Decisions & Statements – 2000

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Decisions and Statements, December 2000

1. Publication of semi-annual report - extension of time limit

A listed company asked the Copenhagen Stock Exchange for permission to postpone the publication of its semi-annual report for 2000/2001 until three months after the close of the accounting period on 31 October 2000.

The reason that the company requested an extension was that immediately before the end of the accounting period the company had doubled its East European activities, which caused special non-recurrent problems in connection with the semi-annual report. Such problems included review of all calculations for prospectuses developed in co-operation with a third party, accounting and physical integration of the above activities and change of accounting policies for acquired companies, including especially the application of the percentage-of-completion method for ongoing sold projects.

Against this background and pursuant to Rule 54 of the Rules governing issuers of securities listed on the Copenhagen Stock Exchange A/S, the Copenhagen Stock Exchange granted the company permission to publish its semi-annual report by the end of January 2001, provided that the company would prepare and publish the semi-annual report at an earlier date, if possible.

The actual extension of the time limit was given on the condition that the company would publish an announcement explaining the reason for the extension of the time limit not later than the day on which a preliminary announcement of the semi-annual results should originally have been published. Another condition was that the announcement should contain a brief outlook as well as information on the week, and preferably the date, of the expected publication of the semi-annual report.

2. Downward adjustment – timing of publication

Approx. 1½ months after having published a preliminary announcement of its annual results, a listed company issued an announcement stating that the company's net capital was probably lost. The Copenhagen Stock Exchange asked the company to explain exactly when the management had become aware of the factors leading to the sharp reduction in the company's net capital. Moreover, the company was asked to give an account of the discussions that the management had had about the financial position of the company and the significance hereof. Finally, the Exchange wanted information about the persons, internally as well as externally, who had been informed of the company's financial position prior to the company's announcement and when the individual person had been informed hereof.

The Copenhagen Stock Exchange pointed out that a listed company must meet the disclosure requirements and immediately report essential aspects concerning the company which may be assumed to be of significance to the price of the company's securities. Moreover, the company shall immediately notify the Copenhagen Stock Exchange if there are significant changes in the expected development compared to what was previously published.

The company gave an account of the situation and stated its great dependence on foreign exchange as the reason for the downward adjustment. The company stated that it had not been using hedging instruments to reduce the sensitivity to currency fluctuation, just as the company had not prepared an actual sensitivity analysis of the stocks.

The Copenhagen Stock Exchange told the company that it is of great importance that listed companies have adequate internal management systems and adequate preparedness to be

able to make current financial reports so that the companies may meet the disclosure requirements in a satisfactory way. The Copenhagen Stock Exchange expressed disapproval of the company's unsatisfactory way of informing the market of the consequences of the development in the factors to which the company's results were so sensitive.

3. Adoption of amendments to the Articles which are contrary to what it means to be a listed company - delisting of a company

After the close of an exchange offer according to which the shareholders in a listed company were offered to exchange their shares with shares in a listed subsidiary, a group of majority shareholders held more than 90 per cent of the votes and shares in the company. From the exchange offer it appeared that the intention was to remove the company from listing on the Copenhagen Stock Exchange.

Approx. six months after the exchange offer had closed the company convened an extraordinary general meeting at which the board’s decision to delist the company’s B-shares and a number of amendments to the company's Articles were to be adopted.

At the extraordinary general meeting the amendments to the Articles were adopted, including a redemption resolution and a resolution granting pre-emption rights to the company’s A-shareholders.

The pre-emption right meant that no shareholder was allowed to sell its shares to a third party unless those shares had first been offered to the A-shareholders in the company in proportion to their existing A-shareholdings. The price at which the shareholder should offer its shares to the A-shareholders of the company should be fixed by the company's auditor. The shares of a listed company must be freely negotiable, which means that neither the Articles nor other rules must limit a shareholder's ability to dispose of the shares in question. The Exchange found that the adopted amendment to the Articles put a limit on the negotiability, which was inconsistent with being a listed company.

The redemption resolution meant that the A-shareholders could require of the B-shareholders that they had their shares redeemed by the A-shareholders at a price which was to be fixed by the company's auditor. The Copenhagen Stock Exchange was concerned about a company having adopted a right of redemption with a view to a compulsory redemption of minority shareholders, when this situation is already regulated by the Danish Companies Act, which lay down a specific procedure.

The Copenhagen Stock Exchange reprimanded the company for having adopted the above resolutions at its general meeting, which are inconsistent with the principles of stock exchange listing.

The company subsequently asked the Copenhagen Stock Exchange to delist its B-shares.

Section 30(3) of the Executive Order on the conditions for the admission of securities to listing provides that where an issuer whose securities are listed submits a request for delisting, such request shall be complied with unless the stock exchange is satisfied that such delisting is not in the interests of the investors, borrowers or the securities market.

Especially considering that

- the group of majority shareholders held 90.73 per cent of the capital and 98.28 per cent of the votes in the company,
- in addition, the company held own shares corresponding to 7.88 per cent of the capital and 1.47 per cent of the votes,
- the number of B-shares in circulation was 1,473 from a total B-volume of 49,517 shares

- all shareholders in the company via the exchange offer had been offered to exchange the shares to shares in the listed subsidiary,
- it was the majority shareholders' strategy to buy all the shares offered for sale, and
- according to the minutes of the general meeting no objections to the delisting of the company were raised at the extraordinary general meeting,

the Copenhagen Stock Exchange complied with the request for delisting. This was based on the condition that

- prior to delisting a voluntary bid would be made and carried out in accordance with the rules governing bids. Hence all the B-shareholders should be allowed to exchange their shares for cash or shares at the same ratio as that of the previous exchange offer,
- the offer document would state that the Articles mentioned above, which are inconsistent with stock exchange listing, would not be applied,
- it would appear from the voluntary bid that the offer to the B-shareholders would run for another three months after the delisting of the B-shares.

4. *Accounting figures for three years – flotation - granting of exemption*

A company, which was in the course of formation at the time of the request, asked the Copenhagen Stock Exchange to exempt it from the rule requiring companies to include official accounts for the last three years in connection with stock exchange listing. The company was founded with a view to making investments in unlisted companies with a growth potential in the IT and telemedia industries, including start-up companies.

The company gave an account of its strategy, company mission and activities.

The Copenhagen Stock Exchange granted the company exemption from the rule requiring companies to include official accounts for three years, pursuant to schedule A.I.3 of the Executive order on prospectuses.

The exemption was granted on the condition that this was a newly founded company and that

- the company had a clear and well-defined investment strategy,
- the company had a clear phased procedure for the investment process,
- the company had a professional management board and board of directors
- explicit rules regulate the diversification of risk, including that no individual investment can amount to more than 10 per cent of the total value of the portfolio at the time of the investment,
- the company would have an investment portfolio that on the first day of listing and for up to 18 months would consist of listed shares of the IT and telecommunications industries, which was a reflection of the portfolios in two listed unit trusts, and
- the prospectus would contain a description of the risks involved.

5. *Listing of shares of the same class*

Schedule A, I (5) of the Executive Order no. 331 of 23 April 1996 on the conditions for the admission of securities to listing provides that the application for admission to listing must cover all the shares of the same class already issued. Moreover, it may be provided that this condition shall not apply to applications for admission not covering all the shares of the same class already issued where the shares of that class for which admission is not sought belong to blocks serving to maintain control of the company or are not negotiable for a certain time under agreements, provided that the public is informed of such situations and there is no danger of such situations prejudicing the interests of the holders of the shares for which admission to listing is sought.

Consequent to the above the Copenhagen Stock Exchange has often been asked whether pursuant to this rule it would be possible to admit only part of a share class to listing on the Copenhagen Stock Exchange. The Exchange finds that all the shares of a share class must be listed, irrespective of the above provision in the Executive Order.

Decisions and Statements, November 2000

1. Late publication of purchase of own shares – reprimand

A listed company issued an announcement to the Copenhagen Stock Exchange about a change in the company's holding of own shares. From the Exchange's trading systems it appeared that the company had effected transactions in own shares the day before, and as a result the 2 per cent limit had been exceed already then. The Exchange requested the company to explain the reason why the announcement was not published until the day after the transactions in question had been made. The company replied that immediately before 17:00 it had acquired shares, which would trigger off an obligation to report under section 28 of the Danish Securities Trading Act. However, since it was not physically possible to formulate and send an announcement before the Exchange's trading systems closed, an announcement was published the following day before the systems opened.

The Exchange wrote to the company that pursuant to section 28 of the Danish Securities Trading Act announcements must be issued immediately, i.e. on the day of the transaction. The opening hours of the Exchange are irrelevant to a company's fulfilment of its disclosure requirements. Consequently, the Exchange reprimanded the company for having failed to issue the announcement about the change in its holding of own shares on the day of the transaction.

Decisions and Statements, October 2000

2. Internal rules - time-limit within which the management is allowed to execute transactions in the company's shares

Pursuant to Rule 16 of the Rules governing issuers of securities listed on the Copenhagen Stock Exchange A/S listed Danish companies must prepare internal rules regulating the access for board members, directors and other members of the managerial staff or 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 involved are allowed to execute transactions. The Exchange recommends that this time-limit be fixed at six weeks after publication of the company's preliminary announcement of the annual accounts and interim reports and other announcements regarding accounting records containing information about the company's activities and results for a given period and perhaps a description of the outlook for the company.

In connection with the holding of its general meeting a listed company made an upward adjustment of its expectations for the current financial year. Approximately one month later the Copenhagen Stock Exchange received a letter from the managing director of the company, who asked the Exchange to formally approve that this upward adjustment was to be deemed an announcement regarding accounting records, which would open new trading windows as the managing director was interested in acquiring shares in the company.

The Copenhagen Stock Exchange replied that "other announcements regarding accounting records" mean company announcements providing an overall picture of the company's activities and results. Company announcements stating the exact amount of the expected profit/loss for the year do not constitute such an announcement regarding accounting records.

Moreover, the Exchange pointed out that it is not within the Exchange's powers to formally approve share transactions. Also, the individual company will have to construe its own internal rules.

3. Capital increase - conversion of bank debt - refusal of request for exemption from the rule requiring companies to prepare a prospectus

At the extraordinary general meeting of a listed company it was adopted to reduce the company's share capital by 77 per cent to partly cover a loss, moreover, it was adopted to convert bank debt to share capital. In this connection the company asked the Copenhagen Stock Exchange to grant it exemption from the rule requiring companies to prepare a prospectus.

Due to the financial position of the company and the anticipated capital changes the Copenhagen Stock Exchange did not find grounds for exempting the company from the obligation to prepare a prospectus. However, the prospectus could be adjusted to the specific situation, and a number of factors, which are normally included in a prospectus, would thus be of less importance. The material should have the same structure and contents as a prospectus and thus contain thorough descriptions of the risk factors, markets, suppliers, customers and competitive position. The material should also contain the auditors' opinion.

4. Exemption from the obligation to include the parent company's accounting figures for the last three years in connection with the demerger of a listed company

Prior to the demerger of a listed company, where one division was to be spun off and become an independent listed company with retrospective effect from 1 January 2000, the company sought exemption from the obligation to include the parent company's accounting figures for the last three years in the prospectus which was to be prepared in connection with the spin-off.

Pursuant to paragraph 5(1)(1) of schedule A of the Executive Order on prospectuses the Copenhagen Stock Exchange may allow companies to include either the own or the consolidated annual accounts, on the condition that the accounts which are not included do not provide any significant additional information.

Against this background the Exchange did not object to the prospectus excluding the parent company's accounting figures for the last three years, as the prospectus would include the opening balance sheet of the newly established company as well as information on accounting estimates in connection with the preparation of the consolidated accounts with all the notes of the last three years. In this connection the Exchange found it appropriate that the reason why the parent company's accounting figures had been excluded should appear from the prospectus.

Decisions and Statements, September 2000

1. Mandatory bid – shareholder gains control via issue

The Copenhagen Stock Exchange was asked to consider whether a shareholder, who had acquired shares in a listed company in November of 1999 and ended up with approx. 49 per cent of the votes in the company following an issue in May 2000, was obliged to make an offer to the other shareholders of the company in pursuance of section 31 of the Danish Securities Trading Act.

In line with the practice in cases where a shareholder gains control via a merger, the Exchange and the Danish Ministry of Economic Affairs found that section 31 of the Danish Securities Trading Act should be interpreted in such a way that the rules governing mandatory bids do not apply in connection with issues because the said provision requires that the controlling influence is gained through the transfer of a shareholding (see Decisions and Statements of 1999, page 16). The Exchange did not find grounds for any other decision in this case.

The Exchange based its opinion on the fact that when the shareholder had acquired the shares in November 1999 he had not been promised or guaranteed a controlling influence in the company. Moreover, the Exchange did not find any reason to believe that the shares had not been finally transferred from the seller to the shareholder until the realisation of the share issue in May 2000. Finally, there was no indication that the rules on mandatory bids of section 31 of the Danish Securities Trading Act had been violated in any way, neither in connection with the shareholder's acquisition of the shares in November 1999, nor in connection with the shareholder's subscription for shares in May 2000.

Based on the information provided, the Exchange found that the investor was not obliged to make an offer to redeem the remaining shareholders of the company.

The Exchange based its decision on information that no actual agreement allowing the shareholder to gain a controlling influence had been made between the shareholder and the company prior to the shareholder's acquisition of the shares in the company in November 1999.

2. Mandatory bid – one acquirer

The Copenhagen Stock Exchange was asked to consider whether a contemplated transaction involving the A shares of a listed company would trigger off an obligation to make an offer to the remaining shareholders.

The A shares were held by three shareholders. A owned 4.6 per cent of the votes in the company, B, which was a Fund, owned 30.5 per cent of the votes and C owned 32.3 per cent of the votes. The contemplated transaction would mean that C would take over the Fund's A shares, which on the other hand would take over a corresponding B shareholding from C.

It was stated that the Fund was founded in connection with the listing of the company at the end of the 1970s. In the mid-1990s an agreement on the voting right was made between the Fund and C in connection with the parties' holding of A shares. Under the terms of the agreement C was under an obligation to vote according to the instructions of the Fund at the general meeting. C was chairman of the board of the Fund, which consisted of two of C's brothers and sisters, two executives from a subsidiary of the listed company and an independent member.

Section 31 (1) (i) of the Danish Securities Trading Act provides that where 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 such transfer involves that the acquirer will hold the majority of the voting rights in the company. The rules governing mandatory bids are an important element in the protection of minority shareholders.

The contemplated transfer of shares would mean that C went from holding 32.3 per cent of the votes to holding 59.7 per cent of the votes in the listed company, and against this background C would have to make an offer to the remaining shareholders, cf. section 31 (1) (i) of the Danish Securities Trading Act.

From section 1 (5) of the Danish Securities Council's Executive Order on mandatory bids it appears that an acquirer within the meaning of section 31 of the Danish Securities Trading

Act shall mean both a natural and a legal person and several of these who co-operate on obtaining controlling influence over a company.

When considering whether more shareholders may be seen as one shareholder within the meaning of section 31 without the existence of a written agreement to that effect, the Exchange primarily checks whether the shareholders in practice exercise a controlling influence over the company, i.e. whether the shareholders have voted, acted or otherwise behaved as one shareholder.

The Copenhagen Stock Exchange found that the Fund and C were to be deemed one shareholder within the meaning of section 31 of the Danish Securities Trading Act, and the Exchange based its opinion on the following:

- That C, who is the holder of a majority holding of A and B shares, chairman of the board, managing director of the listed company, which via a subsidiary appointed two of this company's executives to the board of the Fund, and the brother of the two brothers/sisters who were sitting on the board of the Fund, in actual fact would have to be deemed as having an influence on the Fund and thus its voting.
- That the Fund and C in practice had voted, acted and behaved as one shareholder, which was supported by the fact that the Fund since 1990 had mandated C to vote on behalf of the board at the company's general meetings.
- That since the listing of the company in the late 1970s, an agreement on voting rights had existed between the Fund and C in connection with the parties' A shareholding.

Against this background the Exchange found that C's acquisition of the Fund's A shares, which in turn acquired a corresponding B shareholding from C did not force C to make an offer to redeem the minority shareholder in pursuance of section 31 of the Danish Securities Trading Act.

3. Publication of information to the press

The Copenhagen Stock Exchange read in the press that a listed company had made an offer running into billions for a foreign company. In the article a representative of the listed company said that an offer had been made, that the offer would expire the following week and that the company was very interested in taking over the foreign company. The company had not issued a stock exchange announcement with information on the offer. The Exchange found that via its statements to the press the company had created uncertainty about the offer and its contents, consequently, the Exchange contacted the company and demanded that it immediately published an announcement, which provided the market with at least the same information as the press. Such an announcement was published later that day.

4. Late publication of preliminary announcement of annual results

A company had failed to publish a preliminary announcement of its annual results within 3 months of the closing of the financial year. The Copenhagen Stock Exchange contacted the company, which subsequently published an announcement. The Exchange reprimanded the company for having failed to publish the preliminary announcement of its annual results in time.

5. Trade reporting and publication of company announcements via the Internet

In September 1999, the Copenhagen Stock Exchange introduced a new system for reporting and publication of company announcements, StockWise. The new system allows companies to submit announcements to the Copenhagen Stock Exchange in PDF format via

the Internet. The Exchange then redistributes the announcements in this format to the information recipients. The system has many advantages in the form of speed (up to 40 times faster than the fax), better layout, efficient redistribution, many facilities for the end users etc. For the companies it is merely a question of getting used to it and in the not-too-distant future publication of announcements via the Internet will probably be a requirement and consequently companies, which are not already using StockWise, are invited to contact the Exchange and get a free start-up kit and user instructions. The company will be able to submit transaction reports and announcements via StockWise immediately after the start-up kit has been installed.

Decisions and Statements, August 2000

1. *Notification of major holdings – section 29 of the Danish Securities Trading Act*

The Copenhagen Stock Exchange received an announcement from a shareholder. It appeared from the announcement that following a sale of shares in a listed company, the shareholder now held 64.66 per cent of the votes and shares in the company. The most recent announcement from the shareholder stated that he held 88.38 per cent of the shares. Since the identity of the buyers of the remaining shares had not been revealed and the transactions had not been reported to the Exchange's trading system, the Exchange asked the major shareholder to notify the Exchange of the identity of the buyers, the time of the transactions and the identity of those who had effected the transaction as well as the price. Two days later the listed company, whose shares had been sold, at the request of the Exchange issued a section 29 announcement on behalf of two foreign shareholders, who each had acquired more than 5 per cent of the shares. Moreover, it was announced that a number of minority shareholders had acquired the remaining shares.

The Copenhagen Stock Exchange contacted the two new shareholders and informed them of the provisions of section 29 of the Danish Securities Trading Act under which a shareholder who acquires at least 5 per cent of the capital or votes in a listed company, must immediately publish an announcement to that effect. Immediately means the day of the transaction.

2. *Timing of publication of an English version of company announcement*

The Copenhagen Stock Exchange was asked whether a company was allowed to publish the English version of a company announcement prior to the Danish version. Pursuant to Rule 11 of the Rules governing issuers of securities listed on the Copenhagen Stock Exchange A/S announcements from Danish issuers must be in the Danish language and KFX companies must also publish an English version. Moreover, companies must make an effort to publish the English translation simultaneously with the Danish version. The Copenhagen Stock Exchange recommends that it should appear from the announcements that the English version is provided for convenience only and that in case of discrepancy the Danish version shall prevail.

The Exchange announced that the company would comply with the said provision, if a Danish version of the announcement would be published immediately after the English version.

3. *Price-sensitive announcement – timing of publication*

The Copenhagen Stock Exchange received an announcement from a listed company about aspects concerning the company's foreign, listed subsidiary. It appeared from the announcement that the foreign stock exchange had been notified the day before. The Copenhagen Stock Exchange asked the company to explain whether the announcement was

subject to the disclosure requirements, and – if this was the case – why the announcement had not been sent to the Copenhagen Stock Exchange until the day after it had been published to the foreign exchange. The company replied that the announcement was a clarification of a previous announcement, and that the announcement from the subsidiary company had reached the company so late in the day that it was not possible to publish it until the following day.

The Exchange reprimanded the company for having failed to submit the announcement to the Copenhagen Stock Exchange at least simultaneously with the other publication. Moreover, the Exchange made it clear to the company that the company itself must assess whether aspects relating to a subsidiary must be disclosed by the company. When an announcement is submitted to the Exchange with a view to publication, the Exchange presumes that the announcement is subject to the disclosure requirements. The company must make sure that publication of an announcement takes place at least simultaneously with other publications, irrespective of any time difference.

4. Extension of time limit refused

A company asked the Copenhagen Stock Exchange to extend the time limit for publication of the company's interim report for the period 1 October 2000 – 31 June 2001, so that the interim report would not have to be published until the end of September 2001. The reason for the application, the company explained, was that one of the company's factories would be closed down for three weeks in July 2001, and that the internal work process in connection with presentation and preparation of the company's interim report would be hampered during this period, which an exemption would make up for.

Pursuant to Rule 54 of the Rules governing issuers of securities listed on the Copenhagen Stock Exchange A/S the Exchange may in special cases grant exemptions from the rules, including the time limit for publication of announcements of financial results. On the existing basis the Exchange did not find sufficient documentation that this was a special case which would justify an exemption from the 2-month time limit, consequently, the Exchange refused an extension of the time limit.

5. Notice of press conference prior to publication of company announcement

The Copenhagen Stock Exchange read in the press that a listed company had convened a press conference that morning at 9:00. It appeared from the article that the company had reached "no less than a milestone". An announcement about this was published at 8:45.

The Copenhagen Stock Exchange reprimanded the company for having invited members of the press to a press conference and informed them of a non-published announcement prior to the publication of such announcement.

6. Formal requirements for interim reports – failure to give information on incentive scheme

The Copenhagen Stock Exchange received a company's interim report, which mentioned a warrant scheme. The Exchange asked the company for further information on the scheme, including whether the scheme was subject to Rule 17 of the Rules governing issuers of securities listed on the Copenhagen Stock Exchange A/S. The company replied that the scheme was subject to Rule 17 and that the company had adopted the scheme, but it was in course of preparation.

The Exchange made it clear to the company that pursuant to Rule 17 the Exchange must be notified of decisions on the introduction of incentive schemes to the management. It is not the authorisation of the board, but the board's subsequent decision to issue warrants to the

management, which triggers off an announcement. The announcement must contain information on the persons involved, the types of services and information which makes it possible to assess the value hereof. Where such information is not available at the time of the decision to issue the incentive scheme to the management, this must be stated in the announcement together with information on when an announcement to that effect will be published.

7. Holding of own shares – section 28 of the Danish Securities Trading Act

The Copenhagen Stock Exchange was asked when a company's acquisition of own shares would impose an obligation to disclose information under section 28 of the Danish Securities Trading Act.

When a company acquires more than 2 per cent of its own shares, the Copenhagen Stock Exchange shall immediately be notified of the company's and its subsidiaries' total share holdings in the company. This also applies if the share holding is subsequently changed and such change accounts for 2 per cent or more of the share capital. If a company acquires more than 2 per cent of its own shares, e.g. 4.37 per cent, an announcement must be issued with information on changes, where the 2.37 per cent and 6.37 per cent limits are crossed.

A company must always issue an announcement if the holding of own shares falls below the 2 per cent limit of the share capital, notwithstanding that the change constitutes 2 per cent or more.

8. Obligation to submit an offer in connection with an option

The Copenhagen Stock Exchange was asked to state whether the conclusion and performance of a specific agreement would require the investor to make an offer to the minority shareholders of a listed company under section 31 of the Danish Securities Trading Act.

Section 31 of the Danish Securities Trading Act provides that where 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 such transfer involves that the acquirer obtains the right to exercise a controlling influence over the company and will hold more than one third of the voting rights in the company.

From the letter it appeared that an investor would buy shares in the company from a number of institutional investors, and the investor's holding of shares in the company would thus amount to 33.2 per cent of the votes. Viewed separately, this transfer of shares would not force the investor to make an offer to redeem the minority shareholder in pursuance of section 31 of the Danish Securities Trading Act.

Moreover, it appeared that the investor, depending on the future development of the company, wished to take control of the company through the ownership of more than 50 per cent of the shares.

In this connection the institutional investors had made an irrevocable offer to the investor giving him an option to acquire a certain number of shares in the company at a fixed price within a specified time frame. If the option was exercised this would mean that the investor would gain control of the company and he would consequently have to make an offer to redeem the minority shareholders. The Exchange was informed that the buyer had not and would not guarantee the exercise of the option.

As regards the parties' future influence on the company, it was announced that at the time of the conclusion of the agreement the investor had made it a condition that the other parties would vote in favour of a representative of the investor being elected to the

company's board of directors as the sole representative of the investor. Moreover, it was announced that the parties to the contract had made no written or oral agreement on co-ordinated casting of votes at board meetings. Correspondingly, it was announced that the parties to the contract had made no written or oral agreement on co-ordinated casting of votes at the company's general meetings. Finally, it was announced that the voting rights attached to the shares held by the institutional investors, and which were covered by the offer, would remain with the parties involved until the acceptance of the offer.

Based on the information provided, the Exchange found that the investor was not obliged to make an offer to redeem the company's shareholders until the investor decided to exercise the option, in whole or in part, and the Exchange based its opinion on the following:

- That as long as the option had not been exercised in whole or in part, the investor would not hold more than 33.2 per cent of the votes in the company.
- That no written or oral agreement existed on co-ordinated casting of votes at board meetings.
- That the parties to the contract had made no written or oral agreement on co-ordinated casting of votes at the company's general meetings.
- That the voting rights attached to the shares held by the institutional investors, and which were covered by the offer, would remain with the parties involved until the offer may be accepted.

9. Exemption from the rule requiring companies to prepare a prospectus in connection with issues in excess of 10 per cent

Before a listed company took over the remaining 50 per cent of the share capital in a foreign company, the company sought exemption from the rule requiring companies to prepare a prospectus. In the application it was stated that the issue was a private placement, that the capital increase only amounted to 11.4 per cent of the company's share capital, that the listed company would not engage in new activities or new geographic markets, since the company simply increased its shareholding from 50 per cent to 100 per cent, and that the listed company would continue and develop the existing activities in the foreign company.

With due consideration of the specific circumstances, the Exchange would consider the prospectus requirement to be fulfilled provided that the company would prepare a document which, subject to Exchange approval, could take the place of a real prospectus. The document should include a description of the foreign company, including activities and financial information and the financial impact of the acquisition of the listed company. Moreover, the company should publish the material prepared in pursuance of the rules of the Danish Companies Act, including valuation reports and statements.

10. Exemption from the rule requiring companies to prepare a prospectus in connection with a private placement

A listed company sought exemption from the rule requiring companies to prepare a prospectus in connection with a private placement, where the company acquires 100 per cent of the share capital in another company. The acquisition would result in a capital increase in the listed company of 41.7 per cent compared with the company's existing share capital.

Due to the size of the capital increase the Exchange did not find grounds for exempting the company from the preparation of a prospectus. The company should thus prepare a prospectus, which could be adjusted to the specific situation, and a number of factors, which are normally included in a prospectus, would thus be of less importance. The prospectus should contain a detailed description of the other company, including activities, market descriptions, competitive situation and financial information. Moreover, the

financial impact of the acquisition should be described. The prospectus should also contain the material which should be submitted to the Danish Commerce and Companies Agency, including valuation reports and statements prepared in pursuance of the rules of the Danish Companies Act.

11. Exemption from the rule requiring companies to prepare a prospectus in connection with the exercise of warrants

A legal adviser of a company sought exemption on behalf of the company from the rule requiring companies to prepare a prospectus in connection with one or more capital increases, when warrants are exercised, which the company was planning on issuing to employees of the company and its subsidiaries. When the issued warrants were exercised, new shares corresponding to 5 per cent of the share capital in the company would be issued.

Considering the total size and nature of the capital increases, the Copenhagen Stock Exchange announced that in the specific case, cf. section 6 of the Prospectus Order, the Exchange would consider the obligation to prepare a prospectus to be discharged if the company would publish an announcement describing the exercise in detail, including the number of subscribers, the subscription price, the subsequent capital increase etc.

12. Subscription for unit trust certificates on a subscription form that has been downloaded from the Internet without prospectus attached

In connection with the admission to listing of a new fund the Copenhagen Stock Exchange became aware that the unit trust had made a subscription form available at its home page so that investors could use this form to subscribe for units throughout the subscription period without seeing the prospectus.

Since subscription for securities must be made on the basis of a prospectus the unit trust was asked to incorporate the subscription form in the downloadable prospectus in connection with future listings of new units.

The Exchange referred to Rule 3.4 of the Guidelines on securities listing on the Copenhagen Stock Exchange A/S, which provides that the subscription form must be appended to the prospectus and cannot be supplied as a single copy.

Decisions and Statements, July 2000

1. Portfolio of own shares – late reporting, according to § 28 of the Danish Securities Trading Act

By the middle of July 2000, the Copenhagen Stock Exchange received a company announcement from a public company. It appeared from the announcement that the company's portfolio of own shares had risen to 4.27% of the total share capital. The company's previous report was from the middle of August 1998 and the share holding was 2.11% of the share capital.

According to § 28 of the Danish Securities Trading Act, public companies shall immediately inform the Stock Exchange of the total shareholding of the company and its subsidiary company, when the nominal value constitutes 2% or more of the share capital in the company. This also applies when the shareholding is later adjusted according to the latest report of shareholding, and when the adjustment constitutes 2% or more of the share capital.

As the Copenhagen Stock Exchange could not see any noticeable volume of trade from the middle of July 2000 up to the days of company announcement, the company was thus requested to state exactly when the company's shareholding passed 4.11%.

The company replied that this limit had been passed in the beginning of June 2000, but due to human and technical failure, the company announcement was not published until the middle of July 2000.

The Copenhagen Stock Exchange gave the company a reprimand for the late report with reference to § 28 of the Danish Securities Trading Act.

Decisions and Statements, June 2000

1. One shareholder within the meaning of section 31 of the Danish Securities Trading Act

The Copenhagen Stock Exchange was asked to reply to a number of questions regarding a planned inter-company transaction in unlisted A-shares between the shareholders of a listed company. The company had three A-shareholders, A, B and C. A held 23.7 per cent of the votes, B held 23.6 per cent of the votes and C held 23.1 per cent of the votes in the company.

B was contemplating surrendering all its A-shares to A. Following such transfer A would own 45.1 per cent of the votes, B would hold 2.2 per cent of the votes and C 23.1 per cent of the votes.

In this connection the Copenhagen Stock Exchange was asked whether B’s transfer of all its A-shares to A would result in an obligation being imposed on A to submit a take-over bid to the B-shareholders of the company.

Section 31 of the Danish Securities Trading Act provides that where 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 such transfer involves that the acquirer obtains the right to exercise a controlling influence over the company and will hold more than one third of the voting rights in the company.

Section 1 (5) of the Danish Securities Council’s Executive Order on mandatory bids specifies that an acquirer within the meaning of section 31 of the Danish Securities Trading Act shall mean both a natural and a legal person and several of these who co-operate on obtaining controlling influence over the company.

The Exchange was informed that the company was originally founded by six persons, including A, B and C. Two of the founders left the company after 1½ years. Before the company went public in the mid-80s, the four shareholders entered into a shareholders’ agreement which stipulated that the four shareholders were obliged to vote in compliance with the decision of the majority of the A-shareholders.

When, in the beginning of the 90s, yet another founder wished to dispose of its shareholding it was agreed that his A-shares should be transferred to the continuing A-shareholders. This was announced in a joint company announcement from the three remaining A-shareholders. Moreover, the announcement stated that a shareholders’ agreement existed between the three A-shareholders that they would vote unanimously.

The company’s prospectus from the mid-90s also contained information on the shareholders’ agreement and the obligation to vote unanimously.

Moreover, the Exchange was informed that the A-shareholders had in practice agreed on all business transactions.

The Copenhagen Stock Exchange found that A, B and C were to be deemed one shareholder within the meaning of section 31 of the Danish Securities Trading Act, and the Exchange based its opinion on the following:

- a shareholders' agreement on voting and pre-emption rights had existed between the original A-shareholders since the listing of the company in the mid-80s,
- this was to a certain extent expressed in the company's Articles of Association,
- this was repeated in the company's prospectus from the mid-90s, and
- the A-shareholders had in practice voted and acted as one shareholder, which was supported by company announcements published by the three shareholders and by the shareholders' voting at the company's general meetings.

In these circumstances the Exchange found that B's transfer of its A-shares to A did not result in an obligation being imposed on A to submit a take-over bid under section 31 of the Danish Securities Trading Act. In this connection the Exchange assumed that the existing shareholders' agreement between the A-shareholders would be retained.

2. *Misleading company announcement*

A company issued an announcement stating that the majority of votes had been transferred and that the new shareholders would contribute new significant activities to the listed company through a direct placement. The announcement did not mention any provisos or terms attached to the agreements.

A few weeks later, the company announced that the previously mentioned buyers no longer wished to acquire the majority holding in the company, as it would be too time-consuming and risky to step in as a majority shareholder. Based on this development the board of directors had decided that the company should apply for a suspension of payments order.

The Exchange was of the opinion that the publication of the original company announcement had led the market to believe that a final and absolute transfer of the majority of votes in the company had taken place. Consequently, the Copenhagen Stock Exchange asked the company to explain how the new buyers could step down from what appeared to be a final and absolute agreement.

The company replied that just before Easter the majority shareholder had closed negotiations with potential buyers of the company's shares. At the same time the company conducted negotiations on the sale of part of the company's activities and settlement with the creditors, which was immediately communicated to the Exchange. The company regretted that the original announcement had caused the Copenhagen Stock Exchange to believe that the agreement had been final and absolute. Moreover, it was stated that after having read the material again, and having the failed negotiations in mind, the company had to admit that the announcement ought to have included a passage explaining that the negotiations had ended with the signing of a letter of intent.

Trading in and assessment of listed securities are to a wide extent based on information published by the listed companies. Consequently, it is decisive for the functioning of the market that the announcements published by listed companies are trustworthy, precise, clear and adequate and contain information on all matters of importance to the assessment of the information disclosed.

In the Exchange's opinion the company's original announcement must have led the market to believe that a final and absolute transfer of the majority of votes in the company had

taken place and that matters relating to the sale of activities, debts and obligations etc had been settled.

Against this background the Copenhagen Stock Exchange reprimanded the board and management board of the company for having failed to give adequate information. Moreover, the Exchange told the buyer and seller of the majority holding in question that it was to be regretted that the contents of the company announcement left the impression that a final and absolute agreement had been entered into. The reprimand was published.

3. Announcement pursuant to section 2 (2) of Act No. 250 of 3 March 1999

On 12 March 1999, the Minister of Economic Affairs introduced a bill to amend the Danish Securities Trading Act, including the provisions of section 31 on take-over bids. A transitional provision was introduced with a view to ensuring that the state of the law would remain unchanged for shareholders who had prior to the introduction of the bill acquired shares in listed companies in reliance on section 31 then in force.

The transitional provision provides that shareholders who at the introduction of the bill hold more than one third of the votes and have a controlling influence shall only submit a take-over bid when they acquire more than 50 per cent of the votes or when one of the provisions of items 2-4 of section 31 is complied with. In order to be covered by the transitional provision the shareholder should have reported its holding of shares to the Copenhagen Stock Exchange by 1 August 1999 and the Exchange should have verified that the shareholder is subject to the provisions of the 1st clause and has confirmed this to the shareholder.

In the spring of 2000, a shareholder wrote to the Danish Securities Council and stated that he via a company believed to be covered by the transitional provision. From the letter it appeared that the shareholder held approx. 42 per cent of the share capital in a listed company as at 12 March 1999. According to the information received the reason for the late report was an oversight on his part.

The Council sent the letter to the Copenhagen Stock Exchange for further action.

The transitional provision will only take effect where the Copenhagen Stock Exchange has been notified before 1 August 1999, and there is no statutory basis for exemption from this deadline, the Copenhagen Stock Exchange informed the shareholder, consequently, his application was refused.

Moreover, the Exchange informed the shareholder that his shareholding of approx. 42 per cent in the listed company was subject to section 31 (1), item 5.

Decisions and Statements, May 2000

1. Take-over bid – one shareholder

The Copenhagen Stock Exchange received a notice from a shareholder, who announced that he had acquired 20 per cent of the shares and votes in a listed company. Later that day, the Exchange received a notice from another shareholder, who announced that he had acquired 16.50 per cent of the shares and votes in the same company.

Section 31 of the Danish Securities Trading Act provides that where 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 such transfer involves that the acquirer

1. will hold the majority of voting rights in the company,

2. becomes entitled to appoint or di8smiss a majority of the company's members of the Board of Directors,
3. obtains the right to exercise a controlling influence over the company according to the articles of association or otherwise in agreement with the company, or
4. according to agreement with other shareholders will control the majority of voting rights in the company.

In order to be able to assess whether the two shareholders were to be deemed one shareholder within the meaning of section 31 of the Danish Securities Trading Act, or whether the two shareholders had entered into any agreements that would result in an obligation to submit a take-over bid, the Copenhagen Stock Exchange asked each of the two shareholders to inform the Exchange of the real identity behind the shareholder in question, both in respect of ownership and influence. Moreover, the Exchange asked each of the two shareholders to inform the Exchange whether they were connected in any way.

Each of the two shareholders informed the Exchange of the real identity behind the two shareholders, and they also stated that there was no connection between them. On the existing basis the Exchange did not find that the two shareholders were to be deemed one shareholder within the meaning of section 31 of the Danish Securities Trading Act, consequently, there was no reason for further inquiry.

2. The term "recognised, international auditing company" of Rule 20 (6)

An accounting firm asked the Copenhagen Stock Exchange for an amplification of Rule 20 (6) of the Rules Governing Issuers of Securities Listed on the Copenhagen Stock Exchange. The accounting firm asked how the Exchange would construe "recognised, international auditing company", and in which cases it must be stated if not all the companies of the group are audited by the parent company's auditing companies or their foreign associates or by a recognised, international auditing company.

Rule 20 (6) provides that if not all companies of a group in which a Danish listed company is the parent company are audited by at least one of the parent company's auditing companies or their foreign associates or by a recognised, international auditing company, the accounts shall state this.

The wording "recognised, international auditing company" indicates that two conditions must be met, viz. that it is a recognised auditing company and that it must engage in international operations. The auditing company in question must be of a certain size, especially within its business area, it must engage in international co-operation of a certain character and firmness, typically by virtue of representative offices or correspondent offices in other countries than the country of origin. Moreover, the auditing company must receive general recognition and enjoy confidence in the countries where it operates. The term "foreign associates" implies that close co-operation exists between the foreign associates, and that certain harmonised policies, methods and procedures are applied to ensure a certain, high quality of the audit performed.

Foreign subsidiaries may be relieved of the duty to perform an audit or be audited by a "Steuerberater" etc., and as a consequence of the size and importance of the companies, the work with a view to incorporating the companies into the consolidated accounts may instead be organised so that a review is made or some other verification by the parent company's auditors or the foreign associates of the auditors of the parent company. In such cases the Exchange does not find that it must be stated in the annual accounts that the annual accounts of the subsidiary are not audited by at least one of the parent company's auditing companies or their foreign associates or by a recognised, international auditing company.

If the subsidiary is of a certain importance it must be stated in the annual accounts that the annual accounts of the subsidiary are not audited by at least one of the parent company's

auditing companies or their foreign associates or by a recognised, international auditing company. In this connection it will probably be natural to disclose that a review or other verification has been made by the parent company's auditors or the foreign associates of the auditors of the parent company, where this is the case. The Exchange finds that the name of the foreign subsidiary shall appear from the annual accounts. However, the level of importance must always be based on an assessment in each specific case, an assessment which must be made by the management of the listed company in consultation with the auditors appointed by the general meeting.

3. Timing of publication of semi-annual report - the Board's transaction of business - own shares

The Copenhagen Stock Exchange received a company's semi-annual report for 1999/2000 at 08:59. The announcement stated that the semi-annual report had been approved by the company's Board of Directors the day before.

The Copenhagen Stock Exchange asked the company to explain why the semi-annual report had not been published until the day after the Board meeting had taken place. Moreover, the Exchange requested information on the time of the opening of the discussion of the semi-annual report and the exact time of the closing of this item on the agenda.

The company replied that the semi-annual report had not been approved until after the Exchange had closed and, consequently, the company found it expedient to postpone publication to the following morning.

Pursuant to Rule 24 of the Rules Governing Issuers of Securities Listed on the Copenhagen Stock Exchange the semi-annual report must be published immediately after board approval. Thus publication cannot await the opening of the trading systems of the Exchange.

The Exchange reprimanded the company for having failed to publish the semi-annual report for 1999/2000 immediately after board approval.

Moreover, from the semi-annual report it appeared that the company had acquired its own shares, and as a consequence the company's share holding now amounted to 2.01 per cent. In the annual accounts for 1998/1999 the company had announced that the total holding of own shares amounted to 1.9 per cent of the share capital.

Pursuant to section 28 of the Danish Securities Trading Act a listed company shall immediately notify the Exchange about the company's and its subsidiaries' total share holdings in the company, if the nominal value of such holdings accounts for 2 per cent or more of the company's share capital.

Consequently, the Copenhagen Stock Exchange told the company to observe this provision and the requirement that accounts must be published immediately after board approval.

Decisions and Statements, April 2000

1. Request for extension of deadline for publication of preliminary announcement of annual results

A company asked the Copenhagen Stock Exchange for an extension of the deadline so that the company’s preliminary announcement of its annual accounts for 1999 should not be published until five weeks after the expiry of the deadline on 31 March 2000. The reason for this request was that the accounts of the company’s subsidiaries were not yet available.

Pursuant to Rule 54 of the Rules governing issuers of securities listed on the Copenhagen Stock Exchange A/S, the Exchange may in special circumstances grant an exemption from these rules, including the deadline for publication of the preliminary announcement of annual results.

The Copenhagen Stock Exchange found the circumstances insufficiently documented to substantiate an extension of the deadline, consequently, the Exchange informed the company that based on the above circumstances the Exchange could not grant its request.

The company submitted a new request with information on the reason for the delay in the preparation of the accounts of the foreign subsidiaries. Moreover, the company stated that the publication of a preliminary announcement of the annual accounts within the 3-month deadline would not give a true view of the company's situation, including a true and fair view of the results and especially the net capital. According to the company such an announcement would result in extreme fluctuations in the company's share price.

Against this background the Copenhagen Stock Exchange allowed the company to postpone the publication until the end of April 2000, but the grant was provided on the condition that the company would prepare and publish the preliminary announcement of the annual accounts before 30 April 2000, if possible.

The Exchange made it a condition that the company should publish an announcement not later than the day when the preliminary announcement of the annual accounts should originally have been published with information on the extension of the deadline and the reason as well as the development of the international project, which was the reason why the foreign subsidiaries had not yet prepared the annual accounts for 1999. Such an announcement was published on the day when the preliminary announcement of the annual accounts should originally have been published.

2. Delayed publication of preliminary announcement of the annual accounts

Pursuant to Rule 23(5) of the Rules governing issuers of securities listed on the Copenhagen Stock Exchange A/S the preliminary announcement of the annual accounts must be published not later than three months after the closing of the financial year.

On 3 April 2000, the Exchange noticed that a company that uses the calendar year as financial year had not yet published a preliminary announcement of its annual accounts for 1999. The Copenhagen Stock Exchange requested the company to immediately publish the preliminary announcement of its annual accounts, moreover, the company was transferred to the observation list. On 4 April 2000, the company published a preliminary announcement of its annual accounts and the company's shares were subsequently removed from the observation list.

The Copenhagen Stock Exchange reprimanded the company for having failed to publish the preliminary announcement of its annual accounts for 1999 within the fixed 3-month time limit.

Decisions and Statements, March 2000

1. Take-over bid – control within the family

In pursuance of section 29 of the Danish Securities Trading Act, the Copenhagen Stock Exchange received an announcement from a shareholder who is also the chairman of the Board of the company in question. It appeared from the announcement that the chairman now held 41 per cent of the share capital of the company. However, it did not appear from the announcement – which was published two minutes after the publication of the

company's interim report – whether this shareholding was the result of an acquisition or a sale. It was subsequently announced that the shareholding was the result of an acquisition of shares. The Copenhagen Stock Exchange informed the chairman that where a shareholding in a listed company is transferred and the transfer means that the acquirer will be able to exercise a controlling influence over the company and will hold more than one third of the voting rights, the acquirer must offer to buy the outstanding shares from the remaining shareholders within four weeks.

The Copenhagen Stock Exchange was informed that the chairman, his wife and his children had held 69 per cent of the share capital in the company ever since the company went public. Moreover, the family had subsequently regulated the ownership structure through a shareholders' agreement, which stipulated that any transfer exceeding 5 per cent of a shareholder's holding of shares in one calendar year will automatically give the other members of the family a pre-emption right.

The Copenhagen Stock Exchange received an announcement signed by all the members of the family, which confirmed that since the listing of the company, they

- had in every respect acted as one shareholder in matters concerning the family's shareholding in the company,
- had in agreement voted as one shareholder in matters regarding the family's shareholding in the company,
- considered themselves as one shareholder in the company.

Finally, the Copenhagen Stock Exchange received three copies of the minutes of the company's general meetings for the last three years.

The Copenhagen Stock Exchange informed the chairman that based on the information available the Exchange found that the members of the family should be regarded as one shareholder as defined in section 31 of the Danish Securities Trading Act. The Exchange based its opinion on the following:

- the fact that each individual member of the family had declared that they had in every respect acted and voted as one shareholder in matters concerning the family's shareholding in the company,
- the fact that the existing shareholders' agreement and the minutes of the company's general meetings for the last three years support the case and
- that acquisition by inheritance is exempt from the mandatory bid of section 31of the Danish Securities Trading Act.

Consequently, the Exchange found that the chairman's acquisition of shares did not require him to make an offer to redeem the minority shareholders under section 31 of the Danish Securities Trading Act.

As regards the shareholders' agreement the Copenhagen Stock Exchange directed the family's attention to section 10 of the Danish Securities Council's Executive Order No. 827 of 10 November 1999, which provides that shareholders in a listed company covered by section 29 of the Danish Securities Trading Act shall immediately publish information about any conditions in shareholders' agreements which may affect the free negotiability of the shares or which may have a significant effect on price-fixing. Since the above seems to apply to the shareholders' agreement in question the Exchange requested of the family that it immediately published the contents of the shareholders' agreement. The Copenhagen Stock Exchange reprimanded the family for having failed to publish the contents of the agreement immediately after it had been concluded.

The Copenhagen Stock Exchange also reprimanded the chairman for having failed to state in the announcement he had published whether the shareholding was the result of an acquisition or sale.

Moreover, the Copenhagen Stock Exchange noted that when trading in the company's shares on the day of the publication of the company's interim report the chairman had apparently violated the internal rules laid down by the company, which provide that the management is only allowed to trade in the company's shares during the six weeks after the publication of a preliminary announcement of financial results. The Exchange informed the chairman of the inappropriateness of the situation.

2. Information on the management's expectations for the future

The Copenhagen Stock Exchange received a company's preliminary announcement of the annual accounts for 1999. Commenting on the outlook for the accounting year 2000, the company only stated that it expected the heavy investments mentioned in the preliminary announcement to generate a profit and therefore the company forecasted a moderate increase in the turnover and a significantly improved result for the year.

Rule 25 of the Rules Governing Issuers of Securities Listed on the Copenhagen Stock Exchange provides that accounts and preliminary announcements of accounts shall contain information on the management's expectations for the current year's financial development of the company. Such announcements must contain information on expectations for the level of activities and results.

The Exchange found that the above-mentioned expectations for the accounting year 2000 did not meet the requirements of Rule 25 and, consequently, the Exchange requested of the company that it promptly published an announcement stating the management's expectations for the level of activities and result for the accounting year 2000.

The following day, the company published an elaborate announcement from which it appeared that the expected level of activities would result in a moderate increase in the turnover and that the management expected pre-tax profits to amount to some DKK 10 million.

Decisions and Statements, February 2000

1. Requirements for the contents of quarterly reports published by banks

On 1 October 1999, the Copenhagen Stock Exchange issued new rules with a stronger recommendation to the listed companies to publish interim reports about activities and results for the first three and nine months of every accounting year. Section 24 of the Rules governing issuers of securities listed on the Copenhagen Stock Exchange provides that quarterly reports must be in compliance with the rules regulating contents and time requirements applicable to the publication of semi-annual reports.

In this connection the Copenhagen Stock Exchange was asked whether these rules had been checked with the Danish Financial Supervisory Authority's requirement that in addition to profit and loss account, balance sheet and off-balance sheet items, a bank's semi-annual report must contain notes, which means that a quarterly report published by a bank must contain notes in order to be referred to as a quarterly report. The Copenhagen Stock Exchange replied that in the opinion of the Exchange quarterly reports published by a bank need not contain notes in order to be referred to as quarterly reports.

2. Exemption from comparative figures in semi-annual report

A company asked to be exempted from having to publish comparative figures for the 1st half of 1998/1999 in the company's semi-annual report for 1999/2000.

The reason for this request was that a newly realised merger and two major acquisitions had resulted in substantial structural changes and required a change in the accounting policies and, consequently, the informative value of such comparative figures would be rather limited.

Against this background the Exchange decided to grant the company exemption from the obligation to publish comparative figures in the semi-annual report for 1999/2000. The exemption would be granted provided that the reason for the exemption was clearly stated in the semi-annual report and that the comparative figures were replaced by a verbal description.

3. Subscription form downloadable via the Internet

The Copenhagen Stock Exchange became aware that in connection with an offering of units the unit trust had made a subscription form available at its home page so that investors could use this form to subscribe for units throughout the subscription period.

Since subscription for securities must be made on the basis of a prospectus the unit trust was asked to incorporate the subscription form in the downloadable prospectus in connection with future listings of new units.

The Exchange referred to section 3.4 of the Guidelines on securities listing on the Copenhagen Stock Exchange A/S, which provides that the subscription form must be appended to the prospectus and cannot be supplied as a single copy.

4. Timing of publication of preliminary announcement of annual results – the Board of Directors' transaction of business

The Copenhagen Stock Exchange received a company's preliminary announcement of its annual results for 1999 a day early. The reason for this was that the company had placed a closed version of the announcement on its web site and subsequently suspected that someone had had access to the accounts.

The Exchange asked the company for an explanation of the course of events leading up to the publication of the preliminary announcement of the annual accounts. Moreover, the company was asked to inform the Exchange of the time of the opening of the discussion of the accounts and the exact time of the closing of this item on the agenda. The company should also disclose the exact time of the publication of the annual accounts on the web site. The company was asked to explain how this could happen and state the measures taken to prevent information about the annual accounts from being accessible to the general public prior to publication.

From the company's reply it appeared that the Board of Directors had approved the annual accounts and the preliminary announcement of the annual accounts at approx. 10:45 and that later in the day a meeting of representatives had been held at which the preliminary announcement of the annual accounts had been on the agenda in accordance with established practice. Since the opening and closing of the meeting of representatives vary from year to year the publication of the preliminary announcement of the annual accounts had been scheduled for the following morning.

Moreover, the company stated that a closed version of a text commenting on the results for 1999 had been placed on the company's web site. Subsequently, the company became aware that the text had actually been accessible to the public from 15:10 to 15:38, and hence the publication of the preliminary announcement was initiated.

Pursuant to section 23 of the Rules governing issuers of securities listed on the Copenhagen Stock Exchange A/S a preliminary announcement of the annual results must be published immediately after board approval of the annual accounts.

The Copenhagen Stock Exchange stated that in general the publication of a preliminary announcement of the annual results which has been approved by the company's board of directors can not await presentation to the representatives or any other committee with no power to discuss or approve preliminary announcements of annual results.

From the company's letter to the Copenhagen Stock Exchange it appeared that the committee of representatives was not empowered to discuss or approve the accounts of the company, cf. the Articles of Association of the company.

The Copenhagen Stock Exchange reprimanded the company for failing to publish the preliminary announcement of its annual results for 1999 immediately after board approval.

Furthermore, the Exchange reprimanded the company for having placed information about the company's results on the company's web site prior to the publication via the Copenhagen Stock Exchange.

5. Timing of publication of preliminary announcement of annual results – the Board of Directors' transaction of business

The Copenhagen Stock Exchange received a company's preliminary announcement of its annual results at 8:00. It appeared from the announcement that the annual accounts had been considered and approved at the meeting of the company's board of directors the day before.

The Copenhagen Stock Exchange asked the company to explain why the preliminary announcement of the annual results had not been published on the day of the board meeting. Moreover, the company was asked to inform the Exchange of the time at which the accounts were transacted at the board meeting and the exact time of the closing of this item on the agenda.

The company replied that the annual accounts had been approved at 15:30 and that a meeting of representatives had been held in continuation hereof at which the item "presentation of the annual accounts" had been closed at approx. 17:30. Since the presentation of the accounts was not concluded until the Exchange had closed, the company decided to postpone publication to the following morning.

Pursuant to section 23 of the Rules governing issuers of securities listed on the Copenhagen Stock Exchange A/S a preliminary announcement of the annual results must be published immediately after board approval of the annual accounts.

The Copenhagen Stock Exchange stated that in general the publication of a preliminary announcement of the annual results which has been approved by the company's board of directors can not await presentation to the representatives or any other committee with no power to discuss or approve preliminary announcements of annual results.

From the company's letter to the Copenhagen Stock Exchange it appeared that the committee of representatives was not empowered to discuss or approve the accounts of the company, cf. the Articles of Association of the company.

The Copenhagen Stock Exchange reprimanded the company for failing to publish the preliminary announcement of its annual results for 1999 immediately after board approval.

Decisions and Statements, January 2000

1. Company and CEO fined for having violated section 27(1) of the Danish Securities Trading Act

As mentioned under 1.17 of "Decisions and Statements 1996", the Copenhagen Stock Exchange at the beginning of November 1996, received a listed company's preliminary announcement of its results for 1995/96, which showed a pre-tax loss of DKK 114 million, down from a pre-tax profit of DKK 164 million a year earlier. The company's semi-annual report, which was published in mid-April 1996, forecasted "a profit for the year, though somewhat below last year's level". At mid-September 1996, the expectations for 1995/96 were adjusted downwards to "below what was previously forecasted". Having listened to the company's comments, the Copenhagen Stock Exchange reprimanded the company for having failed to adjust expectations downwards prior to the publication of the preliminary announcement of the annual results. Moreover, the Copenhagen Stock Exchange reprimanded the company for not having stated the size of the company's downward adjustment in its stock exchange announcement from mid-September 1996. The Exchange published the reprimand.

The factors that caused the Exchange to publicly reprimand the company later meant that the company and the then CEO were charged with having violated section 27(1) of the Danish Securities Trading Act

- when in the period from mid-August to mid-September 1996 the company and CEO had failed to inform the Exchange of essential aspects concerning the financial position of the company which may be assumed to be of significance to the pricing of the company's shares irrespective of the Board's decision to notify the Exchange in mid-August 1996, and
- when in mid-September 1996 the company and CEO had furnished the Copenhagen Stock Exchange with information about the company's position that was misleading in that it diverged greatly from the information available to the management of the company.

The court found the accused guilty as charged in accordance with their confessions, which were confirmed by other information available on the case. The company was fined DKK 100,000 and the CEO was fined DKK 25,000 or sentenced to 10 days' imprisonment in lieu of the fine.

It appears from the reasoning of the court that in order to ensure a high degree of confidence in securities trading in Denmark it must be deemed important that the listed companies carefully observe the provisions of the law governing the disclosure requirements. When fixing the size of the fine, the court attached great importance to the fact that the case involved delay and failure to disclose information to the Copenhagen Stock Exchange about a serious cut in the company's expected result for the year, which meant that the price of the company's shares dropped from 400 to 370 in connection with the publication of the preliminary announcement of the annual results at mid-September 1996 and the market value fell from 410 to 300 in connection with the presentation of the annual accounts at the beginning of November 1996. Potential shareholders were thus exposed to a high degree of risk.

At the time of sentencing the company was no longer listed on the Copenhagen Stock Exchange.

2. Take-over bids – improved conditions – account from the board

Pursuant to the Danish Securities Council's Executive Order on take-over bids an offeror that has made an offer to buy the shares of a listed company may at any time until the expiry of the period during which the offer is open amend the terms attaching to the offer if this constitutes an improvement of the terms offered for the offerees. The board of directors of the listed company shall, within seven days after the publication of the amending document draw up and publish an additional account for the shareholders of the company on the amendments which have been incorporated into the offer document. This shall include giving an account of the advantages and disadvantages of the amendments made to the offer document.

According to the Copenhagen Stock Exchange this also applies in cases where the offeror merely extends the period during which the offer is open. In such cases the board of directors of the listed company need only publish an announcement that refers to the original published account, if the extension of the period does not give rise to any further comments.