations for good corporate governance in Denmark' provides a set of recommendations for what is considered good corporate governance in Denmark.

With a view to making it more attractive to invest in Danish listed companies - and to improve the Danish companies' access to capital by attracting foreign investors among others - the Copenhagen Stock Exchange finds it important that listed companies state to what extent they follow the recommendations and take inspiration from the recommendations for good corporate governance. Good corporate governance - and the companies' publication of their position on it - contribute to assuring investors that the resources of the company are exploited in the best possible way.

The Exchange finds that shareholders, investors and the market have a significant interest in how listed companies are managed, and in knowing what position the management of the companies take on the concept of Corporate Governance.

This formed the basis for the decision of including the report's recommendations in the rules of the Exchange. From section 36 of the Disclosure requirements for issuers of shares listed on the Copenhagen Stock Exchange A/S it thus follows that the companies are encouraged in their annual report and accounts to relate to the recommendations for good corporate governance which form the second part of the Nørby Committee's report.

The companies may for example relate to the recommendations by inserting a separate section hereon into their annual report. Such a section may be by way of a summary, or it may contain an indication of to what extent the company follows the recommendations and an account of why another set of principles are applied or if the recommendations are deviated from. Another possibility for the company is to provide relevant information about the companies' Corporate Governance principles in a different way in the annual report. Preferably based on the seven main areas of the report.

As it appears directly from section 36 and from the above in general, the companies are under no obligation to follow or relate to the recommendations for good corporate governance. Referring to the significant role these matters generally play regarding the market's assessment of a company, the Exchange finds that listed companies that choose to relate to Corporate Governance should make such information available to the market by publishing it via the Copenhagen Stock Exchange. This also falls in line with the above-mentioned rule stated in section 36 and the comment attached thereto.

When a listed company chooses to relate to Corporate Governance the Exchange therefore finds it important that the company's position is given in an annual report, in an interim report or in a different way in a company announcement that is published through the Copenhagen Stock Exchange. In this way the investors are ensured an overview of the situation of the concerned company.

2. Directed issue exceeding 10 per cent - fulfilment of the Exchange's prospectus requirements

Prior to the realisation of a directed issue, the Copenhagen Stock Exchange was asked to what extent it would be possible for a listed company to carry out a directed issue against payment in cash in connection with a simultaneous publication of a detailed company announcement that in terms of contents would correspond to the Exchange's requirements to the contents of a prospectus.

The company's listed share capital would be increased by approx. 20 per cent. Furthermore, a directed issue in the unlisted capital of A shares would be realised. In connection with the issue the company would expand its shareholders of A shares, which previously only included a fund.

During the past two years the company had had a tight cash position, and the proceeds of the issue was to be used for improving the company's capital base and would thus put an end to the tight liquid position and was at the same time to reduce the short-term liabilities.

In connection with directed issues a prospectus must generally be drafted even though the new shares are to be subscribed for by a limited number of investors. The prospectus must be adapted to the situation that the issue is directed at specific investors.

In pursuance of section 9 of the Executive Order on Prospectuses, the Exchange may authorise omission from the prospectus of certain prescribed information if it considers that such information is of minor importance only and is not such as will influence assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer; or if it is assessed that disclosure of such information would be contrary to the public interest or seriously detrimental to the issuer. It is a requirement, however, that any non-disclosure does not mislead the public.

Since this was a directed issue where no actual offer of shares was made, and the new shares were to be subscribed for by a limited number of shareholders which had given their advance approval of subscribing for the new shares, the Exchange found that the prospectus, in the circumstances, could be drafted as an announcement with an information level that corresponded to that required in a prospectus.

As regards the persons responsible for the contents of the prospectus, the Exchange found that they should give their opinion on the contents of the prospectus, possibly adapted to the concrete situation. The auditors of the company should furthermore incorporate a declaration to the extent that they had assisted in drafting the prospectus stating what duties they had had.

Moreover, the prospectus should contain declarations from any intermediaries to the extent that they had assisted in the drafting.

Any declarations prepared in pursuance of the rules of the Danish Companies Act, including declarations made in pursuance of section 29 of the Danish Companies Act, should also be incorporated as a part of the prospectus, possibly by way of an appendix.

The Exchange received a draft prospectus and gave its comments hereto. These were incorporated in the prospectus prior to publication.