



# OMX Nordic Exchange Copenhagens Decisions and Statements in 2007

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## January

### 1. Allotment of share options – time of publication

A listed company published an announcement about the introduction of an options programme for the CEO of the company.

The Copenhagen Stock Exchange asked the company to explain why it had not published an announcement about the options programme at the time of the decision to introduce an options programme in compliance with Rule 19 of the Disclosure requirements for issuers of shares.

It appeared from the company's account that the company announcement was not published until this late date because of the Christmas holidays as the value of the schemes had to be computed prior to publication.

Rule 19 of the Disclosure requirements for issuers of shares on the Copenhagen Stock Exchange A/S provides that the Copenhagen Stock Exchange shall be notified of any decision to introduce share-based pay programmes as soon as possible. The announcement must, among other things, contain information on the type of the share-based pay programme, the group of persons covered by the programme, broken down by supervisory board, executive board, managerial staff and other employees, the time of the grant, the total number of underlying shares in the programme, and the distribution hereof on the supervisory board, executive board, managerial staff and other employees. Moreover, the announcement must contain information on the objectives on which the share-based grant is based, the period within which the programme is open, the exercise price, any terms and conditions that the share-based grant is subject to, the market value of the share-based grant, including a description of how the market value has been computed, and the most significant preconditions.

Against this background the Copenhagen Stock Exchange reprimanded the company for having failed to publish an announcement pursuant to Rule 19 of the Disclosure requirements for issuers of shares, when the decision to introduce the share option programme was made.

### 2. Allotment of share options – failure to provide information

A listed company published an announcement about allotment of share options to the executive board of the company.

The Copenhagen Stock Exchange asked the company to explain why the announcement did not contain the information required by Rule 19 of the Disclosure requirements for issuers of shares on the Copenhagen Stock Exchange A/S. Moreover, the Copenhagen Stock Exchange requested the company to immediately issue an announcement containing the above information in pursuance of Rule 19.

Rule 19 of the Disclosure requirements for issuers of shares on the Copenhagen Stock Exchange A/S provides that the Copenhagen Stock Exchange shall be notified of any decision to introduce share-based pay programmes as soon as possible. The announcement must, among other things, contain information on the type of the share-based pay programme, the group of persons covered by the programme, broken down by supervisory board, executive board, managerial staff and other employees, the time of the grant, the total number of underlying shares in the programme, and the distribution hereof on the supervisory board, executive board, managerial staff and other employees.

Moreover, the announcement must contain information on the objectives on which the share-based grant is based, the period within which the programme is open, the exercise price, any terms and conditions that the share-based grant is subject to, the market value of the share-based grant, including a description of how the market value has been computed, and the most significant preconditions.

Against this background, the Copenhagen Stock Exchange reprimanded the company for having failed to publish an announcement containing all the information required by Rule 19 of the Disclosure requirements for issuers of shares.

### **3. Preliminary announcement of financial statements – lack of approval and audit of the financial statements**

A listed company released a preliminary announcement of its financial statements, and it appeared from the management statement and the auditors' report that the preliminary announcement of the financial statements was published on the basis of a not yet approved and audited annual report.

The Copenhagen Stock Exchange requested the company to explain how the supervisory board could publish a preliminary announcement of the financial statements when no approved and audited annual report existed.

It appeared from the company's account that the supervisory board had been of the opinion that the market should have the information that was released in the preliminary announcement of the financial statements as the annual report was to a wide extent finished. Moreover, prior to the publication, the auditors of the company had stated that they did not expect to require supplementary information or render a qualified opinion.

Moreover, it appeared from the account that the executive board was of the opinion that the final annual report would not deviate significantly from the preliminary announcement of the financial statements as no changes were expected in the results, equity or total cash flow. The annual report, which was later published by the company, showed that the profit for the year, the equity and the total cash flow remained unchanged compared with the preliminary announcement of the financial statements.

Pursuant to Rule 26 and Schedule B of the Disclosure requirements for issuers of shares on the Copenhagen Stock Exchange A/S the preliminary announcement of the financial statements must be published on the basis of an approved and audited annual report.

Against this background, the Copenhagen Stock Exchange reprimanded the company for having failed to publish a preliminary announcement of the financial statements in compliance with Rule 26 of the Disclosure requirements for issuers of shares on the basis of an approved and audited annual report.

### **4. Preliminary announcement of financial statements – descriptions of management changes**

A listed company published a preliminary announcement of its financial statements, which, among other things, described a plan for the company's organisation and strategy. One of the elements of

the plan involved changes in the management, which had taken up their duties the month before, which had been announced in a separate company announcement.

As the press had questioned whether the management changes described had been announced correctly, the company asked for the Exchange's opinion.

The Exchange informed the company that on the basis of the information provided it found that the management changes were adequately described in the preliminary announcement of the financial statements. Moreover, the Exchange found that the press had not reported information which was not available in the preliminary announcement of the financial statements.

However, the Exchange was of the opinion that the company could have considered whether to highlight the management changes even more in the preliminary announcement of the financial statements in the light of the material price-sensitive effect that the appointment of the existing management had had the month before. Since the changes were described clearly in the preliminary announcement of the financial statements and this was not a correction of a previous announcement but merely a new role which had been approved by the supervisory board immediately before the publication of the preliminary announcement of the financial statements as an element of a number of strategic changes, the Exchange was of the opinion that the company had satisfied the disclosure requirements.

The Exchange's statement was provided on the basis of the following rules:

A listed company shall as soon as possible publish information on essential aspects concerning the company which may be assumed to be of significance to the pricing of the securities. Publication via the Copenhagen Stock Exchange shall take place at least simultaneously with any other publication.

Moreover, a company is required to ensure that everybody has equal access to price-sensitive information and that no unauthorised party gets access to such information before it is published via the Copenhagen Stock Exchange.

These obligations are imposed by section 27 of the Danish Securities Trading Act, the observance of which the Exchange shall ensure pursuant to the powers delegated by the Danish Financial Supervisory Authority under the Executive Order on delegation. These obligations are, moreover, imposed by Rules 4 and 11 of the Disclosure requirements for issuers of shares on the Copenhagen Stock Exchange.

Also, Rule 17 of the Disclosure requirements for issuers of shares on the Copenhagen Stock Exchange provides that all significant changes in the composition of the managerial staff shall be communicated to the Exchange as soon as possible.

Finally, Rule 14 of the Disclosure requirements for issuers of shares on the Copenhagen Stock Exchange provides that all announcements shall begin with a summary and the most important information shall be stated first.

## **February**

### **No Decisions and Statements in February**

## March

### 1. Publication of information on ongoing sales process

The Copenhagen Stock Exchange noticed that an article in a daily paper stated that a listed company was on the verge of selling a subsidiary, and a time frame and expected selling price were also mentioned.

The Copenhagen Stock Exchange contacted the company by telephone and was informed that the supervisory board had not made a decision on whether to sell the subsidiary and, consequently, no negotiations were pending at that time. Moreover, the Exchange was informed that no specific offer had been made and no sales agreement had been negotiated.

The listed company later published an announcement on the sale of the subsidiary in question.

Against this background the Exchange asked to company to explain the course of events in connection with the sale of the subsidiary as well as the considerations made by the supervisory board, on the basis of the article, concerning whether inside information had been passed on.

It appeared from the company's statement that, at the time of the article, a sales process had been launched, that the company had received indicative non-binding offers from potential buyers and that a process letter accompanied by a draft purchase agreement regarding the second round of the offer process had been sent to selected, potential buyers who were granted access to an electronic data room.

#### Legal basis

Pursuant to section 27(1) of the Danish Securities Trading Act, an issuer shall promptly inform the public of inside information as specified in section 34(2) if such information relates directly to the issuer's business. Inside information shall be made public immediately after the inside information is available.

Section 34(2) of the Danish Securities Trading Act provides that inside information is any information of a precise nature which has not been made public, relating to issuers of securities, securities or market conditions with respect to such securities and which, if it were made public, would be likely to have a significant effect on the price formation of one or more securities.

Information of a precise nature as specified in section 34(2) of the Danish Securities Trading Act means information which relates to circumstances that exist or are reasonably likely to come into existence, or an event that has occurred, or is reasonably likely to occur, and is sufficiently precise for a conclusion to be made regarding the effect of the relevant events or conditions on the price formation of the securities concerned, cf. section 34(3), para. 1.

Information which would be likely to have a significant effect on the price formation as specified in section 32(2) of the Danish Securities Trading Act means information a reasonable investor would be likely to use as part of the basis of his investment decisions, cf. section 34(3), para. 2.

Section 27(6) of the Danish Securities Trading Act provides that an issuer may under his own responsibility delay the public disclosure of inside information such as not to prejudice his legitimate interests provided that such delay would not be likely to mislead the public and the issuer is able to ensure the confidentiality of that information.

Legitimate interests may, in particular, relate to negotiations in course, or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure, cf. section 27(6), para. 1. of the Danish Securities Trading Act.

#### Opinion

Based on the directives, legislature, the legislative material and CESR's technical consulting, information on ongoing negotiations is considered inside information if the information is likely to have a significant effect on the price formation of the securities. This applies irrespective of whether there are any outstanding issues such as the price, execution of the transaction, etc.

The Exchange found that, at the time of the article, the negotiations concerning the sale of the subsidiary had taken such a definite form that they should be considered a reality, irrespective of the fact that uncertainties remained regarding the terms and execution of the transaction. Moreover, the Exchange found that, due to the size of the transaction, the relation to the company's strategic announcements and the company's own treatment of the information on the sale, the information had an effect on the price formation of the securities.

The listed company had treated the information on the ongoing negotiations as inside information and thus included employees and advisers with knowledge of the sales process on the company's list of insiders. And there is no doubt that, pursuant to section 35 of the Danish Securities Trading Act, it would not be permitted for anyone with knowledge about the sales process to buy or sell the company's shares just as information about the sales process could not be passed on pursuant to section 36 of the Danish Securities Trading Act.

Moreover, it was found that, under section 27(6) of the Danish Securities Trading Act, the listed company was entitled to delay the information about the ongoing negotiations in order not to prejudice its legitimate interests, cf. section 27(6), para. 1. However, this access to delay the information was based on the condition that the company was able to ensure the confidentiality of the negotiations.

Based to the close factual connection between the information provided in the article in question and the described status of the sale of the subsidiary, the Exchange found that it had not been possible to ensure that the information on the negotiations had been treated as confidential. Consequently, the company was no longer entitled to delay the publication of the inside information, cf. section 27(6) of the Danish Securities Trading Act.

#### Decision

Against this background and pursuant to section 27 of the Danish Securities Trading Act, the Exchange reprimanded the company for having failed to publish information on the sales process regarding the subsidiary in a company announcement when the negotiations had been reported in the article in question.

## April

### 1. Information about capital increase

A listed company issued a company announcement about a coming capital increase.

From the announcement it appeared that the decision to increase the capital was made by the supervisory board some time before the release of the announcement.

A listed company shall as soon as possible publish information about price-sensitive matters. This obligation is imposed by section 27 of the Danish Securities Trading Act, the observance of which the Exchange shall ensure pursuant to the powers delegated by the Danish Financial Supervisory Authority under the Executive Order on delegation. Moreover, this is provided by Rule 16 of the disclosure requirements for issuers of shares on the Copenhagen Stock Exchange.

Rule 22 of the disclosure requirements for issuers of shares on the Copenhagen Stock Exchange also provides that:

*”Any actual or proposed change in the share capital of a company shall be communicated as soon as possible to the Copenhagen Stock Exchange. Similarly, the Copenhagen Stock Exchange shall be informed as soon as possible of the issuing of bonds, convertible bonds, warrants, etc., as well as of the raising of subordinated resources/loan capital, etc.*

*(2) All changes in the capital structure of a company shall be arranged so that any announcement to that effect is not published immediately before or after the publication of preliminary announcements of results or annual reports and accounts.*

*(3) Any proposal to increase the share capital of a company shall contain information as to whether existing shareholders or any other parties are granted pre-emption rights, or whether the issue is offered to the general public for free subscription.*

*(4) The announcement submitted to the Copenhagen Stock Exchange shall at least contain information about:*

*the volume of the intended capital increase,*

*whether existing shareholders do or do not have pre-emption rights and whether the increase in*

*share capital is made through a direct placement or a public offering,*

*subscription conditions,*

*subscription price and*

*the time of the share capital increase.*

*(5) In the event of non-capital issues, where the shares are immediately resold to a third party, or in the event of direct placements, notification of the period during which the subscription price shall be fixed shall be given not later than two days before the commencement of the subscription period.”*

Against this background, the Copenhagen Stock Exchange asked the company to explain why an announcement about the capital increase was not issued immediately upon board decision.

According to the company’s statement the company had sent a draft of the announcement to the Exchange immediately upon board decision.

However, the company was obliged to publish an announcement about the change in the share capital of the company as soon as possible upon board decision. This is provided by section 27 of the Danish Securities Trading Act and by the disclosure requirements for issuers of shares on the Copenhagen Stock Exchange.



Moreover, the company should publish an announcement pursuant to Rule 4 of Prospectuses and issuing conditions at the admission of shares to listing on the Copenhagen Stock Exchange. This announcement must be approved by the Exchange and published at least five trading days prior to the first day of listing. However, such announcement does not replace the announcement to be issued after the decision has been made to increase the share capital.

Pursuant to section 27 of the Danish Securities Trading Act and Rules 16 and 22 of the Disclosure requirements for issuers of shares on the Copenhagen Stock Exchange A/S, the Exchange reprimanded the company for having failed to publish an announcement about the planned capital increase upon board decision.

## **2. Changed expectations for 2006 results and future results**

A listed company published an announcement which, according to the heading, was an announcement about the publication of a prospectus in connection with an issue with pre-emption rights and which – in accordance with the heading – was submitted as a prospectus announcement in the CNS system. However, on page two of the announcement it was stated that the company had changed its expectations for 2006 compared with the previously announced outlook and had new expectations for 2007. It was stated neither in the heading nor in the introduction that this announcement was not just a prospectus announcement.

Significant changes in the company's outlook in relation to the information published shall be communicated to the Exchange immediately after the changes have occurred. This obligation is imposed by section 27 of the Danish Securities Trading Act, the observance of which the Exchange shall ensure pursuant to the powers delegated by the Danish Financial Supervisory Authority under the Executive Order on delegation. Moreover, this is provided by Rule 31 of the disclosure requirements for issuers of shares on the Copenhagen Stock Exchange.

Finally, Rule 14 of the Disclosure requirements for issuers of shares on the Copenhagen Stock Exchange provides that all announcements shall begin with a summary and the most important information shall be stated first.

The Exchange asked to company to explain why it was not stated clearly in the announcement that this was not merely a prospectus announcement, but that the announcement also contained information on a changed outlook.

According to the company's statement the company did not find the changes to be significant and, consequently, they had not been highlighted in the prospectus announcement.

Pursuant to Rule 14 of the Disclosure requirements for issuers of shares on the Copenhagen Stock Exchange, the Exchange reprimanded the company for having failed to clearly state in the introduction that the announcement, in addition to information on the publication of a prospectus in connection with an issue with pre-emption rights, also contained information about a changed outlook for 2006.

## **May**

### **No Decisions and Statements in May**

## June

### 1. Late publication by a development fund

A listed company published an announcement one day later than its partner in a development fund. The Copenhagen Stock Exchange therefore contacted the company and requested an explanation of the delay.

The reason for the Exchange's inquiry was that a listed company shall as soon as possible make public information on essential aspects concerning the company which may be assumed to be of significance to the pricing of the securities. Publication via the Copenhagen Stock Exchange shall take place at least simultaneously with any other publication.

This obligation is imposed by section 27 of the Danish Securities Trading Act, the observance of which the Exchange shall ensure pursuant to the powers delegated by the Danish Financial Supervisory Authority under the Executive Order on delegation. This obligation is, moreover, imposed by Rules 11 and 16 of the Disclosure requirements for issuers of shares on the Copenhagen Stock Exchange.

Moreover, a listed company is required to ensure that everybody has equal access to price-sensitive information and that no unauthorised party gets access to such information before it is made public via the Copenhagen Stock Exchange. This is provided by Rule 4 of the disclosure requirements for issuers of shares on the Copenhagen Stock Exchange.

Therefore, the Exchange requested the company to give an account of why the company's announcement was not made public at least simultaneously with the publication by the partner.

The company explained that the agreement on the establishment of a development fund between the partner and the company was concluded on the day on which the partner had issued an announcement about the establishment and that the CEO of the company had mistakenly thought that a joint announcement had been issued. When this error was discovered the following day, the announcement was drawn up and made public.

In respect of the announcement about the establishment of a development fund between the partner and the company, the company itself was a party to this agreement and was obliged to make public an announcement as soon as possible after the entering into of the agreement and at least simultaneously with the partner.

The Exchange reprimanded the company for having failed to publish an announcement in compliance with section 27 of the Danish Securities Trading Act about the establishment of a development fund between the partner and the company immediately after the signing of the agreement and at least simultaneously with the partner.

## July

### No Decisions and Statements in July

## August

### **1. Deviation from the trading window because of publication of intrinsic value**

In connection with an application from an investment company which on a daily basis publishes intrinsic value, an inquiry was made for the Stock Exchange, concerning the opportunity of deviating from the rules regarding the trading windows.

It appears from section 9 in Disclosure requirements for issuers of shares listed on the Copenhagen Stock Exchange, that the internal rules shall contain a period, within which the persons included on the insider list are permitted to trade. The maximum length of this period is six weeks after each published interim report or preliminary announcement of annual results. Section 9(3) contains a possibility that the period, in which the persons included on the insider list are permitted to trade, shall not apply on special occasions and that a deviation from this period can occur in definite cases. Furthermore it appears from the comment to section 9 that the chairman of the board has to be informed immediately. The possibility of deviation from this can only be given as an exception and it always depends on the fact that the concerned person who trades, is not in possession of insider information.

In the light of this, the company inquired if deviation from the trading window could occur, provided that the chairman of the board approved of this, considering the daily publication of intrinsic value.

In the light of these valid rules, there was not a possibility for a general deviation from the trading window with the argument that the company publishes intrinsic values on a daily basis, in the opinion of the Stock Exchange.

### **2. Interim announcements do not open trading windows**

Surveillance has been requested to decide on, whether periodic statements covered by section 4 in the disclosure requirements for issuers, open up windows for managements trading in the company's shares.

According to section 9 in the disclosure requirements for issuers of securities on the Copenhagen Stock Exchange a listed company has to lay down a set of internal rules for the board members, general managers and other employees' access to, for their own or a third party's account, trade the company's issued and listed shares and connected financial instruments. In addition, it appears from section 9 (2) in disclosure requirements for issuers of securities on Copenhagen Stock Exchange, that the internal rules must contain a period of time within which the persons included on the insider-list, drawn up with reference to The Danish Securities Trading Act section 37 (4) can trade. This period can maximally be fixed at six weeks after the publication of either an interim report or an annual report.

According to The Danish Securities Act section 27 (8) an issuer of shares admitted to listing or trading on a stock exchange, an authorised market place or a similar regulated market has to publish a periodic statement within both the first and second half-year period of the financial year. The statement has to be published at least ten weeks after the beginning of the concerned half-year period and at the latest, six weeks before the end of the period.

According to section 4 (2) in the Executive order on disclosure requirements that the periodic statement shall provide an explanation of material events and transactions that have taken place during the relevant period and their impact on the financial position of the issuer and its controlled undertakings and a general description of the financial position and performance of the issuer and its controlled undertakings during the relevant period.

Surveillance was requested to decide on, whether a periodic statement, as defined in The Danish Securities Act section 27 (8), cf. the Executive order on disclosure requirements section 4, opens a trading window so that it is possible for the board members, general managers and other employees to trade with the company's listed shares and connected financial instruments.

The reason for this, is that only in situations such as this, the management of the company has had an opportunity to go through the total financial situation and estimated its expectations for the future. To open a trading window, it is demanded, that the content of the connecting announcement contains a financial statement and a balance sheet.

An announcement that only includes an adjustment of the company's expectations to the annual result does not provide an overall impression of the company's activity and result and does not constitute an announcement opening a trading window. The same applies to announcement in which the company only maintain the expectations to the annual result.

In the view of Surveillance, such interim reports will not open a trading window for the board members, general managers and other employees.

## **September**

### **1. Publication of interim report 2007**

A listed company contacted the Exchange with information that an extract of the financial data from the company's interim report 2007 had been made public in a document as a result of an external distribution error. The document had been distributed that same day, hours before the publication of the interim report – one day earlier than agreed and prior to the publication of the interim report.

The Exchange asked the company to explain why the interim report had not been published at the time when the extract of the financial data was ready for publication in the document. Moreover, the Exchange asked the company to give an account of the chain of events in connection with the printing and completion of the document.

The reason why the Exchange contacted the company is that a listed company must publish information about significant price-sensitive matters as soon as possible. Moreover, the company must ensure that everybody has equal access to such information and that publication pursuant to section 27a of the Danish Securities Trading Act always takes place at least simultaneously with any other publication. Inside information must generally not be passed on unless this is a normal part of the person's performance of his duty, task or function.

Moreover, Rule 25(3) of the Disclosure requirements for issuers of shares provides that the interim report must be made public immediately upon Board approval.

It appeared from the company's account that the company's interim report had been published immediately upon Board approval. Thus, the extract of the financial data included in the document in question was not ready for publication until after the Board meeting simultaneously with the company announcement. Moreover, it appeared that in case the Supervisory Board did not approve the interim report, the printed interim report as well as the document in question would be recalled. Finally, it was stated that the company had taken the necessary measures to prevent a future recurrence of this error.

Based on the company's account, OMX Nordic Exchange Copenhagen did not find reason to believe that the company had intended to distribute financial data that should have been released. However, the Exchange nevertheless expressed disapproval of the fact that the company's interim figures had been distributed in the document prior to publication. Finally, the Exchange called upon the company to take measures to prevent a recurrence of this type of incident.

## **2. Information in the press**

A listed company released an announcement about an offer regarding certain restructurings of the company that the company had received from a number of investors. Subsequently, further details about the offer were disclosed at a press conference and in articles and statements in the press.

Against this background, OMX Nordic Exchange Copenhagen told the company to be careful not to create uncertainty in the press about the company's shares. Moreover, the Exchange asked the company to consider whether the market needed information which had not been published.

Finally, the Exchange asked to company to explain why a number of details about the offer had been given at a press conference and not in a company announcement.

To ensure market efficiency, all market participants must have equal access to price-sensitive information from the listed companies and the market participants must be able to rely on that. It is also important that no listed company creates uncertainty about the pricing of the company's shares, e.g. via information in the media which has not been published in company announcements.

Therefore, a listed company must, as soon as possible, publish information on essential aspects concerning the company which may be assumed to be of significance to the pricing of the securities.

Moreover, a company is required to ensure that everybody has equal access to price-sensitive information and that no unauthorised party gets access to such information before it is published.

These obligations are imposed by section 27 of the Danish Securities Trading Act, the observance of which the Exchange must ensure pursuant to the powers delegated by the Danish Financial Supervisory Authority under the Executive Order on delegation. These obligations are, moreover, imposed by Rules 4 and 11 of the Disclosure requirements for issuers of shares on OMX Nordic Exchange Copenhagen.

It appeared from the company's account that the company had found that there was much uncertainty about whether the offer could actually be carried out. Moreover, the company felt that it was unable to consider the offer as several aspects needed to be completed first.

The group of investors subsequently held a press conference without the participation of representatives from the company, which, consequently, had no influence on the conference. It was at this conference that several details about the offer were disclosed, such as a management change and the size of the offer.

After the press conference, the company held a meeting with representatives of the group of investors. The company informed the investors that their behaviour in the press was highly unsatisfactory to the company as the group of investors had failed to observe current stock exchange rules and regulations. After the meeting, the company gave a brief oral statement to the representatives of the press and informed them that more information from the company would be in the form of a company announcement. The case was then discussed at an extraordinary Board meeting and a company announcement was subsequently released.



Based on the company's account, OMX found no reasons to take any further action. However, OMX found it regrettable that information, which had not been published pursuant to section 27 of the Danish Securities Trading Act, had reached the market.

OMX reminded the company that in future it must point out to potential partners that they must ensure that everybody has equal access to material information about the company which may be assumed to be of significance to the pricing of the company's securities and must secure that no unauthorised party gets access to such information before it is made public.

### **3. Information in the market**

OMX Nordic Exchange Copenhagen found rumours in a news medium that a listed company was about to be bought up and that the plan was to delist the company. At the same time, the price of the company's share rose.

The Exchange contacted the company, which stated that the company had not entered into any negotiations regarding a potential sale of parts of or the entire company and had not been contacted either. However, the company informed the Exchange that it was about to release an important announcement, which had nothing to do with the above, and that the company was not aware that any inside information had been leaked in this connection.

Against this background, OMX Nordic Exchange Copenhagen asked the company to comment on the rumours in the market, including whether the company had entered into negotiations regarding a sale of parts of or the entire company, negotiations regarding the acquisition of other companies or had been approached in any way. Moreover, OMX Nordic Exchange Copenhagen asked the company to decide whether the market needed information about the company and whether the company should release an announcement on the basis of the rumours in the market.

Finally, OMX Nordic Exchange Copenhagen asked the company to summarise the considerations made by the management concerning whether inside information about the case that the company expected to release an announcement about had been passed on.

The reason why the Exchange had contacted the company is that a listed company must publish information about significant price-sensitive matters as soon as possible. Moreover, the company must ensure that everybody has equal access to such information and that publication pursuant to section 27a of the Danish Securities Trading Act always takes place at least simultaneously with any other publication and that inside information must generally not be passed on unless this is a normal part of the person's performance of his duty, task or function.

These obligations are imposed by section 27 of the Danish Securities Trading Act, the observance of which OMX Nordic Exchange Copenhagen shall ensure pursuant to the powers delegated by the Danish Financial Supervisory Authority under the Executive Order on delegation. These obligations are, moreover, imposed by Rules 4, 11 and 16 of the Disclosure requirements for issuers of shares on OMX Nordic Exchange Copenhagen.

Section 27(6) of the Danish Securities Trading Act provides that a listed company may under its own responsibility delay the public disclosure of inside information such as not to prejudice the company's legitimate interests provided that such delay is not likely to mislead the public and the company is able to ensure the confidentiality of that information.

Legitimate interests may relate to negotiations in course, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure, cf. section 27(6) of the Danish Securities Trading Act.

According to the company, it was aware of the rumours that existed in the market and it dismissed any rumours of any such negotiations.

Moreover, the company stated that it did not feel that the market needed more information about the company, consequently, there was no need for any company announcement.

On the basis of the company's account regarding rumours about a sale of parts of or the entire company, negotiations regarding acquisition of other companies or any approaches to that effect, OMX found no reasons to take any further action.

#### **4. Information in the press prior to listing**

OMX Nordic Exchange Copenhagen found an article in a news medium in which the chairman of a company that had just made public a prospectus prior to a public offer and a planned stock exchange listing had apparently provided information about the company's negotiating processes, which deviated from the description in the prospectus.

To ensure market efficiency, all market participants must have equal access to price-sensitive information from the listed companies and the market participants must be able to rely on that.

The disclosure requirements apply from the time of application of listing. Therefore, a listed company that has applied for admission to listing must, as soon as possible, publish information on essential aspects concerning the company which may be assumed to be of significance to the pricing of its securities. Publication must always take place at least simultaneously with any other publication.

Moreover, a company is required to ensure that everybody has equal access to price-sensitive information and that no unauthorised party gets access to such information before it is made public.

These obligations are imposed by section 27 of the Danish Securities Trading Act, the observance of which OMX Nordic Exchange Copenhagen shall ensure pursuant to the powers delegated by the Danish Financial Supervisory Authority under the Executive Order on delegation. These obligations are, moreover, imposed by Rules 4, 11 and 16 of the Disclosure requirements for issuers of shares on OMX Nordic Exchange Copenhagen.

Therefore, OMX Nordic Exchange Copenhagen asked the company to consider the contents of the article, including compare it with the information provided in the prospectus.

It appeared from the company's account that the company was of the opinion that the news medium had over-interpreted information that the chairman of the company had given in an interview with another news medium.

The company also stated that the company's negotiating processes had not changed since the publication of the prospectus.

Based on the company's account, OMX found no reasons to take any further action.

However, OMX found reason to point out that it is regrettable that, in continuation of the publication of a prospectus, the chairman of the company made statements to the press which could potentially create uncertainty about the status of the company's negotiating processes.

## **5. Information in the press**

OMX Nordic Exchange Copenhagen found an article in the daily newspaper Børsen, from which it appeared that the company was ready for growth through mergers or acquisitions, and a number of potential takeover targets were mentioned. Moreover, the article stated that a major shareholder was willing to change his ownership and help the company raise capital, should the right merger or takeover target appear.

To ensure market efficiency, all market participants must have equal access to price-sensitive information from the listed companies and the market participants must be able to rely on that. It is also important that no listed company creates uncertainty about the pricing of the company's shares, e.g. via information in the media which has not been published in company announcements. Moreover, the company must ensure that everybody has equal access to such information and that publication pursuant to section 27a of the Danish Securities Trading Act always takes place at least simultaneously with any other publication.

These obligations are imposed by section 27 of the Danish Securities Trading Act, the observance of which OMX Nordic Exchange Copenhagen shall ensure pursuant to the powers delegated by the Danish Financial Supervisory Authority under the Executive Order on delegation. These obligations are, moreover, imposed by Rules 4, 11 and 16 of the Disclosure requirements for issuers of shares on OMX Nordic Exchange Copenhagen.

Based on the above information, OMX Nordic Exchange Copenhagen asked the company to consider whether this information had been made public before, whether the market needed more information from the company and whether the company should publish a clarifying announcement on the basis of the information in the article.

Moreover, OMX Nordic Exchange Copenhagen asked the company to summarise the considerations made by the company concerning whether price-sensitive or inside information had been passed on.

It appeared from the company's account that the company had previously presented the specific amount that constitutes the company's investment capacity and that they expected to reach the strategic growth targets through acquisition of companies and activities. It was also stated that due to the activities of the company, the natural takeover targets for the company were a small group of companies.

Based on the company's information, OMX Nordic Exchange Copenhagen found no reasons to take any further action.

## **6. Information in the market**

OMX Nordic Exchange Copenhagen found an article on the website of the daily newspaper Børsen, from which it appeared that a company would hold a press conference to present the company's new strategy. The specific details of a planned sale of more companies within the group were also mentioned.

To ensure market efficiency, all market participants must have equal access to price-sensitive information from the listed companies and the market participants must be able to rely on that. In this connection it is important to ensure that no unauthorised party gets access to such information and that no listed company creates uncertainty about the pricing of its shares, e.g. via information in the media about the sale of important companies within a group which has not been published in company announcements.



Therefore, a listed company must, as soon as possible, publish information on essential aspects concerning the company which may be assumed to be of significance to the pricing of its securities. Publication must always take place at least simultaneously with any other publication.

These obligations are imposed by section 27 of the Danish Securities Trading Act, the observance of which the Exchange must ensure pursuant to the powers delegated by the Danish Financial Supervisory Authority under the Executive Order on delegation. These obligations are, moreover, imposed by Rules 4, 11 and 16 of the Disclosure requirements for issuers of shares on OMX Nordic Exchange Copenhagen.

Therefore, the Exchange asked the company to explain if and to what extent the company had disclosed the details of the future strategy, including whether the information had been passed on to the press before the company issued a company announcement. Moreover, the Exchange asked the company to summarise the considerations made by the company concerning whether price-sensitive information had been passed on and what internal procedures the company had implemented to prevent dissemination of price-sensitive information.

It appeared from the company's account that many speculations about the company's strategic plan had been voiced, but that the specific rumours in the article contained a lot of incorrect information compared with the actual strategic plan.

Having reviewed the events, the company was of the opinion that the simultaneous release of an invitation to a press conference at a subsidiary had probably intensified the speculations about a possible sale of the subsidiary.

Based on the company's information, OMX Nordic Exchange Copenhagen found no reasons to take any further action.

However, the Exchange nevertheless expressed disapproval of the fact that invitations to press conferences were made public in a way that allowed market participants to speculate about the content due to the simultaneously announced press conference at the subsidiary.

Finally, the Exchange called upon the company to take measures to prevent a recurrence of this type of incident.

## **October**

### **1. Information in the press**

OMX Nordic Exchange Copenhagen noted that an article in the daily press contained information about the earnings profile, including breakdown into two business areas, of a company admitted to trading.

OMX Nordic Exchange Copenhagen asked the company to explain whether the information about the company's earnings profile had been made public on a previous occasion and whether it would be necessary for the company to issue an announcement on the basis of the information in the article.

Moreover, the Exchange asked the company to summarise the considerations made by the company concerning whether inside information had been passed on.

To ensure market efficiency, all market participants must have equal access to price-sensitive information from the companies admitted to trading and the market participants must be able to rely on that. It is also important that no company creates uncertainty about the pricing of the company's shares, e.g. via information in the media which has not been published in company announcements to the market. Moreover, the company must ensure that everybody has equal access to such information and that publication pursuant to section 27a of the Danish Securities Trading Act always takes place at least simultaneously with any other publication.

These obligations are imposed by section 27 of the Danish Securities Trading Act, the observance of which the Exchange must ensure pursuant to the powers delegated by the Danish Financial Supervisory Authority under the Executive Order on delegation. These obligations are, moreover, imposed by Rules 4, 11 and 16 of the Disclosure requirements for issuers of shares on OMX Nordic Exchange Copenhagen.

The company stated that the information had already been made public in the company's annual report. The information could be obtained by looking at the income broken down into business areas disclosed in the annual report and comparing this with the company's acquisitions within one business area, which was also publicly available information.

Moreover, the company stated in its letter to the Exchange that a company's earnings profile is not included on the list of examples of inside information of Rule 16 of the Disclosure requirements for issuers of shares. The comments to this provision include a number of examples of conditions that will generally have an impact on a company's business and which must, consequently, be made public if they may be assumed to be of significance to the pricing of the securities. In this connection the Exchange pointed out that the list of examples included under the disclosure requirements does not constitute an exhaustive list.

Based on the company's information, the Exchange found no reasons to take any further action.

## **2. Press conference and uncertainty in the market**

A company admitted to trading had sent out an invitation to a press conference. The topic of the press conference was not disclosed. In the period leading up to the press conference there was uncertainty in the market about the topic of the press conference, and speculations were circulating.

Immediately before the press conference began, the company published an announcement from which it appeared that an agreement on a new sponsor had been concluded and that this would be the topic of the press conference.

OMX Nordic Exchange Copenhagen asked the company to explain when the agreement on a new sponsor had been concluded and to explain the time of publication of the announcement. Moreover, the Exchange asked the company to specify its considerations behind the events taking place prior to the holding of the press conference, including the provision of information to the market.

To ensure market efficiency, all market participants must have equal access to price-sensitive information from the companies and the market participants must be able to rely on that. In this connection it is important to ensure that no unauthorised party gets access to such information and that no listed company creates uncertainty about the pricing of its shares.

Therefore, a listed company must, as soon as possible, publish information on essential aspects concerning the company which may be assumed to be of significance to the pricing of its securities.

These obligations are imposed by section 27 of the Danish Securities Trading Act, the observance of which the Exchange must ensure pursuant to the powers delegated by the Danish Financial Supervisory Authority under the Executive Order on delegation. This obligation is, moreover, imposed by Rules 4, 11 and 16 of the Disclosure requirements for issuers of shares on the Copenhagen Stock Exchange.

It appeared from the company's letter that the sponsor agreement was an agreement between several parties that had been concluded and signed by the parties about one hour prior to the holding of the press conference.

The Exchange informed the company that information about the conclusion and termination of sponsor agreements will generally always be considered price-sensitive. The company's procedures in connection with the publication of the new sponsor agreement had created uncertainty in the market.

Based on the company's statement, the Exchange took it that the agreement had been made public immediately before the publication of the announcement about the agreement.

The Exchange expressed disapproval of the fact that uncertainty had been created in the market about the topic of the press conference during the period from the invitation to the press conference and to the publication of the company announcement. This is in conflict with the equal treatment requirement set out in Rule 4 of the Disclosure requirements for issuers of shares.

The Exchange also informed the company that in connection with an invitation to a press conference about conditions that may be assumed to be of significance to the pricing of the company's shares information about such conditions must be made public at least simultaneously with the distribution of the invitations.

Thus, information covered by the disclosure requirements must be made public as soon as possible in accordance with the relevant rules. An invitation to a press conference, at which you wish to provide information about conditions covered by the disclosure requirements, cannot be announced until at least simultaneously with publication of such information. However, this does not apply to announcements of financial results announced in advance.

### **3. Information about acquisition**

A company admitted to trading issued a company announcement from which it appeared that the company had acquired another company. The announcement also stated that the acquisition would have no impact on the previously announced financial results for 2007. Otherwise, the announcement did not contain any information about the acquisition.

Rule 21 of the Disclosure requirements for issuers of shares provides that in the event that a company decides to increase or change its activities to a significant extent, the company shall, as soon as possible, publish an announcement with information about the acquisition, including, among other things, turnover, results, equity and number of staff, the reason for the acquisition, form of payment and, if possible, the price of the activities acquired.

The company had published the information about the acquisition in a company announcement as information that is covered by the disclosure requirements.

Against this background, OMX Nordic Exchange Copenhagen asked the company to explain why the company announcement did not contain any detailed information about the acquisition. The Ex-

change also asked the company to issue a supplementary announcement containing detailed information about the acquisition in accordance with Rule 21 of the Disclosure requirements for issuers of shares.

The company stated that it was of the opinion that the acquisition of the company may be assumed to have an impact on the pricing of the company's shares for strategic reasons and that it had, therefore, published an announcement about the acquisition.

However, the company did not find that this was a significant increase or change in its activities as the activity acquired was very modest and the activity was already represented in one of the company's business units. Moreover, the company stated that the turnover of the acquired company accounted for a very small percentage of the turnover of the company admitted to trading.

The Exchange found that the company's acquisition of the company did not constitute a significant increase or change in the activities as defined by Rule 21 of the Disclosure requirements for issuers of shares. Thus, the Exchange found no reasons to require that further information be published under Rule 21.

However, the Exchange expressed disapproval of the fact that – though the company announcement stated that the acquisition would have no impact on the previously announced financial results for 2007 – it was not possible to assess whether this was an acquisition of very modest activities on the basis of the information of the announcement. Thus, the Exchange asked the company to be more careful in the future when formulating announcements and make sure that they provide a basis for assessing the importance of the information given.

#### **4. Upward adjustment of expectations – time of publication**

A company admitted to trading issued an announcement with an upward adjustment of the company's expectations for the full-year results from a single-digit million figure to a three-digit million figure before tax.

Considering the current financial reporting to the management, which is presumed to take place, OMX Nordic Exchange Copenhagen asked the company to give an account of the current reporting to the company's management, including when the reporting had taken place and what the reporting had included. Moreover, OMX requested information about when the management of the company had realised that the financial results for the year had to be adjusted upwards.

To ensure market efficiency, all market participants must have equal access to price-sensitive information from the companies admitted to trading and the market participants must be able to rely on that. Therefore, a company must, as soon as possible, publish information on essential aspects concerning the company which may be assumed to be of significance to the pricing of its securities.

These obligations are imposed by section 27 of the Danish Securities Trading Act, the observance of which the Exchange must ensure pursuant to the powers delegated by the Danish Financial Supervisory Authority under the Executive Order on delegation. These obligations are, moreover, imposed by Rules 4, 11 and 16 of the Disclosure requirements for issuers of shares on OMX Nordic Exchange Copenhagen A/S.

Moreover, Rule 31 of the Disclosure requirements for issuers of shares provides that significant changes in the outlook in relation to the information published shall be communicated as soon as possible. This obligation applies even though it is not possible to calculate the expected results precisely at the time in question.

The company stated that the value adjustments made in connection with the presentation of the annual report were not known until the year had passed; consequently, the presentation of precise figures before the end of the year would be subject to great uncertainty. Moreover, the company stated that the valuation was not received until in connection with the preparation of the financial statements and after the company had reviewed the significant figures together with its auditors. The changed expectations were then published immediately.

The Exchange noted that the company had published the changed expectations immediately after they had been reviewed. Based on the company's information, the Exchange found no reasons to take any further action.

Moreover, the Exchange noted that the company's procedures had subsequently been changed so that, in future, the company would make announcements about significant value adjustments throughout the financial year.

#### **5. Coordination of publication of announcements**

A company admitted to trading on OMX Nordic Exchange Copenhagen issued an announcement from which it appeared that the company was negotiating with another company admitted to trading on another regulated market about the establishment of a consortium which should acquire the share capital in a third company. The announcement from the other company was published about 7 minutes prior to the publication of the announcement from the company admitted to trading on OMX Nordic Exchange Copenhagen. The information sent the company's shares soaring.

To ensure market efficiency, all market participants must have equal access to price-sensitive information from the companies admitted to trading and the market participants must be able to rely on that. It is also important that no company creates uncertainty about the pricing of the company's shares, e.g. via information in the media which has not been published in company announcements. Moreover, the company must ensure that everybody has equal access to such information and that publication pursuant to section 27a of the Danish Securities Trading Act always takes place at least simultaneously with any other publication.

These obligations are imposed by section 27 of the Danish Securities Trading Act, the observance of which OMX Nordic Exchange Copenhagen shall ensure pursuant to the powers delegated by the Danish Financial Supervisory Authority under the Executive Order on delegation. These obligations are, moreover, imposed by Rules 4, 11 and 16 of the Disclosure requirements for issuers of shares on OMX Nordic Exchange Copenhagen.

Against this background, the Exchange asked the company to explain how the information was made available prior to the company's publication and what initiatives the company had taken to coordinate the release of the announcement with the other company.

The company stated that the two companies which were negotiating the establishment of a consortium had agreed that the release of the company announcements to the exchange in Copenhagen and the other regulated market should take place simultaneously. However, the company admitted to trading on the exchange in Copenhagen had some technical problems with the release and, therefore, the announcement from the company admitted to trading on the exchange in Copenhagen was made public after the announcement from the other company.

The Exchange expressed disapproval of the fact that the company announcement was not made public at least simultaneously with the announcement from the other company as this is in conflict with the equal treatment principle of Rule 4 of the Disclosure requirements for issuers of shares.

Moreover, the Exchange noted that the company had taken measures to reduce the risk of such technical problems in the future.

The Exchange pointed out to the company that if a similar situation would, nevertheless, arise, the company should contact the Exchange so that trading in the company's shares could be halted until the information was released to the market.

## **November**

### **1. New distribution of tasks between the Danish Financial Supervisory Authority and the Exchange – disclosure requirements**

Until 1 November 2007, OMX Nordic Exchange Copenhagen decided cases on violation of the disclosure requirements of the Danish Securities Trading Act. On 1 November 2007, the delegation agreement between the Danish Financial Supervisory Authority and the Exchange was amended so that in future this competence will rest with the Danish Financial Supervisory Authority. This is a consequence of the new rules resulting from the implementation of the Directive on markets in financial instruments (MiFID).

The Exchange will still be checking whether the issuers meet the disclosure requirements pursuant to the act as well as the Exchange's own marketplace rules, cf. section 18(2), para. 9, of the Danish Securities Trading Act.

The Exchange will, thus, have an active obligation to check that the issuers meet the disclosure requirements of both the act and the Exchange's own rules. In future, the Danish Financial Supervisory Authority will make decisions and, if required, impose sanctions in cases relating to the disclosure requirements of the Danish Securities Trading Act, and, like before, the Exchange will make decisions and impose sanctions in cases relating to the disclosure requirements of the stock exchange rules.

The Exchange will continue to check whether the issuers meet all the disclosure requirements and, therefore, the Exchange will also generally make the initial contact to a company in case of suspected violation of the disclosure requirements.

When the Exchange contacts an issuer in case of suspected violation of the disclosure requirements, it will initially assess whether this is a violation of the Exchange's own rules, the rules of the Danish Securities Trading Act or both. This is reflected in the regulatory framework referred to in the letter to the issuer.

The Exchange is then going to assess whether the Exchange's own rules have been violated and if there is still suspicion of violation of the disclosure requirements of the act. The Exchange will sanction any violation of its own rules and refer the case to the Danish Financial Supervisory Authority, which will then decide whether the provisions of the Danish Securities Trading Act have been violated. If that is the case, the Danish Financial Supervisory Authority will sanction the violation of the Danish Securities Trading Act.

The Exchange can only decide a case in relation to its own rules and reference will be made to the relevant provisions of the Exchange's own set of rules. Consequently, the specific cases referred to

anonymously here will involve reference only to the relevant provisions of the Exchange's own rules on which the Exchange has based its decision, irrespective of whether reference was initially made to both the Danish Securities Trading Act and the Exchange's own rules.

The issuers may, naturally, continue to contact the Exchange for guidance on the interpretation of the disclosure requirements of the Danish Securities Trading Act.

## **2. Article in newspaper prior to publication of announcement**

A company issued an announcement that it had landed a major order on a foreign market. The announcement was released before the equity market opened.

Later that day, a Danish newspaper contained an article which stated that the company had signed a contract, the value of the contract and the identity of the contracting party. This information corresponded to the information disclosed in the company announcement. The article also stated that information on the order would be published at the end of the week.

OMX Nordic Exchange Copenhagen asked the company to explain whether the company was aware that non-published information had been disclosed, including how a Danish newspaper had knowledge of the information and was able to bring an article that same morning, prior to the publication of the company announcement. Moreover, the Exchange asked the company to explain when the contract in question had been concluded.

To ensure market efficiency, all market participants must have equal access to price-sensitive information from the companies and the market participants must be able to rely on that. It is also important that no company creates uncertainty about the pricing of the company's shares, e.g. via information in the media which has not been published in company announcements.

Rule 16 of the Disclosure requirements for issuers of shares provides that a company shall promptly inform the public of inside information if such information relates directly to the company.

Moreover, Rule 4 of the Disclosure requirements for issuers of shares on OMX Nordic Exchange Copenhagen provides that the companies shall ensure that everybody has equal access to material information about the company which may be assumed to be of significance to the pricing of the company's shares and shall secure that no unauthorised party gets access to such information before it is published. Moreover, such information must not be provided in statements, comments and interviews, etc., without the information being made public at the same time at the latest.

Rule 11 of the Disclosure requirements for issuers of shares provides that information covered by the disclosure requirements shall be made public as soon as possible. Matters subject to the disclosure obligation shall be made public, once the resolution has been passed. Moreover, Rule 11(2) provides that in situations where the obligation to disclose information has not yet been imposed, but where there is a risk that the information has come or will come to the knowledge of a third party, the company shall, if publication is not possible, immediately contact the Exchange with a view to taking the required precautions to secure that no third party can exploit such knowledge.

The company explained that its Head of information had been contacted the day before the publication by a journalist from the newspaper in question. The Head of information had refused to comment on the specific order as the company had not yet obtained approval of publication from the customer. The fact that the newspaper had contacted the company indicated that rumours about the order were circulating so the company immediately contacted the customer to inform it about the

disclosure requirements. The company, moreover, stated that since it had not been able to get a response from the customer, the company had decided to issue an announcement about the order the following morning before the Exchange opened.

The company was of the opinion that it had satisfied section 27(1) of the Danish Securities Trading Act governing disclosure of inside information immediately upon the coming into existence of the set of circumstances or the occurrence of the event so that all market participants have equal access to price-sensitive information.

The company also stated that negotiations of this size would generally stretch over a longer period of time and that it was inevitable that a number of different specialists would get involved and thus have knowledge of the project in question. Even though all parties involved would have to sign a confidentiality clause, it was impossible to be absolutely sure that no third party would find out information about the project.

Moreover, in establishing the contract, the company had undertaken not to issue an announcement without approval by the customer.

The Exchange asked the company to be careful about who has knowledge of negotiations and other issues covered by the disclosure requirements and pointed out that it is important to maintain confidentiality about such issues. In this connection the Exchange informed the company that a company cannot defer its duty of disclosure on the basis of a contract with a third party.

The Exchange reprimanded the supervisory and executive boards of the company for having failed to publish an announcement about the order when the company had found out that information about the order had come to the journalist's knowledge, cf. Rule 16 of the Disclosure requirements for issuers of shares.

The Exchange found it regrettable that the company had not contacted the Exchange immediately as required by Rule 11(2) of the Disclosure requirements for issuers of shares in order that the required precautions could be taken to secure that no third party could exploit the inside information.

Moreover, the Exchange found it regrettable that the company was not able to ensure that everybody had equal access to material information about the company which may be assumed to be of significance to the pricing of the company's securities and secure that no unauthorised party had access to such information before it was made public as provided in Rule 4 of the Disclosure requirements for issuers of shares.

The Exchange noted that the company had tried to do what was practically possible to keep the negotiations secret.

### **3. Information provided at an investor meeting**

It was reported in the press that a company had provided information at an investor meeting about the credit that the company had granted to a special group of companies.

The Exchange, therefore, asked the company to explain the information reported in the press, including what information had been given at the investor meeting and compare it with the information that the company had published previously.

It appeared from the company's letter that the information given at the investor meeting was an update and elaboration of already published information about the extent of the activities in question.





In the light hereof the Exchange asked the company to give a specific account of the update and elaboration which had taken place specifically related to the information which had previously been made public in company announcements and the annual report.

The company stated that the extent of the company's credit exposure was evident from the company's annual report for 2006. The company's credit exposure to this specific group of companies was included herein. This figure had been disclosed at the investor meeting.

Moreover, the company stated that practically all the credit exposure mentioned in the company's annual report was rated in the categories 1-4, which is by and large on a par with the external rating agencies. At the investor meeting, it was stated that the external rating of the credit exposure in question was distributed with about  $\frac{3}{4}$  on AAA and  $\frac{1}{4}$  on AA, which by and large corresponded to the company's internal rating categories 1-3.

The company also stated that information about the extent of the credit exposure in relation to a fully consolidated company had been provided at the investor meeting.

A company must make sure that everybody has equal access to information covered by the disclosure requirements, and that publication always takes place at least simultaneously with any other publication, and that inside information is generally not passed on unless this is a normal part of the person's performance of his duty, task or function.

These obligations are imposed by section 27 of the Danish Securities Trading Act as well as Rules 4, 11 and 16 of the Disclosure requirements for issuers of shares on OMX Nordic Exchange Copenhagen.

To ensure market efficiency, all market participants must have equal access to price-sensitive information from the listed companies and the market participants must be able to rely on that. It is also important that no company creates uncertainty about the pricing of the company's shares, e.g. via information in the media which has not been published in company announcements.

Rule 16 of the Disclosure requirements for issuers of shares provides that a company shall promptly inform the public of inside information if such information relates directly to the company.

Moreover, Rule 4 of the Disclosure requirements for issuers of shares provides that the companies shall ensure that everybody has equal access to material information about the company which may be assumed to be of significance to the pricing of the company's shares and shall secure that no unauthorised party gets access to such information before it is made public. Such information must not be provided in statements, comments and interviews, etc., without the information being made public at the same time at the latest.

Information about circumstances relating to a company's credit exposure is generally information which may be assumed to be of significance to the pricing of the company's shares.

According to the company, the extent of the company's credit exposure to a special group of companies was disclosed at the investor meeting. The company did not inform the Exchange that this figure was evident from previously published material. Also, the company had not informed the Exchange that the credit exposure to the fully consolidated company was evident from previously published material.

The Exchange is of the opinion that when information that may be characterised as price-sensitive has been made public it is only possible to a limited extent to elaborate on such information without having to issue an announcement about the elaborative information. This applies even if the elaborative information is not subject to the disclosure requirements of Rule 16 of the Disclosure requirements for issuers of shares.

The Exchange expressed disapproval of the fact that the company had provided elaborative information at the investor meeting about the company's credit exposure to a special group of companies without that information being published at least simultaneously.

#### **4. No publication of notice convening an annual general meeting**

A company admitted to trading had held its annual general meeting at a previously announced date. OMX Nordic Exchange found that the notice convening the annual general meeting had not been made public.

Rule 33 of the Disclosure requirements for issuers of shares on OMX Nordic Exchange Copenhagen provides that on or before the date of the notice convening the annual general meeting, the notice and all proposed resolutions shall be published.

The Exchange asked the company to explain why the notice convening the annual general meeting had not been published as required by Rule 33.

The company stated that the notice convening the annual general meeting had been sent to all registered shareholders, but that it had not been made public as prescribed by the disclosure requirements. The company also stated that in future it would publish the notice convening general meetings as prescribed by the stock exchange rules.

The Exchange found it regrettable that the notice convening the general meeting was not made public as prescribed by Rule 33 of the Disclosure requirements for issuers of shares.

The Exchange noted that the company would make sure that such an error would not be repeated.

#### **5. No publication of notice convening the general meeting and delayed publication of the outcome**

A company admitted to trading had held its annual general meeting at a previously announced date. OMX Nordic Exchange found that the notice convening the annual general meeting had not been made public and that the outcome of the annual general meeting had not been made public until two days after the holding of the general meeting.

Rule 33 of the Disclosure requirements for issuers of shares on OMX Nordic Exchange Copenhagen provides that on or before the date of the notice convening the annual general meeting, the notice and all proposed resolutions shall be published. Rule 34 of the Disclosure requirements for issuers of shares provides that immediately after the general meeting has been held, an announcement shall be published with information on the outcome, including information on the resolutions passed.

The Exchange asked the company to explain why the notice convening the annual general meeting had not been made public as required by Rule 33. Moreover, the Exchange asked the company to explain why the minutes of the annual general meeting had not been made public until two days after the holding of the meeting.

The company stated that the company's legal adviser had misinformed the company about the timing of the publication of the notice convening the annual general meeting. The company also stated that in future it would publish the notice convening general meetings and the outcome of general meetings as prescribed by the stock exchange rules.

The Exchange found it regrettable that the notice convening the general meeting had not been made public in compliance with Rule 33 of the Disclosure requirements for issuers of shares and that the minutes of the annual general meeting had not been made public promptly after the holding of the general meeting as prescribed by Rule 34 of the Disclosure requirements for issuers of shares.

The Exchange noted that the company would make sure that such an error would not be repeated.

## **6. Information provided in an interview with the company's CEO**

An electronic news medium brought an interview with a company's CEO. The interview provided information about rising prices of a specific raw material and possible effects on the company's bottom line.

The interview seemed to create uncertainty in the market about the company's future earnings, and the price of the company's shares fell later that day.

To ensure market efficiency, all market participants must have equal access to price-sensitive information from the listed companies and the market participants must be able to rely on that. It is also important that no listed company creates uncertainty about the pricing of the company's shares, e.g. via information in the media which has not been published in company announcements.

These obligations are imposed by Rules 4, 11 and 16 of the Disclosure requirements for issuers of shares on OMX Nordic Exchange Copenhagen.

OMX Nordic Exchange Copenhagen asked the company to explain whether the information had been made public on a previous occasion and whether it would be necessary for the company to issue an announcement on the basis of the information provided in the interview.

Moreover, the Exchange asked the company to summarise the considerations made by the company concerning whether price-sensitive or inside information had been passed on.

The company stated that the information about the rising raw material prices was mentioned in the company's annual report for 2006 and a specific monthly raw material report which is released internationally and is publicly available. Moreover, the company stated that the company's quarterly reports for Q1 and Q2 2007 included the recently imposed and any expected price rises and changes in the company's revenue.

Finally, the company stated that the comment by the company's CEO merely made the logical conclusion that an increase in raw material costs may have a negative impact on the company's bottom line. Thus, the statement by the CEO was not based on actual knowledge about significant changes in relation to previously published information and, therefore, there was no need for further information to be provided to the market.

Based on the company's information, the Exchange found no reasons to take any further action.



However, the Exchange told the company to be careful with statements that may give the impression that this was new information as this may lead to uncertainty.

### **7. No information to the Exchange – removal from trading on First North**

The press brought a series of articles about a number of property deals that a company admitted to trading on First North allegedly should have performed with related parties. The articles also contained information about the majority shareholder and the management of the company and the company's business foundation was called in question.

After the first article, the company issued an announcement from which it appeared that the company's majority shareholder had decided that the other shareholders, who had probably lost faith in the company's future development because of the articles in the press, should be able to dispose of their shares to the majority shareholder at a price which the company had fixed as a reasonable price at the time of the company's introduction on First North.

A company admitted to trading on First North shall, as soon as possible, publish any decision made by the company as well as information about aspects concerning the company which may be assumed to be of significance to the pricing of the company's financial instruments. This is provided by the First North Rules. Moreover, it is a significant prerequisite of the function of the marketplace that investors can have confidence in the companies admitted to trading on First North and that First North can launch measures which are deemed appropriate in order to protect the investors and the reputation of the marketplace.

Against this background, First North asked the company for a detailed explanation of the allegations made in the press. Moreover, First North asked the company to consider whether a supplementary announcement should be released to the market on the basis of the company's review and the circumstances of the case. First North would do the same after receipt of the company's review. A copy of the letter to the company was also sent to the company's Certified Adviser. First North had set a deadline for receipt of the review.

Upon expiry of the deadline, First North had not received a response. Then First North repeatedly contacted the company to get in touch with the company's management in an attempt to seek clarification of the matter. It was not successful.

First North informed the company that in order to maintain confidence in the companies admitted to trading on First North it is of the essence that timely and correct information is published to the market. It was also of the utmost importance that First North and the company's Certified Adviser could get in touch with the company's management within a short period of time. It is even more important that the company's management is available in times of uncertainty about the company's situation.

First North reprimanded the company's supervisory and executive boards for not being available when clarification was sought.

First North published this reprimand later that day.

Prior to this, the company's Certified Adviser had informed the company that it no longer wished to act as a Certified Adviser for the company as it was unable to monitor the company and had not been adequately informed of the issues mentioned in the press. Moreover, the Certified Adviser stated that the company's chairman and a member of the executive board had left the company's

supervisory board earlier that day. The company had no Certified Adviser and the supervisory board comprised one person, who was also the CEO of the company.

First North informed the company that it had to enter into an agreement with a Certified Adviser as soon as possible.

Again First North repeatedly tried to contact the company, but with no success.

!½ weeks after First North had issued the public reprimand, First North received an e-mail from the company's CEO. It appeared from the e-mail that, after having returned home from a trip abroad, the CEO had learned about the stories in the press and found that the rest of the supervisory board had left the company. He, therefore, announced that he would leave the supervisory board and resign as CEO of the company with immediate effect. First North made the content of this e-mail public.

Again First North tried to get the company to give an account. Still no success.

About three weeks after the CEO had also left the company First North sent a letter to the company stating that if First North had not received an announcement from the company within a certain number of days, the company would be removed from trading on First North with immediate effect.

No reaction from the company.

Thus, First North removed the company from trading on First North based on the following:

- There was considerable uncertainty about the company's situation.
- First North had repeatedly tried to contact the management of the company to get a clarification of the company's situation. It had not succeeded in getting such a clarification.
- The company's Certified Adviser had left the company as it was unable to get access to information about the company and, consequently, could not fulfil its obligations.
- The supervisory and executive boards of the company had decided to leave the company with reference to the uncertainty surrounding the company.
- No initiative had been taken to re-establish the managerial situation of the company.
- A company on First North must have the right organisation and the right employees to fulfil the disclosure requirements, cf. Rule 2.2.4 of the First North Rules. This was not the case for this company.
- In reality, the company had ceased to exist as a company admitted to trading as it did not respond when it was contacted by First North, as it did not issue company announcements, as it did not have a management and took no steps to re-establish the situation.

First North concluded that no company existed with the competencies or will to meet the obligations, including Chapter 4 of the First North Rules, which follow from being a company admitted to trading on First North. Thus, First North decided not to have the company admitted to trading on First North.

The company was removed from trading pursuant to Rule 7.2.2 of the First North Rules and section 42e(1) of the Danish Securities Trading Act.

## **December**

## **1. Exemption from the requirement to present accounts for three years in connection with the admission of new companies to trading on the Exchange**

A company must meet a number of criteria to be eligible for admission to trading on OMX Nordic Exchange Copenhagen. For instance criteria relating to the formation of the company, that the shares must be freely negotiable, the distribution of shares in public hands, requirements of the company's management and that the company has published annual reports for at least three years.

When a company applies for admission to trading on the Exchange the company must specify how the company meets the listing requirements.

In specific and duly motivated cases a company may ask to be exempted from one of the admission criteria. Such questions relating to an admission criterion should be addressed at an early stage of the admission process.

In certain duly motivated cases the Exchange has exempted companies from the requirement to present accounts for the last three years.

Clause 3.5 of the Listing Requirements of OMX Nordic Exchange Copenhagen provides that the company must have published annual accounts for at least three years in accordance with the accounting laws applicable to the company in its home country. In addition, the line(s) of business and the field of operation of the company and its group shall have a sufficient operating history.

Below you will find an account of the Exchange's practice in connection with exemptions from the requirement to present accounts for three years.

### *The Exchange's practice*

The explanatory text to clause 3.5 of the Listing requirements states the following:

*“The general rule is that the company shall have complete annual accounts for at least three years. When the operating history of the company is evaluated, a company that has conducted its current business, in essential respects, for three years and is able to present financial accounts for these years is normally deemed to fulfil the requirement. Evaluation of accounts and operating history shall cover the company including its subsidiaries. The basis for the assessment shall be the situation for the company as it develops over time. Since a company may acquire or divest one or more subsidiaries, this, of course, must be reflected in the annual accounts. The company must be able to demonstrate its operations in order for the Exchange and the investors to assess the development of the business. Pro forma accounts (or other financial information that is presented for comparative purposes to explain changes to official accounts or a lack thereof) are presented as required in the prospectus, and typically such accounts are presented for one fiscal year. However, the Exchange may require additional comparable information for evaluating fulfilment of clause 3.5.2. Material changes in the company's line(s) of*

*business or field of operation prior to listing, or for example a reverse takeover, may lead to the requirement stipulated in clause 3.5.2 not being fulfilled, or require extensive additional information about the business of the company before making an informed judgment of the company.*

*In order for an exemption to be granted from the requirement to have annual accounts for three years, there should be sufficient information for the Exchange and the investors to evaluate the development of the business and to form an informed judgment of the company and its shares as an investment. This information may be evidence of an otherwise stable and high-quality environment, as may be the case, for example, in the event of spin-offs from listed companies or where a company has been formed through an acquisition or merger between two or more companies that would be suitable for listing, or other corresponding cases. For evaluating companies with less than three years of operational history, even more attention will be paid to the information presented about the business and operation of the company.”*

As the description of the company’s activities is more important than the company’s operating history, an exemption may be granted in specific and duly motivated cases from the requirement to have annual accounts for three years.

This applies to special types of companies such as investment companies, including property investment companies. It is typically such companies that have sought exemption from this requirement. The greater part of these companies have a specific, describable portfolio prior to going public. However, companies that did not have a specific, describable portfolio prior to going public have also been granted exemption, provided that the company could present a well-defined and precise investment strategy.

In relation to the investment strategy, the industries, the size of the portfolio companies, the screening processes for investments, the number of companies in the portfolio and the expected distribution of funds between companies and industries/types of undertakings must be described thoroughly, i.e. be well-defined and precise. Moreover, the Exchange has informed the companies that it considers that it would be expedient to define the investment strategy in the company’s articles of association.

The Exchange has also placed emphasis on the other admission criteria and requires each company to document that the management has the competence and experience required to govern a company admitted to trading and to comply with the obligations of such company. If the company is managed by a management company, the management of this company must also have the competence and experience required to govern a company admitted to trading and to comply with the obligations of such company.

Moreover, the company shall establish and maintain adequate procedures, controls and systems, including systems and accounting procedures to enable compliance with the disclosure requirements and provide the market with timely, reliable, accurate and up-to-date information as required by the Exchange.

When a company wishes to apply for exemption from the requirement to have annual accounts for three years, the Exchange must receive a request as early as possible in the listing process. Based on an assessment of the request, the Exchange will decide whether to grant an exemption from the requirement.

#### *Property investment companies*

It is the Exchange's practice to grant property investment companies exemption from the requirement when the companies have had a specific property portfolio which could be described in the prospectus in relation to e.g. public land assessment, purchase price, rents, vacancies, types of tenancy, including information on rents, management agreements, related costs, etc. The purpose of this type of company is to make investments; consequently, it is essential that the companies can present budgets, etc. in a prospectus. Moreover, the company's investment strategy must be described.

In order for an exemption to be granted, the company must, at the time of admission, at least have entered into agreements for the purchase of specific properties, which can be described in the prospectus.

#### *Investment companies*

The investment companies have typically been newly founded companies that would not make any investments until after the completion of the offering of shares and the company's admission to trading. It has thus been the company's concept to start up activities in connection with the admission to trading on the Exchange. Investors generally do not attach importance to the historical development of these companies. However, it is important that the investment strategy is thoroughly described in the prospectus.

It has been the Exchange's practice to grant this type of companies exemption from the requirement to have annual accounts for three years. The exemptions have been granted because the activities of the companies were quite similar to those of investment associations and certain associations that have traditionally been admitted to trading without being able to demonstrate an operating history as they are almost always newly founded funds/associations. This also applies to structured products and other securities with a financial element.

#### *Official listing*

Please note that after 1 November 2007, companies can be admitted to both trading and official listing. If both options are chosen, which is common practice, the Exchange will have to consider the requirement to have annual accounts for three years both in relation to the Listing requirements, as mentioned above, and the Executive Order on the conditions for the admission of securities to stock exchange listing.

The Danish Financial Supervisory Authority has delegated the powers conferred under this Executive Order to the Exchange. Thus, the Exchange will consider the requirement both in respect of admission to trading on the Exchange and the admission to official listing. In respect of the requirement to have annual accounts for three years, the same practice is applicable to both the stock exchange rules and the Executive Order.



## **2. Price rises and rumours in the market**

OMX Nordic Exchange Copenhagen noted that a company's share was heavily traded and the price soared. At the same time, there were rumours in the market about the company's circumstances which, if true, would be covered by the disclosure requirements.

The Exchange, therefore, asked the company to state whether the rumours in the market were true and if the market needed further information.

To ensure market efficiency, all market participants must have equal access to price-sensitive information from the companies and the market participants must be able to rely on that. It is also important that no listed company creates uncertainty about the pricing of the company's shares, e.g. via information in the media which has not been published in company announcements.

Section 27(1) of the Danish Securities Trading Act provides that an issuer of securities shall promptly inform the public of inside information if such information relates directly to the issuer's business. The issuer shall disclose inside information immediately upon the coming into existence of the set of circumstances or the occurrence of the event even though the set of circumstances or event has not yet been formalised. Moreover, section 27(2) of the Danish Securities Trading Act provides that inside information which an issuer or a person trading on its behalf or for its account discloses to a third party as a normal part of that person's performance of his duty, task or function must be made public simultaneously with the disclosure to the third party.

Moreover, Rule 4 of the Disclosure requirements for issuers of shares on OMX Nordic Exchange Copenhagen provides that the companies shall ensure that everybody has equal access to material information about the company which may be assumed to be of significance to the pricing of the company's shares and shall secure that no unauthorised party gets access to such information before it is published. Moreover, such information must not be provided in statements, comments and interviews, etc., without the information being made public at the same time at the latest.

Rule 11 of the Disclosure requirements for issuers of shares provides that information covered by the disclosure requirements shall be made public as soon as possible. Matters subject to the disclosure obligation shall be made public, once the resolution has been passed.

Rule 16 of the Disclosure requirements for issuers of shares provides that a company shall promptly inform the public of inside information if such information relates directly to the company.

The company stated that the rumours in the market were not true and that it did not find that the market needed further information.

Based on the company's statement, the Exchange found no reasons to take any further action on the basis of the stock exchange rules.

### **3. No publication of annual report and corporate governance report**

A company admitted to trading on OMX Nordic Exchange Copenhagen published its preliminary announcement of the financial statements for 2006 via the Exchange's publication system. The company's annual report for 2006 was available on the company's website, but it had not been made public via the Exchange's publication system.

Rule 29 of the Disclosure requirements for issuers of shares on OMX Nordic Exchange Copenhagen provides that companies admitted to trading must publish the annual report as soon as possible and not later than eight days before the annual general meeting.

Rule 36 of the Disclosure requirements for issuers of shares provides that Danish companies must address the recommendations for good corporate governance in the annual report. The companies must adopt the 'comply or explain' principle when preparing the report.

The explanatory text to Rule 36 describes how companies are to apply the 'comply or explain' principle.

The explanatory text to Rule 36 states that the 'comply or explain' principle implies that the companies are required either to comply with the recommendations for corporate governance or explain why they do not comply with the recommendations. Moreover, it is stated that it is natural and important for companies to focus on the areas where the recommendations are not complied with.

Therefore, the Exchange asked the company to publish its annual report as soon as possible. Moreover, the Exchange asked the company to explain why the company's annual report for 2006 had not been made public in accordance with Rule 29.

The Exchange also asked the company to explain why the company's annual report for 2006 did not contain a corporate governance section, cf. Rule 36 of the Disclosure requirements for issuers of shares.

Finally, the Exchange called upon the company to make public a statement of how the company addresses the recommendations for corporate governance as provided by Rule 36 of the Disclosure requirements for issuers of shares.

The company stated that it had not published its annual report as required by Rule 29 of the Disclosure requirements for issuers of shares because of an administrative error. The company also stated that it had upgraded several key functions in the past year and that it had tightened internal procedures.

The Exchange reprimanded the supervisory and executive boards of the company for having failed to publish the annual report as soon as possible and not later than eight days before the annual general meeting as required by Rule 29 of the Disclosure requirements for issuers of shares.

The company informed the Exchange that its approach to the Recommendations for corporate governance was included in previously published prospectuses and this section was not included in the company's annual report for 2006 by mistake.

The Exchange, therefore, found that the company's report on how it addresses the Recommendations for corporate governance was available to the market. However, the Exchange found it regrettable that the company had not incorporated a corporate governance section into the annual report for 2006. The Exchange pointed out to the company that the company's annual report for 2007 must feature a section on corporate governance, cf. Rule 36 of the Disclosure requirements for issuers of shares.

Finally, the Exchange expressed disapproval of the fact that the company did not respond within a reasonable time to the Exchange's request for an explanation of the above-mentioned problems as several months had passed from the time of the Exchange's first request and until the time when the Exchange received the company's statement.

#### **4. Rumours in the press**

OMX Nordic Exchange Copenhagen found an article in the press about a company admitted to trading which contained information that was covered by the disclosure requirements, including information about an amendment to an agreement with the company's partner. The company's CEO participated in an interview.

The Exchange, therefore, asked the company to state whether the information in the article was true and if the market needed further information.

To ensure market efficiency, all market participants must have equal access to price-sensitive information from the companies and the market participants must be able to rely on that. It is also important that no listed company creates uncertainty about the pricing of the company's shares, e.g. via information in the media which has not been published in company announcements.

Moreover, Rule 4 of the Disclosure requirements for issuers of shares on OMX Nordic Exchange Copenhagen provides that the companies shall ensure that everybody has equal access to material information about the company which may be assumed to be of significance to the pricing of the company's securities and shall secure that no unauthorised party gets access to such information before it is made public. Moreover, such information must not be provided in statements, comments and interviews, etc., without the information being made public at the same time at the latest.

Rule 11 of the Disclosure requirements for issuers of shares provides that information covered by the disclosure requirements shall be made public as soon as possible. Matters subject to the disclosure obligation shall be made public, once the resolution has been passed.

Rule 16 of the Disclosure requirements for issuers of shares provides that a company shall promptly inform the public of inside information if such information relates directly to the company.

The company stated that the reason why the company had participated in the article was a desire to promote one of the company's products as well as the cooperation with a partner.

The company also informed the Exchange that no negotiations were in progress between the company and the partner regarding a revision of the existing cooperation agreement.

During the interview, the journalist had received a copy of the current company presentation. Moreover, the company had not received a draft of the article for approval before going to print.

Finally, the company stated that it did not find that the market needed further information about the company. The company stated that it was fully aware of the disclosure requirements applicable to companies admitted to trading. Moreover, the company was of the opinion that it had met all current disclosure requirements imposed by the Danish Securities Trading Act and the Disclosure requirements for issuers of shares when giving the interview.

On the basis of the company's statements, the Exchange found that no information was leaked to the journalist. Therefore, the Exchange found no reasons to take any further action on the basis of the stock exchange rules.

##### **5. Expansion of the company's activities – information in a prospectus**

A company admitted to trading issued an announcement stating that the company had decided to acquire an undertaking, thus expanding and changing the company's activities significantly. The purchase price should be paid in the company's shares admitted to trading and a prospectus would thus have to be prepared.

A newspaper subsequently brought an interview with the seller of the company, and the seller disclosed information about the activities as well as the company's acquisition hereof. The seller provided information about the contents of the prospectus which the company admitted to trading would have to prepare in connection with the issue of the shares that would constitute the purchase price. The statements in the newspaper indicated that the company would provide further information in the prospectus about the transaction in question, including information about the basis of the valuation of the activities. Moreover, the article left the impression that investors would not be able to assess the value of the company and its new activities until after the publication of the prospectus.

To ensure market efficiency, all market participants must have equal access to price-sensitive information from the listed companies and the market participants must be able to rely on that. It is also important that no listed company creates uncertainty about the pricing of the company's shares, e.g. via information in the media which has not been published in company announcements.

Section 27(1) of the Danish Securities Trading Act provides that an issuer of securities shall promptly inform the public of inside information if such information relates directly to the issuer's business. Moreover, section 27(2) of the Danish Securities Trading Act provides that inside information which an issuer or a person trading on its behalf or for its account

discloses to a third party as a normal part of that person's performance of his duty, task or function must be made public simultaneously with the disclosure to the third party.

Moreover, Rule 4 of the Disclosure requirements for issuers of shares on OMX Nordic Exchange Copenhagen provides that the companies shall ensure that everybody has equal access to material information about the company which may be assumed to be of significance to the pricing of the company's shares and shall secure that no unauthorised party gets access to such information before it is published. Moreover, such information must not be provided in statements, comments and interviews, etc., without the information being made public at the same time at the latest.

Consequently, all material information about the company's acquisition of the activities should have been made public in connection with the company's announcement of the acquisition. Such information cannot await the publication of a prospectus. Thus, a prospectus from a company already admitted to trading must not contain any material non-published information according to the disclosure requirements.

The Exchange asked the company to confirm that the prospectus would not contain any material non-published information. The Exchange also asked the company to take action against the seller of the undertaking who had made statements about company-related matters.

The company informed the Exchange that the company had impressed on the seller that statements from the company should come solely from the management of the company.

The company also insisted that the future prospectus would not contain material non-published information. In this connection the company stated that in addition to already published material information, the future prospectus would include only clarifications which define the market and the opportunities but which do not contain material non-published information.

Based on the company's information, the Exchange found no reasons to take any further action.

However, the Exchange pointed out to the company that if a third party makes a statement about the company, the management of the company may be required to comment on such statement and possibly issue a company announcement.

The company must be particularly careful in situations where statements may give the impression that this is new information as it may lead to uncertainty in the market.

#### **6. Information provided at a capital market day**

A company admitted to trading issued an announcement from which it appeared that the company had held a capital market day. The development in a certain type of product had been described at the capital market day. Moreover, it appeared from the company announcement that the presentation had been based on publicly available information.

The day that the capital market day was held, the company's shares were heavily traded and fell by about 4.5%.

The company announcement stated that the price movement in continuation of the capital market day had caused the company to clarify that, compared with the 2007 results forecast in the interim report for 2007, the value of the products in question had been written down by a certain two-digit million figure in the third quarter and was expected to be written down by almost the same amount in the fourth quarter. Moreover, it was stated that those writedowns were expected to be neutralised by additional earnings on other investment activities and other gains. The profit forecast for 2007 was thus maintained at the previously announced level.

To ensure market efficiency, all market participants must have equal access to price-sensitive information from the listed companies and the market participants must be able to rely on that. It is also important that no listed company creates uncertainty about the pricing of the company's shares, e.g. via information in the media which has not been published in company announcements.

Section 27(1) of the Danish Securities Trading Act provides that an issuer of securities shall promptly inform the public of inside information if such information relates directly to the issuer's business. Moreover, section 27(2) of the Danish Securities Trading Act provides that inside information which an issuer or a person trading on its behalf or for its account discloses to a third party as a normal part of that person's performance of his duty, task or function must be made public simultaneously with the disclosure to the third party.

Moreover, Rule 4 of the Disclosure requirements for issuers of shares on OMX Nordic Exchange Copenhagen provides that the companies shall ensure that everybody has equal access to material information about the company which may be assumed to be of significance to the pricing of the company's shares and shall secure that no unauthorised party gets access to such information before it is published. Moreover, such information must not be provided in statements, comments and interviews, etc., without the information being made public at the same time at the latest.

OMX Nordic Exchange, therefore, asked the company to explain to what extent and where the information provided at the capital market day had already been made public. Moreover, the Exchange asked the company to consider whether the statement that the company maintained the profit forecast for 2007 constituted inside information in the present situation.

A number of the transparency sheets used at the capital market day showed market information and considerations in connection with the general market development regarding the product in question with indication of sources on each sheet.

The company also stated that the problems with the products in question in 2006 and 2007 had been described at the capital market day and that it had been specified that major losses should be expected on the products of those particular years. Moreover, it was emphasised that the presentation did not relate to the company's exposure in these products, which for the most part included issues from 2005 and earlier.



In respect of the writedowns in the third and fourth quarters and the additional earnings in other areas, the company stated that its forecast was based on the last known prices in the market and that the forecast was not adjusted upwards or downwards in connection with the market development, which was publicly available and must be supposed to be common knowledge; consequently, no new forecast was made public between the publication of the interim reports unless new price-sensitive information would surface.

In respect of the specific information given about the expectations at the capital market day, the company explained that after having reviewed the market for the products in question, the company had, at the capital market day, stated that this did not give rise to any changes in the previously published profit forecast for 2007.

The company also explained that no specific information was given neither about the write-down in the third quarter nor the writedown in the fourth quarter and that no information was given about the additional earnings on other assets and gains and whether such earnings could neutralise the writedown.

The company concluded that on the basis of the general market development it was to be expected that the company in the present situation would have gains on the other assets and opposite losses on the products in question. Thus, the company was of the opinion that an ascertainment that the previous forecast was maintained did not constitute new information to the market.

The Exchange found that the company had not given information at the capital market day which had not previously been made public, including information on the expectations for the future.

However, in the light of the movements in the price of the company's shares in continuation of the capital market day and the subsequent company announcement, the Exchange found it regrettable that communications from the company at the capital market day apparently caused uncertainty, which subsequently meant that it was necessary for the company to clarify the matter in a company announcement.