

DECISIONS AND STATEMENTS IN 2011

NASDAQ OMX COPENHAGEN



NASDAQ OMX Copenhagen's Decisions and Statements in 2011

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I. MAIN MARKET

1. Reprimands

1.1 Appointment of new CEO

(Scandinavian Properties A/S)

A company announced that it at a Board meeting the previous day had been decided to appoint a new CEO with effect from the next day.

It is stated in rule 3.1.1 in Rules for issuers of shares on NASDAQ OMX Copenhagen A/S (the exchange), that the company shall, as soon as possible, disclose information about decisions or other facts and circumstances that are price sensitive.

It is also stated in rule 3.1.3 in Rules for issuers of shares that disclosure of information covered by these Rules shall be made as soon as possible, unless otherwise specifically stated.

It is further stated in rule 3.3.5 in Rules for issuers of shares, that, all proposals and actual changes with respect to the board of directors of the company shall be disclosed. In addition, any other significant changes to the company's top management, including but not limited to the CEO, shall be disclosed.

In light of the above the exchange requested the company concrete and in detail to explain the process of appointment of the new CEO, including whether the company could have been published the employment immediately following the Board meeting.

The company stated that it at the Board meeting had been decided to appoint a new CEO with effect from the next day.

It also appeared from the explanation that it had been decided at the Board meeting to draft an announcement which subsequently should be approved at the Board

In preparing the statement and the Board's final approval of the announcement an internal error happened, so that the statement was not published until the afternoon the following day.

On this background the exchange reprimanded the company for not having as soon as possible, disclosed information about the appointment of the new CEO, cf. Rule 3.1.3 in conjunction with rule 3.3.5 in Rules for issuers of shares.

1.2 Correct and relevant information in company announcements

(PARKEN Sport & Entertainment A/S)

In the daily press there was reporting and rumors of a possible future sale of shares, a divestment of activities and an issue of new shares in a listed company.

After a few days, the company published an announcement which - amongst other things - mentioned that the company was neither involved in any negotiations regarding an issue of new shares or a divestment of activities nor had received any enquiries thereof. Subsequently, the reporting in the press continued and the press reported on concrete discussions.

Throughout the period, there were large fluctuations in the company share and the turnover increased significantly.

According to rule 3.1.1 in Rules for issuers of shares on NASDAQ OMX Copenhagen (the exchange) a company shall, as soon as possible, disclose information about decisions or other factors and circumstances that are "price sensitive".

It is also clear from rule 3.1.4 in Rules for issuers of shares, that if a company learns that price sensitive information has leaked prior to disclosure; the company shall publish an announcement regarding the matter.

From the commentary to rule 3.1.4 it appears that market rumors or speculation in the media may occur even if the information has not leaked from the company. The company is not obliged to comment on unfounded rumors or other inaccurate or misleading information from third parties. If an untrue rumor is affecting the price of the company's securities significantly, the company should nevertheless consider publishing an announcement in order to give correct information to the market and to ensure a normal price formation.

On this basis, the exchange requested the company to explain the circumstances behind the ongoing reporting and rumors in the press.

It appeared from the company's statement that it had been made aware of a third party's interest in the company approximately 14 days prior to the rumors began. It also appeared that the company had received a series of documents by e-mail from someone other than the interested third party which, inter alia, raises the possibility of a recapitalization of the company. Finally, it also appeared that the company had participated in a meeting where the interested third parties had also participated; however, an issue of new shares or sale of activities was not discussed during the meeting.

In the company's opinion, the meeting was just a loose and informal briefing on some strategic ideas and did not qualify as an actual enquiry. At the end of the meeting, the company made it clear that a written request from the meeting participants was necessary in order for the company to relate to anything. Such request should specify the identity of the requesting party and the intentions behind the request. It appeared from the statement that such request has not been received.

It also appeared from the statement that the company realised, during the preparation process of a company announcement, an essential need for the company to communicate clearly to the market that there was no basis for expectations on a possible issue of new shares.

In the company's opinion, the company announcement does not preclude that there may have been communication of a non-committal, vague, or exploratory character, which is consistent with the fact that such communication occurs on a regular basis, however, irrelevant to the market.

It is stated in rule 3.1.2 in Rules for issuers of shares that information disclosed by the company shall be correct, relevant and clear, and must not be misleading.

Thus, as a main rule, as long as there is neither price sensitive information nor any rumors on price sensitive information, no disclosure obligation exists.

The company, however, published an announcement in which the company commented on rumors in the media, despite the fact that the company considered "the communication to be of a character that was non-committal, vague, or exploratory, of a quite normal occurrence, but irrelevant to the market."

In case of a leak as well as in case of just pure rumors, rule 3.1.2 in Rules for issuers of shares requires that information disclosed by the company shall be correct, relevant and clear and must not be misleading.

In the announcement from the company several issues were denied. Adding thereto, the consistency in the announcement which ends with the sentence "nor has it received any enquiries thereof", the exchange is of the opinion that a natural linguistic understanding of the announcement will be understood as no contact has been made between the parties whatsoever.

Based on the above the exchange reprimanded the company that the information disclosed in the announcement was not correct, but rather was misleading, cf. the Rules for issuers of shares rule 3.1.2.

1.3 Late publication of half-yearly report

(GreenWind Energi A/S)

A company announced that the company the same day had decided to postpone its half-yearly report from being published prior to the two month deadline to publishing it after the two month deadline for publishing half-yearly reports.

On the day of the planned publication of the half-yearly report, the company postpones the publication of the half-yearly report another 2 days. The half-yearly report was published 2 days later, shortly before midnight.

Throughout the period there were large fluctuations in the share and the turnover increased significantly.

According to rule 3.1.1 in Rules for issuers of shares on NASDAQ OMX Copenhagen A/S (the exchange), a company shall, as soon as possible, disclose information about decisions or other facts and circumstances that are "price sensitive".

It follows from rule 3.2.2 in Rules for issuers of shares, that half-yearly reports shall be published within two month from the expiry of the reporting period. Such a report shall include a statement whether or not the company's auditor has conducted a review.

It further follows from rule 3.2.12 in Rules for issuers of shares, that a company shall publish a financial calendar listing the dates on which the company expects to disclose financial statement releases, interim reports, interim management statements and the date of the annual general meeting. The financial calendar shall be published prior to the beginning of each financial year. If a disclosure cannot be made on a pre-announced date, the company must publish a new date on which the disclosure will be made. If possible, the new date should be published at least one week prior to the original date.

On this basis the exchange requested the company to concretely and in detail explain why the company's half-yearly report had not been published within the two month deadline.

The company stated that they, in order to present a true and fair view of the company's financial situation, found it necessary to postpone and thereby exceed the deadline for publication of the half-yearly report until negotiations on a possible reconstruction of the company had finished.

Based on the above, the exchange reprimanded the company that the company did not publish its half-yearly report within two months from the expiry of the reporting period – cf. rule 3.2.2 of the Rules for issuers of shares.

1.4 Late publication of half-yearly report

(GW Energi A/S)

A company announced that the company the same day had decided to postpone its half-yearly report from being published prior to the two month deadline to publishing it after the two month deadline for publishing half-yearly reports.

On the day of the planned publication of the half-yearly report, the company postpones the publication of the half-yearly report another 2 days. The half-yearly report was published 2 days later, shortly before midnight.

According to rule 3.2.2 in Rules for issuers of bonds on NASDAQ OMX Copenhagen A/S, a company shall, as soon as possible, disclose information covered by these rules.

It follows from rule 3.3.7 in Rules for issuers of bonds, that half-yearly reports shall be published within two month from the expiry of the reporting period.

It further follows from rule 3.4.5.3 in the Rules for issuers of bonds that an issuer before the end of the first month of each reporting year shall publish a financial calendar which must contain the anticipated dates for when in that year the issuer expects to publish financial reports. Furthermore it follows that if a disclosure cannot be made on a pre-announced date, the company must publish a new date on which the disclosure will be made. If possible, the new date should be published at least one week prior to the original date.

On this basis the exchange requested the company to concretely and in detail explain why the company's half-yearly report had not been published within the two month deadline.

The company stated that they, in order to present a true and fair view of the company's financial situation, found it necessary to postpone and thereby exceed the deadline for publication of the half-yearly report until negotiations on a possible reconstruction of the company had finished.

Based on the above, the exchange reprimanded the company that the company did not publish its half-yearly report within two months from the expiry of the reporting period – cf. rule 3.3.7 of the Rules for issuers of bonds.

1.5 Late publication of yearly report and adjustment of result

(Tower Group A/S)

A company published a revised financial calendar from which it appeared that the company had decided not to publish a financial statement release but instead publish a full yearly report on the last day within the deadline. A week before the expiry of the deadline the company postpones the publication a week.

It appears from rule 3.1.1 Rules for issuers of shares that a company shall, as soon as possible, disclose information that are “price sensitive” if this information is directly concerning the company.

It follows from rule 3.2.2 in Rules for issuers of shares that the deadline for disclosure of a report of annual earnings is within two or three months depending on whether or not the company's auditor has conducted a review. It furthermore appears from the comment to rule 3.2.2 that the annual report shall be disclosed no later than three month after the expiry of the reporting period, if the company does not disclose a financial statement release.

On this basis the exchange requested that the company to publish the yearly report as soon as possible. Furthermore the exchange requested the company to concretely and in detail explain why the company's yearly report had not been published within the three month deadline and explain the reason for that the company decided not to publish a financial statement release.

The company explained that the company's preparation of the yearly report was delayed due to unexpected problems with an IT-converting.

It furthermore explained that it is the management's opinion that the source of error in the system now is exhaustively identified and that the consolidated yearly report will be completed and published after the completion of a comprehensive control and reconciliation of the data.

It was further stated by the company that it unfortunately was necessary to postpone the publication another 14 days.

After the 14 days, the company postponed the publication yet again and then yet again. Simultaneously with the last postponement the company downgraded the result significantly.

It is stated in section 3.1.3 in the Rules for issuers of shares on NASDAQ OMX Copenhagen that disclosure of information covered by these Rules shall be made public as soon as possible, unless otherwise specifically stated. Furthermore it follows from the rule 3.3.1 in Rules for issuers of shares that if a company expects a deviation from its previously announced expectation of the result or economical position, and if such deviation is "price sensitive", the company shall publish information regarding the deviation.

Based on this the exchange requested the company to concretely and in detail explain the process ahead of the disclosure of the changed expectation of the result including when the management of the company became aware that the result would deviate from the previously announced expectation.

From the company's explanation it appeared that the problems with the IT-converting caused the need for a regeneration of correct data and a comprehensive control and reconciliation of the data. The management was therefore, not until right before the publication of the changed expectation of the result, presented with trustworthy numbers and was thereby able to ascertain the full extent of the circumstances, which had had a negative development compared to the expected.

On this background the exchange reprimanded the company for not having published the yearly report/ a financial statement release within three month from the expiry of the reporting period, cf. rule 3.2.2 in Rules for issuers of shares, but instead postponed the publication again and again.

The exchange furthermore reprimanded the company for only having published a significant decrease in the company's result immediately before the disclosure of the yearly report, when the management of the company should have been aware of this at a much earlier stage cf. rule 3.3.1 in Rules for issuers of shares.

1.6 Development of annual general meeting

A listed company held an annual general meeting. The development of the annual general meeting was published four days after the annual general meeting took place, and therefore not immediately after the annual general meeting.

In rule 3.3.3 in Rules for issuers of shares it is stated that the company shall disclose resolutions adopted by the general meeting of shareholders unless such resolutions are insignificant. Furthermore the commentary in rule 3.3.3 states that after the general annual meeting a notice about decisions made should be disclosed.

It furthermore follows from rule 3.1.3 that disclosure of information covered by these Rules shall be made as soon as possible, unless otherwise specifically stated.

In light of the above the exchange requested the company to explain the reason for why the development of the annual general meeting was not published immediately after the annual general meeting took place.

The company explained that it was not possible to complete and publish the development of the annual general meeting due to technical problems. The disclosure was made as soon as it was possible.

The exchange reprimanded the company for not publishing the development of the annual general meeting immediately after the general annual meeting took place, in accordance with the Rules for issuers of shares rule 3.3.3 and rule 3.1.3.

1.7 Difference between content in financial statement release and yearly report

(Scandinavian Properties A/S)

A company disclosed a financial statement release on the last day before the deadline for publishing financial statement releases, based on revised reports. 8 days later the company disclosed the yearly report.

The company's result had been changed from the financial statement release to the yearly report and furthermore there had been made changes in the qualified auditor's report.

It appears from rule 3.1.2 in Rules for issuers of shares that information disclosed by the company shall be correct, relevant and clear, and must not be misleading.

Information regarding decisions, facts and circumstances must be sufficiently comprehensive to enable assessment of the effect of the information disclosed on the company, its financial result and financial position, or the price of its listed securities.

The provision thus entails that the published information must be trustworthy.

From the commentary to rule 3.2.1 in Rules for issuers of shares it appears that the financial statement release should be so comprehensive that the annual report does not provide the market with any new significant information that may be price sensitive. The provision implies that at the time of publishing, the financial reporting must be finished and finally accepted by the board. Furthermore, the review should be completed.

On this basis, the exchange requested the company to explain in details the abovementioned circumstances, and requested at the same time the auditor to relate to the revised qualified auditor's report.

It appeared from the company's statement that as soon as the board became aware that the numbers in the yearly report was not identical to the numbers in the financial statement release they corrected the yearly report for 2010, and published it with a commentary about the changed conditions.

It also appeared from the statement that the board is of the opinion that the disclosure of the financial statement release and the following revised yearly report did not have any influence on the trading of the shares of the company.

The company's auditor has concurred with the company's remarks and added that it was an unfortunate administrative mistake where the wrong auditors' report (first draft) and numbers unfortunately has been published regarding the financial statement releases.

The exchange pointed out to the company that it is important with complete confidence in the numbers that are published, and that a financial statement release should be as comprehensive that the annual report does not provide the market with any new significant information that may be price sensitive. This implies among other things that the result before taxes and the auditors' report, which is stated in financial statement releases, are identical with the corresponding in the yearly report. The company must furthermore organize the process of publishing the yearly report so that the information can be published before the deadline.

Based on the above, the exchange reprimanded the company that the company's financial statement release did not contain correct information about the company's result and the auditors' report cf. rule 3.1.2 compared with rule 3.2.1 in Rules for issuers of shares.

1.8 Publication of the interim report

(KlimaInvest A/S)

A company published the interim report on a later date than published by the company in the financial calendar.

It appears from rule 3.3.13 in Rules for issuers of shares on NASDAQ OMX Copenhagen (the exchange) that a company shall publish a financial calendar listing the dates on which the company expects to disclose financial statement releases, interim reports, interim management statements and the date of the annual general meeting. The financial calendar shall be published prior to the beginning of each financial year. Furthermore it appears that if a disclosure cannot be made on a pre-announced date in the financial calendar, the company must publish a new date on which disclosure will be made. If possible, the new date should be published at least one week prior to the original date.

On this basis the exchange requested the company to explain the reason why the company's interim report was not published on the pre-announced date in the financial calendar including when the company became aware that the publication could not take place in accordance with the pre-announced, and the reason why the company did not publish an announcement about the change in the financial calendar.

From the explanation it appeared that the publication was postponed as the pre-announced date in the company's financial calendar was a holiday. Furthermore it appeared that the company in the future

will ensure that the financial calendar reflects the opening days on the stock exchange – and any corrections to the financial calendar as a consequence of holidays will in the future be announced to the market via a stock exchange notice.

On basis of the above-mentioned the exchange reprimanded the company that it did not publish the interim report on the pre-announced date in the financial calendar, but published the interim report later, cf. rule 3.3.12 in Rules for issuers of shares.

1.9 Publication of yearly report

(Investeringsforeningen Etik Invest)

The exchange found that a UCITS admitted to trading on NASDAQ OMX Copenhagen A/S had published a yearly report which was not based on the revised account and that the yearly report did not meet the minimum requirement for Schema A in Rules for issuers of UCITS.

From the explanation by the UCITS it appeared that the UCITS admitted that the published yearly report did not meet the minimum requirement for Schema A in Rules for issuers of UCITS and that the audit of the yearly report not until the 31. March had begun. Furthermore it appeared that the company in the future was set to meet the requirement for Schema A.

On this basis the exchange reprimanded to the UCITS that the published yearly report was not based on the revised account and that the yearly report did not meet the requirements for Schema A in Rules for issuers of UCITS.

1.10 Sale of right over contract – leak of information

(PARKEN Sport & Entertainment A/S)

A company published an announcement from which it appeared that the company had entered an agreement on sale of right over contract.

In the announcement the company emphasized that the sale was expected to have a positive impact on the result before taxes for 2011. A few reservations which were expected to be fulfilled were taken in the company announcement.

Prior to the announcement there was information available in the market, concerning negotiations about the sale of right over the contract where details about the contract appeared.

It appears from Rule 3.1.1 in Rules for issuers of shares on NASDAQ OMX Copenhagen that a company shall, as soon as possible, disclose information about decisions or other facts and circumstances that are “price sensitive”.

It appears from Rule 3.1.4 that if a company learns that price sensitive information has leaked prior to such disclosure, the company shall make an announcement regarding the matter. If price sensitive information is given non-intentionally to a third party, who does not owe a duty of confidentiality, disclosure shall be made promptly.

Furthermore it follows from the comment to Rule 3.1.4 that it may occur that information about the company becomes available publicly without the company itself having disclosed it in an announcement. In such cases the company will have to assess whether such information may be price sensitive and whether a disclosure obligation in accordance with the General provision (rule 3.1.1) has

arisen. The assessment shall, among other things, take into consideration the accuracy of the information and possible underlying insider knowledge of the company. When such information is largely accurate and in fact price sensitive information within the company, the company will need to assess whether it has been able to ensure the confidentiality of such information or if price sensitive information has leaked to the market

Based on the abovementioned the exchange requested the company specifically and in detail to explain the procedure prior to the publication of the company announcement. Among this, the company was requested to explain when the sale of right over contract concretely was concluded.

Furthermore the exchange asked the company to relate to whether and, if so, when the company became aware that there was information available in the media concerning the mentioned sale of right over contract cf. Rules for issuers of shares rule 3.1.4.

From the explanation by the company it appeared that the company received the first concrete inquiry regarding sale of abovementioned right over contract in April. Subsequently there were regular inquiries from the contracting party.

In the beginning of June, the company was contacted by the contracting party who stated that this was prepared to meet the terms for the price of sale of right over contract which the company had asked. It was stated that the first draft for a contract was received from the contracting party some days later. The final contract was ready in mid-June.

Rule 3.1.1 concretely entails that a company may negotiate a matter until an agreement has been signed or until a matter has become a reality, and only after this the company is obliged to disclose information to the market. If, however, there is a leak, the company will be obliged to publish an announcement about the negotiations before it has become a reality (thus before the obligation to disclose sets in after Rule 3.1.1.)

Whether the disclosure obligation has occurred in relation to the rules about leak of information, cf. Rule 3.1.4, depends on the specific case and on how advanced and concrete the ongoing negotiations are and an assessment of the probability for the matter to become a reality.

In case of leak of “price sensitive” information about an ongoing negotiation, the company shall publish information corresponding the information that no longer is kept confidential. The company’s announcement may for example indicate that negotiations are not yet completed or which factor and conditions remains. The company shall publish yet another announcement when the agreement has become a reality or in case the negotiations finish without an agreement.

Based on the information provided the exchange found that there were concrete negotiations between the company and the contracting party, that the negotiations had progressed, albeit not completed, that there was concrete information in the media about the ongoing negotiations and that the company subsequently assessed the matter as being “price sensitive” information.

It is the opinion of the exchange that the matter from early June and forward was considered a “price sensitive” information.

The exchange reprimanded the company that the company did not publish a company announcement about negotiations of a sale of right over contract as soon as possible after the information concerning this became publicly available in the market; cf. Rule 3.1.4 in Rules for issuers of shares.

The exchange furthermore remarked, that although there tend to be many speculations and rumour-creation in the media in a given industry/sector, it is the responsibility of the company to ensure that there is no leak of “price sensitive” information from the company or the contracting party until this is correctly announced to the market.

1.11 Publication of financial statements 2010 – Financial Calendar

(Lastas A/S)

A company published its financial statement releases for 2010. From this it appeared that it was approved by the board on the day before.

The dates for board of directors' meetings and the date for the ordinary general meeting appeared from the company's published financial calendar but the financial calendar did not contain dates for publishing various interim reports and interim management statements.

It appears from rule 3.1.3 in Rules for issuers of shares on NASDAQ OMX Copenhagen (the exchange), that all matters regarding the company's disclosure requirement shall be published as soon as possible, unless otherwise specifically stated. This implies that publication of annual reports and interim reports must be done immediately after the board meeting at which the annual report or the interim report is approved. From the comment from rule 3.1.3 it appears that the disclosure should only await the time needed to compile and publish the information.

It appears from rule 3.3.12 in Rules for issuers of shares that a company shall publish a financial calendar listing the dates on which the company expects to disclose financial statement releases, interim reports, interim management statements and the date of the annual general meeting. It furthermore appears that if a disclosure cannot be made on a pre-announced date, the company must publish a new date on which disclosure will be made.

It appears from rule 3.2.1 in Rules for issuers of shares that the company shall prepare and disclose all financial reporting pursuant to the accounting legislation and regulations applicable to the company. It furthermore appears that a company may disclose interim management statements instead of disclosing quarterly reports.

On this basis the exchange requested the company to explain the reason why the company's annual report was not published immediately after it was approved on the board meeting.

Furthermore the exchange requested the company to explain the reason that the company's financial calendar is not completed in accordance to rule 3.3.1 in Rules for issuers of shares.

From the company's explanation it appeared that the board at the ' meeting decided some corrections to the company's annual report that would subsequently be approved by the audit.

Based on the fact that the board' meeting was scheduled for 12:00, the exchange found that the company had had the opportunity to correct the annual report with the board's remarks, and still would be able to publish the annual report on the exact date stated in the financial calendar.

Consequently the exchange reprimanded the company that the company in the opinion of the exchange did not publish the annual report as soon as possible after the approval by the board, and that the company published the annual report on a later date than the date stated in the published financial calendar cf. the Rules 3.1.3 and 3.3.12 in Rules for issuers of shares.

It furthermore appeared from the explanation that the company differs from the recommendations on Corporate Governance regarding publication of interim management statements (quarterly reports).

The exchange afterwards found, that the company does not publish interim management statements as an alternative to quarterly reports.

Based on the abovementioned the exchange reprimanded the company that the company does not publish interim management statements and has not published the dates for interim management statements in the financial calendar cf. the Rules 3.3.12 and 3.2.1 in Rules for issuers of shares.

1.12 Publication of half-yearly report

(Holdingselskabet af 1958 A/S in liquidation)

The exchange found that a company's half-yearly report was dated several days ahead of the actual publication.

According to rule 3.1.1 in Rules for issuers of shares on NASDAQ OMX Copenhagen A/S (the exchange), a company shall, as soon as possible, disclose information about decisions or other facts and circumstances that are "price sensitive".

On this basis the exchange requested the company to explain the process leading up to the publication of the half-yearly report, including the reason for why the company's half-yearly report was not published the same day as it, according to the information contained in the half-yearly report was endorsed.

It appeared from the explanation that the half-yearly report unfortunately was incorrectly dated. The report was completed and signed in the afternoon, and was not published until the day after at 11.09 o'clock.

The exchange found it unfortunate that the endorsement made by the liquidator was dated several days ahead of the actual publication and reprimanded on basis of the above mentioned the company that the half-yearly report was not published as soon as possible after the endorsement made by the liquidator in accordance with Rule 3.1.1 in Rules for issuers of shares.

1.13 Postponement of publication of the interim report

(Tower Group A/S)

Shortly before midnight a company published an announcement, where it was stated, that the board had decided to postpone the publication of the interim report 2011 from that exact day to 2 days later.

According to rule 3.1.1 in Rules for issuers of shares on NASDAQ OMX Copenhagen A/S (the exchange), a company shall, as soon as possible, disclose information about decisions or other facts and circumstances that are "price sensitive".

According to rule 3.2.2 in Rules for issuers of shares, interim reports shall be disclosed within two months from the expiry of the reporting period.

Based on the abovementioned, the exchange requested the company as soon as possible to publish the company's interim report for the period 1. January 2011 – 30. June 2011. Furthermore the exchange

requested the company concretely and in details to explain the reason why the company's interim report was not published within the two months deadline.

The company published the interim report the day after the expiry of the 2 months period. From the company's explanation it appeared, that the delay of the interim report was due to the fact that a part of the company's portfolio is taken under insolvency treatment and it is the work to assess and incorporate the implications of this new situation, which has delayed the process of completing the interim report and the board's approval of this.

Based on the abovementioned, the exchange reprimanded the company, that the company did not publish the interim report within two months from the expiry of the reporting period; cf. Rule 3.2.2 in Rules for issuers of shares.

1.14 Lack of disclosure regarding new main and stadium sponsor

(Silkeborg IF Invest A/S)

A company published an announcement regarding the interim financial report for the first half year of 2011 of which it appeared that the company had signed an agreement with a new main and stadium sponsor.

It appeared from the company's website the day before, that the company the following day had called for a press conference. On the meeting the company was to present a "landmark main sponsor agreement".

After the press conference it additionally appeared from the company's website, that the company has "entered a wide co-operation agreement...", "The epoch-making co-operation agreement" and that "the name of the sponsor additionally already was to find on the players jersey the previous Sunday match...".

It appears from Rule 3.1.1 in Rules for issuers of shares on NASDAQ OMX Copenhagen that a company shall, as soon as possible, disclose information about decisions or other facts and circumstances that are price sensitive.

It follows from the comment to Rule 3.1.1 that a company shall ensure that all market participants have simultaneous access to any price sensitive information about the company. The company is also required to ensure that the information is treated confidentially and that no unauthorized party is given such information prior disclosure. As a consequence of the foregoing, price sensitive information may not be disclosed to analysts, journalists, or any other parties, either individually or in groups, unless such information is simultaneously made public to the market.

Furthermore it follows from the comment to Rule 3.1.1 that a company must disclose information when it is reasonably expected that the price of the securities will be affected. It is not required that actual changes in the price of the securities occur.

Based on the abovementioned the exchange requested the company to explain when the agreement of a new main and stadium sponsor was settled. Furthermore the exchange requested the company specifically and in detail to explain why the information about a new main and stadium sponsor was not disclosed in a separate announcement immediately after the agreement was settled and to explain the procedure ahead of the press conference including the information given to the market.

It appeared from the company's explanation that the negotiations with the sponsor ended approximately a week before and concerned partly jersey-sponsorship and partly the main and stadium sponsor agreement. The company stated that the agreement concerning the main and stadium sponsorship, did not contain elements which differs from the basis for the forward looking statement disclosed by the company, for which reason the company assessed that a separate company announcement was not necessary, which the movement in the share price in the period before and after the publication, according to the company's opinion, also illustrated.

The exchange found reason to notice that in case it is concluded that a matter is not price sensitive, the company can choose to release a press release and/or hold a press conference. In that case the contents and wording of the communication must leave no doubt that the contents are considered not to be price sensitive.

It is the exchange's opinion that the wording from the communication by the company concerning the abovementioned co-operation agreement, gives one the impression that the information was price sensitive.

It appeared from the company's yearly report 2010 that sponsor and co-operation agreements constituted a significantly share of the company's revenue. At the same time the sponsor and co-operation agreements was described as being essential elements in the risk factors for the company.

The exchange concluded that the information regarding a new main and stadium sponsor for the type of company concerned in general would be price sensitive information despite the fact that the information did not give basis to an actual change in share price. It is furthermore the opinion of the exchange that an agreement with a main sponsor was of so essential economically significance for a company of this type, that this regardless the fact that it did not give reason to change the previously announced expectations, was price sensitive and therefore should have been disclosed in a company announcement.

Consequently the exchange reprimanded the company that the company did not disclose information about the new main and stadium sponsor in a company announcement as soon as possible after the signing of agreement cf. Rule 3.1.1 in Rules for issuers of shares.

1.15 Disclosure of quarterly reports/interim management statements

(Brd. Klee A/S)

A company published its financial calendar for 2011/2012. However, the financial calendar did not contain the dates for disclosure of quarterly reports or interim management statements and NASDAQ OMX Copenhagen (the exchange) noted that the company had neither disclosed quarterly reports nor interim management statements.

It appears from Rules for issuers of shares on NASDAQ OMX Copenhagen rule 3.3.12, that a company shall publish a financial calendar listing the dates on which the company expects to disclose financial statement releases, interim reports, interim management statements and the date of the annual general meeting.

Furthermore it appears from Rules for issuers of shares rule 3.2.1 that all financial reporting shall be prepared and disclosed pursuant to accounting legislation and regulations applicable to the company. A company may disclose interim management statements instead of disclosing quarterly reports.

On basis of the above mentioned the exchange requested the company to explain why the company had neither disclosed quarterly reports nor interim management statements.

The company stated that the reason was lack of knowledge of the rules regarding interim management statements. Subsequently the company has clarified the point with the company's auditors and has published a new financial calendar containing the dates for disclosure of interim management statements.

The exchange reprimanded the company that it for a longer period had neither disclosed quarterly reports nor interim management statements in accordance with the Rules for issuers of shares, cf. rule 3.2.1.

1.16 Publication of financial calendar

A company published the financial calendar for the following financial year in connection with the publication of the company's annual report. However an annual report shall be published after the ending of the financial year.

It appears from Rules for issuers of shares on NASDAQ OMX Copenhagen (the exchange) rule 3.3.12, that the financial calendar shall be published prior to the start of each financial year.

On this basis the exchange requested the company to explain the reason that the company's financial calendar was not published prior to the start of the financial year.

Of the company's explanation it appeared that they will make sure to comply with the deadlines for the following financial years.

The exchange reprimanded the company that the company did not publish the financial calendar prior to the start of the financial year cf. rule 3.3.12 in Rules for issuers of shares.

1.17 Publication of financial calendar

A company published its financial calendar for 2011/2012 approximately 3 months after the start of the financial year.

It appears from Rules for issuers of shares on NASDAQ OMX Copenhagen (the exchange) rule 3.3.12, that the financial calendar shall be published prior to the start of each financial year.

On this basis the exchange requested the company to explain the reason why the company's financial calendar was not published prior to the start of the financial year.

From the company's explanation it appeared that the reason for the delay was an omission, but that the company has scrutinized the procedure and has implemented controls, which ensures that the exchange's rules concerning publication of financial calendar will be complied with in the future.

The exchange reprimanded the company that the company did not publish the financial calendar prior to the start of the financial year cf. rule 3.3.12 in Rules for issuers of shares.

1.18 Publication of financial calendar

A company published its financial calendar for 2011/2012 approximately 3 months after the start of the financial year.

It appears from Rules for issuers of shares on NASDAQ OMX Copenhagen (the exchange) rule 3.3.12, that the financial calendar shall be published prior to the start of each financial year.

On this basis the exchange requested the company to explain the reason why the company's financial calendar was not published prior to the start of the financial year.

From the company's explanation it appeared that the delayed publication of the financial calendar was due to the cooperation with the company's administrators, but that the company after taking over the administration itself has scrutinized the procedures and the rules to ensure that a similar case does not recur.

The exchange reprimanded the company that the company did not publish the financial calendar prior to the start of the financial year cf. rule 3.3.12 in Rules for issuers of shares.

1.19 Updated financial guidance

(PANDORA A/S)

A company disclosed an announcement in the beginning of August from which it appeared that the company downgraded the financial guidance for 2011. The updated financial guidance from the company led to a significant price drop from the opening of the market of up to 70 % and took place only 3½ months after the company in April had updated the financial guidance in a positive direction.

From rule 3.1.1 in Rules for issuers of shares it appears that a company shall, as soon as possible, disclose information that are "price sensitive", in case these information directly concerns the company.

Furthermore it appears from rule 3.1.2 in Rules for issuers of shares that information disclosed by the company shall be correct, relevant and clear, and must not be misleading. From the commentary to rule 3.1.2 it appears that the information the company discloses must reflect the company's actual situation and may not be misleading or inaccurate in any manner.

Furthermore it appears from rule 3.3.1 in Rules for issuers of shares that if a company reasonably expects that its financial result or financial position will deviate significantly from a forecast disclosed by the company and such deviation is price sensitive, the company shall disclose information about the deviation.

On this basis the exchange requested the company to concretely and in detail explain the process leading up to the disclosure of the company's announcement. The company has furthermore replied to supplementary questions from the exchange, handed out material and has held a meeting with the exchange.

From the company's explanation it appeared that the board and the management carefully followed the financial development in the company. Thus, the board and the management had regular dialogue during the ongoing evaluation of second quarter 2011.

Furthermore it appeared that it was the assessment of the board and the management during the second quarter that the needed growth in revenue to achieve the company's announced expectations still was a reasonable objective even though there were deviations between the actual development and the budget. The company regularly assessed that it was not relevant to disclose one or more updated guidance during the second quarter 2011. In July a considerable reduction of the revenue occurred whereupon the company disclosed the downgrading in the beginning of August.

The company stated a number of factors which formed the basis for the company to maintain the updated guidance during the second quarter 2011 and in July 2011, disclosed in April. For example the company was behind plan on store openings, the development in sales-in versus sales-out indicated restocking to come in second half of 2011, the impact of price increases expected to ease in second half of 2011 and the company has historically seen more than 60% of its yearly revenue in second half of 2011.

The exchange found that the turnover in the second quarter of 2011 generally remained well below budget. The exchange also noted that the company's statement indicated that the preliminary high-level expectations for 2011 was available in the beginning of July and that a draft internal management report was available in the middle of July 2011.

Furthermore the exchange found that the company in April was able to determine an updated financial guidance during a relatively short time. Moreover the updated financial guidance was not based on a specific event but took place approximately one month before the disclosure of the company's interim financial report for the first quarter 2011.

Based on the explanations etc. from the company the exchange found;

- that the company's procedures and reporting systems in the opinion of the exchange was adequate to ensure a fast and frequent reporting to the management and the board,
- that the company in April was able to determine an updated financial guidance during a relatively short time and based on turnover figures for the first quarter and two weeks in April 2011,
- that the turnover figures for second quarter 2011 were available at the beginning of July. The preliminarily high-level expectations for 2011 were available in the beginning of July while the draft management report for the second quarter was available in the middle of July 2011.

The exchange assessed that the company continuously had knowledge of the negative trend in revenue in the second quarter 2011 and that the company should have had enough data to assess the impact of falling sales – in spite of the factors stated by company.

Based on the explanations etc. from the company, the exchange concluded that it must have been clear to the company at an earlier stage that the guidance disclosed in April 2011 could not be reached and that the company therefore at this earlier stage should have downgraded the guidance for the year. With reference to the significant deterioration in revenue in July 2011 the company could subsequent have made a further downgrade.

Based on the abovementioned the exchange reprimanded the company that the company did not at an earlier stage – primo/medio July 2011 – as soon as possible after the company had become aware that the result would differ significantly from previously disclosed guidance, disclosed an announcement regarding the deviations, cf. Rules for issuers of shares, rule 3.3.1.

2. Declarations and other cases

2.1 Possible disclosure of price sensitive information

(A.P. Møller – Mærsk A/S)

Following a meeting between Head of Investor Relations, A.P. Møller – Mærsk A/S (the company) and an analyst from SEB Enskilda (the market participant) the market participant distributed a market update, which from its wording could only convey the understanding that “price sensitive” information had been disclosed concerning the company’s forthcoming quarterly financial statement. In the market update it was stated among other: “... *the IR, today had received the first draft of the interim results and was able to provide guidance on the accuracy of our interim estimates.*”. Furthermore, it appeared from the market update that the company gave more specific comments to the market participant’s estimates on a number of segments.

Rule 3.1.1 in Rules for issuers of shares on NASDAQ OMX Copenhagen states that a company shall, as soon as possible, disclose information about decisions or other facts and circumstances that are “price sensitive”. A similar rule can be found in The Securities Trading Act § 27.

It is stated in the comment from section 3.1.1 in Rules for issuers of shares that a listed company shall ensure that all market participants have simultaneous access to any price sensitive information about the company. The company is also required to ensure that the information is treated confidentially and that no unauthorized party is given such information prior disclosure. As a consequence of the foregoing, price sensitive information may not be disclosed to analysts, journalists or any other parties, either individually or in groups, unless such information is simultaneously made public to the market.

Furthermore, it is stated in Rules for issuers of shares in section 3.1.3 that disclosure of information covered by these rules shall be made as soon as possible, unless otherwise specifically stated. If price sensitive information is given intentionally to a third party, who does not owe a duty of confidentiality, disclosure shall be made simultaneously.

Based on this, the exchange requested the company to explain the matter, including what specific information Head of Investor Relations gave to the analyst and what the motivation was for providing information to the analyst. The exchange furthermore requested the company to explain what considerations the company had made regarding the price sensitivity of information and the disclosure of it.

It is stated in the explanation, that the first quarter company result was not yet available, why the Head of Investor Relations did not have the information at the meeting, and hence there were no basis to conclude whether there would be reason to adjust the previously announced expectations for the 2011-result.

It is further stated in the explanation what information was given to the analyst and that Head of Investor Relations according to the company’s view only gave ordinary market conform information concerning the activities of company. Therefore, according to the company’s opinion there was not disclosed inside information during the meeting.

The exchange has received an explanation from the market participant, where the market participant broadly agrees to the explanation provided by the company on the progress of the meeting and accepts that the analyst has misunderstood comments by Head of Investor Relations, which led to the impression that the market comment was based on information from a draft for the coming Q1 interim

result. The market participant admits that the analyst was imprecise in the wording in the market update, which could convey the understanding that Head of Investor Relations had provided detailed guidance compared to the analysts estimate.

Subsequently, the exchange asked the company for additional explanation about what information Head of Investor Relations had knowledge about concerning the first quarter of 2011 including information about each business segment ahead of the meeting with the analyst. Furthermore, the company was asked to specifically relate to each of the parts of the market update.

Among other, it is stated in the explanation that Head of Investor Relations had received a first draft on the text description for the use in the Q1 interim report from individual business units, but had not yet received a draft for the text description from the company's container activities. The draft text descriptions were without accounting figures. In the explanation, the company relates to each specific part in the market update and states specifically what information Head of Investor Relations gave the analyst during the meeting.

On request the exchange received additional information from the market participant, including an explanation relating to each specific section in the market update. Furthermore, the market participant explained what information the analyst received during the meeting. The market participant explained that the analyst, according to their understanding, did not receive inside information or non-public information. In the explanation the market participant did strongly regret that the market update contained vague/imprecise wordings.

The exchange emphasizes;

- That the market update was distributed to a significant numbers of receivers who could have got the understanding that price sensitive information had been disclosed,
- That Head of Investor Relations had knowledge about draft versions of text for the Q1 interim result for single business units (the exchange finds reason to remark that according to the understanding of the exchange, a text description of activities for a period before an interim report may contain price sensitive information, even though the text is not supported by accounting figures),
- That even individual parts of the market update would not necessarily be defined as price sensitive to the company – the bundled information could give an indication about the upcoming Q1 result.
- That both the company and the market participant has explained their perception of the matter and that both parts have denied that any non-public price sensitive information was disclosed during the meeting,
- That the market participant has accepted the responsibility for having misunderstood comments by the Head of Investor Relations and conveyed this in the market update by wordings that could give the reader the understanding that the Head of Investor Relations did disclose price sensitive information ahead of the disclosure of the company Q1 interim result.

With reference to the above and the information provided by the company and the market participant the exchange did not have basis to conclude, that the company did pass price sensitive information and hence the exchange did not find reason to conclude that the company did breach the rules of the exchange.

However, the exchange did raise a strong criticism of the fact that a meeting between a person with responsibility for Investor Relations, having potential access to price sensitive information, and a professional analyst could result in such misunderstandings that a market update contained wordings and information that could convey to the reader the understanding that non-public price sensitive information was disclosed.

2.2 Deletion of a company's shares from trading

A company asked the exchange to clarify the possibility of a potential delisting of the company's B-shares from trading on the exchange. The company's A-shares were unlisted.

The company presented the following arguments for delisting:

- Since the company was admitted to trading the company's shares had only been traded to a very limited extent.
- The number of shareholders registered by name was 293. The board of directors assessed that the company did not fulfill the exchange's requirement of a distribution of the shares to minimum 500 shareholders. Also, 222 of the shareholders' holdings each accounted for less than 1,000 EUR.
- Besides the shareholders registered by name, shareholders not registered by name owned 9,8% of the share capital.
- The board of directors assessed that the company's financial and work related consequences of being admitted to trading were relatively large compared to the advantages of being admitted to trading on the exchange.
- The board of directors assessed that the price of the company's shares at the time did not reflect the real values of the company, and that it was difficult to raise new capital without a substantial dilution of those shareholders who did not participate in such a capital increase.
- Potential negative effects of a delisting would primarily be related to the shareholders' inability to sell their shares. However the board of directors assessed that in reality the shareholders did not have this possibility due to the lacking liquidity of the shares.
- The disproportion between the market price and the net asset value of the shares was a substantial disadvantage for the shareholders.
- It would be in the interest of the shareholders to delist the company, because it would make it easier to raise capital.
- Shareholders who wished to buy or sell shares after the delisting could contact the company's administrator, who could try to sell the shares. The administrator didn't guarantee that the shares could be sold at the shareholder's expected price.

Since

- three of the company's shareholders owned 58,5% of the share capital and 78,8% of the votes, and thus there was a substantial free float in the company's shares,
- the company had 293 shareholders registered by name, of which 222 shareholders each owned shares for less than 1000 EUR,
- 9,8% of the company's shares were owned by shareholders not registered by name and it was impossible to determine how these shares were distributed, but there was a risk that they could be distributed to a larger number of smaller shareholders each holding a relatively small number of shares of the company

the exchange concluded that a potential delisting of the company could take place, provided that the question of a delisting was raised as a separate item on a general meeting, and that the exchange subsequently would receive the minutes from the general meeting in order to assess potential objections against the delisting. Furthermore it was a requirement that the shareholders after the general meeting and before a delisting were given the possibility to sell of their shares at a fair price, reflecting the shares market value, e.g by offering to buy the remaining shares.

Afterwards the company published a number of announcements regarding the company's capital situation. It followed that the debt in one of the company's subsidiaries had been terminated and that the company repeatedly had been granted extension of the time for payment of the terminated debt to a fixed date. One of the conditions for the extension was that the company initiated a sales process of the assets of the subsidiary, which was a significant asset for the company.

At the following general meeting the board of directors proposed a delisting of the company's B-shares from trading on the exchange. The proposal was resolved by the present 81,55% of the share capital and 90,63% of the votes.

In the company's subsequent quarterly report it appeared that the company had lost more than half of its share capital.

The quarterly report also stated that the company needed liquidity either by selling assets (apart from the above mentioned sale of an asset) or a capital increase during 2011. A capital increase was assessed as difficult as long as the debt situation in the subsidiary was not resolved.

Also the quarterly report stated that it was detrimental for the company to reach an agreement with its banks concerning a reduction of the financing costs and a change of interest and payment profile. Without such an agreement the company would not have enough liquidity to service its debt or its activities.

Subsequently the company requested the exchange to delist the company's B-shares from trading on the exchange. The following new arguments for delisting were presented.

- The proposal to delist the company was unanimously resolved at the general meeting by the present 81,55% of the share capital and 90,63% of the votes.
- No objections against delisting the company's B-shares were presented at the general meeting.
- The company had been granted extension of the time for payment of a part of the company's debt until a fixed date, provided that the company initiated a sales process of the company's most significant assets. If the sale was carried through without providing the company with a price high enough to enable the company to live up to its postponed debt payment, it could force the company to realize a part of the company's assets, in which case it would be doubtful whether the company could continue as going concern.

Under normal circumstances on this background the exchange would require that the company made sure that the shareholders could dispose of their shares until the delisting in accordance with the practice of the exchange as described in Decisions and Statements 2003. But due to the company's significant financial difficulties, the fact that the delisting was unanimously resolved with a significant majority at a general meeting without objections, that the market value of the company was very low and that the minority shareholders holdings of the shares had to be of very limited size, it was the opinion of the exchange that the company's B-shares could be delisted with a six weeks' notice, so that the shareholders were given time to sell the shares in the market before the shares were delisted.

2.3 Description of the practice concerning the listed companies' statement on Corporate Governance

The rules covering companies listed on NASDAQ OMX Copenhagen (the Stock Exchange) stipulate that Danish companies admitted to trading on the Stock Exchange must give a statement on how they address the Recommendations on Corporate Governance issued by the Committee on Corporate Governance.

The Recommendations are aimed at Danish companies whose shares are admitted to trading on a regulated market, as such companies have chosen to be publicly traded companies. For shareholders and other stakeholders to be able to assess the circumstances in publicly traded companies, transparency is important. It is also important that the society, the companies and the investors have a positive attitude to corporate governance, follow developments within this area, take part in the dialogue on corporate governance and are generally positive towards complying with the recommendations.

”Comply or explain” - principle

The companies shall use the “comply or explain”- principle in their Corporate Governance statement. The “comply or explain”- principle also follows from rule 4.3 in Rules for issuers of shares.

The “comply or explain” - principle means that the companies shall either comply with the Recommendations on Corporate Governance or explain why the company does not comply, in whole or in part, with the recommendations.

The principle means that each company should decide to what extent it wants to comply with the recommendations. If a company does not comply with a recommendation, it must explain why it has chosen differently, and specify its different approach. Previously, it was possible to address a series of recommendations under the same headline. Non-compliance is not a violation of the rules but reflects that the company has structured itself in a different manner than the recommendation specifies.

Today – after we have had the Recommendations on Corporate Governance in Denmark for a number of years – there is generally more focus on the quality of the companies’ feedback on the Recommendations on Corporate Governance and, especially, the explanations given for non-compliance. Consequently, the Stock Exchange considers it important that the companies provide meaningful and understandable explanations of deviations from the recommendations.

Formal requirements for the statement

According to section 107 b of the Financial Statements Act the company must prepare one overall Corporate Governance statement. The statement form part of the management report in the company’s annual report. However, the Financial Statements Act also makes it possible to publish the statement on the company’s webpage by reference to the management report. Irrespective of whether the statement is published in the management report or on the company's webpage by reference to the management report, the statement form part of the management report as mentioned above. Accordingly, the statement shall be prepared in Danish.

If the company decides to publish the statement on the company’s webpage, certain duties are incumbent on the management. These duties are stated in the executive order no. 761 of 20 July 2009 on publication of Corporate Governance statements and policies on social responsibility etc. on a company’s website. Amongst others, the executive order contains the following duties:

- The management report must state that the company has chosen to publish the statement on its website. In this connection the URL-address to be used to go directly to the statement must be stated.
- The statement must be published under the title: "Statutory corporate governance statement, cf. Financial Statements Act § 107 b”.
- It must be indicated in the statement that it is a part of the management report in the company’s annual report.

- The statement must cover the same period as the annual report's accounting period.
- The statement must be kept separate from any voluntary additional information.
- The statement must be publicly available on the company's website from the time the annual report is publicly available.
- The statement must be available in its entirety in unmodified form for at least 5 years at the URL-address listed in the management report in the annual report the statement relates to.

There are special rules to the statement for credit institutions in an executive order on Financial Reports for credit institutions and investment companies, etc.

Follow-up by NASDAQ OMX Copenhagen

The Stock Exchange's examination of a company's statement comprises the following:

- Did the company prepare one overall statement?
- Did the company report on the applicable recommendations?
- Did the company address all the recommendations?

The Stock Exchange does not consider whether an explanation is good or bad – this assessment will expectedly be made by the stakeholders in the market.

Findings by the Stock Exchange concerning the companies' preparation of one overall statement etc.

The Danish Financial Statements Act requires that information be included in one statement and published either in the management's review in the annual report or on the company's website with a reference in the management's review. The statement must be prepared in Danish.

The Stock Exchange finds that most companies refer to their website for detailed information on the company's corporate governance.

If the information is published on the company's website, the URL address (the Internet address) showing where the statement is posted must be disclosed in connection with the management's review, and in this respect, the Stock Exchange contacted a few companies where the Internet address did not link to a valid internet page.

The Stock Exchange found that a number of companies refer to the company's website and not to the Internet address linking directly to the statement (the URL address). A few companies have posted their statement in English only on their website.

Furthermore, the Stock Exchange saw examples of companies posting statements from different years on different locations on their website, and the Stock Exchange also found that the companies differ greatly as to where they post their statements. The Stock Exchange does not take a position on the exact location of the companies' statements, but the Stock Exchange does find it most appropriate to post the statements on the same location each year to make it easier for reader to find the relevant statement and at the same time to follow the company's development from year to year.

In the Stock Exchange's opinion, the companies must concretely address all 78 recommendations (from the 2011 financial year 79 recommendations). This implies that the statement must clearly show what the company has decided for each of the recommendations. It does not, however, imply that the company must explain how it complies with the individual recommendations. The company is still only required to explain the recommendations with which it does not comply.

Accordingly, the Stock Exchange finds that it is not sufficient to state that "the company complies with all recommendations", even if followed by "other than...".

To ensure that the company has addressed all recommendations and that all information is disclosed to the investors and to make it easier to make comparisons across the companies, the Stock Exchange recommends that the companies apply the form prepared by the Committee on Corporate Governance. In any circumstances, the presentation of the information should be well-arranged, preferably using the same structure (points) as the Recommendations.

Other findings from the Stock Exchange's examination of the statements

The Stock Exchange finds that the companies generally comply with the recommendations. Also, a number of companies explain how they comply with the recommendations. The Stock Exchange finds that this information is very valuable to the reader.

When preparing the statement, the companies must apply the "comply or explain" principle. Under this principle, the companies must either comply with the Recommendations on Corporate Governance or explain why they do not comply with some or all of the recommendations. In this respect, it is not sufficient to merely explain the reason for non-compliance. The company must also specify its different approach.

The Stock Exchange has seen several examples of companies merely explaining the reason for non-compliance.

On the basis of the companies' 2010 annual reports the Stock Exchange has reprimanded 16 companies about issues relating to the statements on corporate governance.

II. FIRST NORTH

1. Reprimands

1.1 Late publication of press release from the ordinary general meeting

The exchange found that a company admitted to trading on First North had not published decisions made on the company's ordinary general meeting immediately after the completion of the general meeting, cf. Rule 4.9 in the First North Rulebook. The exchange requested the company to explain the reason for this.

It appeared from the company's explanation that the general meeting took place on a Friday afternoon and that the company completed and issued a press release from the general meeting immediate the following Monday before the market had opened.

From the explanation it furthermore appeared that the press release, in the opinion of the company, was published as soon as possible.

According to the First North Rulebook, disclosure of information in general should take place "as soon as possible" – as for the disclosure of decisions made on the general meeting a company shall issue a press release "immediately after the conclusion of the meeting". The terms "as soon as

possible” and “immediately after...” indicate that the issuer cannot use more time than what is needed to complete a company announcement. The time of day or which day of the week an event occurs is therefore not taken into account. Nor whether it happens outside the opening hours of exchange (the market). It is therefore the opinion of the exchange that decisions made on the general meeting should be published the same day as the completion of the general meeting.

On this basis the exchange reprimanded the company for not having issued a press release from the general meeting immediately after the conclusion of the meeting, cf. Rulebook for First North rule 4.9 (b).

1.2 Late publication of the minutes from the ordinary general meeting

The exchange found that a company admitted to trading on First North had not published decisions made on the company’s ordinary general meeting immediately after the completion of the general meeting, cf. Rulebook for First North rule 4.9 (b). Not until two days after the completion of the general meeting the summary was published. Furthermore the name of the Certified Adviser did not appear on two of the announcements from the company. The exchange requested the company to explain the reason for this.

From the explanation by the company, it appeared that the company’s lawyer not until the day after the completion of the general meeting had completed the summary, and that the chief financial officer who is the only person with access to publishing announcements was not at work that particular day. The company admitted that this was a result of inconveniently planning, for which reason the company immediately changed the procedure.

It furthermore appeared from the explanation that the company mistakenly had not stated the name of the Certified Adviser in two of the company’s announcements. The company stated that the abovementioned change in the procedure also includes additional control of formalities which ensures that this will not happen again.

On this basis the exchange reprimanded the company for not having published a summary immediately after the conclusion of the meeting, cf. Rulebook for First North rule 4.9 (b). The exchange found it unfortunate that the announcements did not contain the name of the company’s Certified Adviser and took note of the fact that the company had changed its procedure in order to ensure control of formalities.

The exchange emphasized the importance of a company admitted to trading on First North is being guided by a Certified Adviser and that the market is aware of who is Certified Adviser for each company.

1.3 Late publication of the minutes from the ordinary general meeting

The exchange found that a company admitted to trading on First North had not published decisions made on the company’s ordinary general meeting immediately after the completion of the general meeting, cf. Rulebook for First North rule 4.9 (b). Not until two days after the completion of the general meeting the summary was published. Furthermore the name of the Certified Adviser did not appear on two of the announcements from the company.

According to rule 5.2 in the First North Rulebook the Certified Adviser shall monitor the company's compliance with First North's disclosure requirements and advice, support and update the company on its obligations on First North.

This means that the Certified Adviser is committed to actively have ongoing contact with the company and to keep informed of the company's activities. The exchange thus assumes that a Certified Adviser in order to fulfill his obligations in connection with a company's general meeting has a close contact with the company both on the content and timeliness of the communication to the market.

On the basis of abovementioned the exchange requested the company's Certified Adviser to explain the procedure for publishing the minutes and explain the reason for why the announcements did not contain the name of the Certified Adviser.

In the explanation Certified Adviser refers to the company's explanation with no further comments.

Furthermore it appeared from the explanation that all announcements should be submitted to the Certified Adviser before publishing, but because of a mistake it did not happen with this announcement.

On this basis, the exchange reprimanded Certified Adviser that they as Certified Adviser for the company did not make sure that the company did publish decisions made on the general meeting immediately after the completion of the general meeting, cf. rule 5.2 in the First North Rulebook.

The exchange found it unfortunate that the announcements did not contain the name of the company's Certified Adviser and took note of the fact that the company had changed its procedure in order to ensure control of formalities.

The exchange emphasized the importance of a company admitted to trading on First North is being guided by a Certified Adviser and that the market is aware of who is Certified Adviser for each company.

1.4 Late publication of the minutes from the ordinary general meeting

The exchange found that a company admitted to trading on First North had not published decisions made on the company's general meeting immediately after the completion of the general meeting, cf. Rulebook for First North rule 4.9 (b). Not until seven days after the completion of the general meeting the summary was published. Furthermore the name of the Certified Adviser did not appear in the announcement from the company. The exchange requested the company to explain the reason for this.

From the explanation by the company it appeared that the summary was completed immediately after the completion of the general meeting, but was not send to First North until seven days later because of a mistake. Furthermore it appeared from the explanation that the missing name of the Certified Adviser also was because of a mistake. The company stated that it tightened up the procedure for disclosure of announcements.

On this basis the exchange reprimanded the company for not having published a summary immediately after the conclusion of the meeting, cf. Rulebook for First North rule 4.9 (b).

The exchange found it unfortunate that the announcement did not contain the name of the company's Certified Adviser and took note of the fact that the company had tightened up the procedure for disclosure of announcements.

The exchange emphasized the importance of a company admitted to trading on First North being guided by a Certified Adviser and that the market is aware of who is Certified Adviser for each company.

1.5 Lack of approval as designated contact person

(Beierholm – Certified Adviser)

The exchange found that a company admitted to trading on First North had not published decisions made on the company's ordinary general meeting immediately after the completion of the general meeting, cf. Rulebook for First North rule 4.9 (b). Not until seven days after the completion of the general meeting the summary was published. Furthermore the name of the Certified Adviser did not appear in the announcement from the company.

According to rule 5.2 in the First North Rulebook the Certified Adviser shall monitor the company's compliance with First North's disclosure requirements and advice, support and update the company on its obligations on First North.

This means that the Certified Adviser is committed to actively have ongoing contact with the company and to keep informed of the company's activities. Thus Certified Adviser has got an obligation to monitor that the company publish the required announcements and control that the company publish the summary of the general meeting after its completion.

On the basis of the above mentioned the exchange requested the company's Certified Adviser to explain the process for the publication of the summary and explain the reason why the announcement did not contain the name of the Certified Adviser.

From the explanation it appeared that the Certified Adviser received the summary the same day after the general meeting and was informed that it immediately would be uploaded to the exchange. Furthermore it appeared that the Certified Adviser did not notice the missing name of the Certified Adviser.

On this basis, the exchange reprimanded Certified Adviser that they as Certified Adviser for the company, did not adequately make sure that the company complied with the disclosure requirements and therefore did not publish decisions made on the general meeting immediately after the completion of the general meeting, cf. rule 5.2 in the First North Rulebook.

The exchange found it unfortunate that the announcement did not contain the name of the company's Certified Adviser and took note of the fact that the company had tightened up the procedure for disclosure of announcements.

The exchange emphasized the importance of a company admitted to trading on First North being guided by a Certified Adviser and that the market is aware of who is Certified Adviser for each company.

The exchange subsequently noticed that the communication between the company, the Certified Adviser and the exchange was handled by a not approved designated contact person.

It follows from the First North Rulebook rule 5.1 (b) and appendix E that a designated contact person must be approved to act as a designated contact person. As mentioned above it follows from the First North Rulebook rule 5.2 which obligations the Certified Adviser has. Among this it is expected that the Certified Adviser has a thorough knowledge of and an ongoing contact with the company.

Furthermore it appears from the First North Rulebook rule 5.4 that the Certified Adviser shall notify the Exchange of any change that affects the Certified Adviser's possibility to perform its function, including any change in personnel or organization. Appendix E shall be used in respect of changes in personnel or organization.

The exchange furthermore reprimanded the Certified Adviser that the person who handled the obligations as Certified Adviser was not approved as designated contact person, cf. the First North Rulebook rule 5.1 (b).

1.6 Publication of the annual report and interim report

(Aqualife A/S)

A company admitted to trading on First North published that the company's annual report would not as previously announced be published before the expiry of the three months period of the financial period, but would be published within the deadlines in the Companies Act would.

It appears from the Rulebook of First North rule 4.6 (a) that after the Company's Board of Directors has approved the annual accounts, the Company shall immediately publish a report of annual earnings figures containing the most important information from the forthcoming annual report.

Furthermore it appears from rule 4.6 (c) that reports of annual earnings figures shall be published as soon as possible and not later than within three months from the expiry of the reporting period.

On this basis the exchange requested the company to concretely and in detail explain the process leading up to the publication of the company's announcements.

From the explanation it appeared that the postponement of the publication of the annual report mainly was due to the fact that the necessary basis for selecting accounting principle and consequently valuing assets and liabilities accurately were not present at the time the decision to defer publication of the yearly report was taken by the board.

Furthermore it appeared from the explanation that the management of the company worked to give a clarification as soon as possible and that it was the board's judgment that a revised yearly report, given that the critical circumstances would be clarified positively and in time, would be published in the beginning of May 2011.

The company published the yearly report one month later and stated at the same time that the quarterly report could be expected 14 days later.

It follows from rule 4.6 (d) that if a company decides to publish quarterly reports, then the requirements set out in Rule 4.6 (c) for half-yearly reports shall apply. This implies that the quarterly reports shall be published as soon as possible and not later than 2 months after the expiry of the financial period.

Thus the deadline for the company's quarterly report was the end of May 2011.

On basis of the above-mentioned the exchange reprimanded the company that the company did not publish its yearly report based on the revised account before the expiry of the three months period in accordance with the Rulebook of First North rule 4.6 (c). The exchange furthermore reprimanded that the company did not publish its 1. quarterly report before the expiry of 2 months after the financial period in accordance with the Rulebook of First North rule 4.6 (d), cf. rule 4.6 (c).

1.7 Publication of annual report

(Athena IT-Group A/S)

A company admitted to trading on First North Premier published its annual report on a Monday. From the annual report it appeared that the Board of Directors had handled and approved this Tuesday the week before.

It appears from Rulebook for First North, appendix L – disclosure rules applicable for First North Premier Segment rule 2.1, that a company shall as soon as possible publish the annual report after the Board has approved it.

The exchange requested the company to explain the reason for the abovementioned.

It appeared from the explanation that the company had held the board meeting on Tuesday with participation of the audit and that the Board had several questions and remarks which led to changes in the draft annual report, primarily of editorial character. These together with minor numerical adjustments as a consequence of the completion of the revision of the annual report was included in the “final” draft for the annual report, which according to the explanation from the company was approved by the Board not before Monday morning 6 days later.

Based on the information the exchange found that the company’s annual report was approved with the proposed changes by the Board on the board meeting which took place Tuesday the week before the publication.

The exchange did not by default find anything wrong with this procedure, but it is a prerequisite that the proposed changes by the Board after the completion of the board meeting, are incorporated within such time that the publication still take place as soon as possible after the approval.

The fact that the publication of the annual report took place not until 6 days after the Board’s approval gives the impression that the annual report was not published as soon as possible and the exchange reprimanded the company on this basis.

1.8 Publication of annual report

(Adviser K/S – Certified Adviser for Athena IT-Group A/S)

A company admitted to trading on First North Premier published its annual report on a Monday. From the annual report it appeared that the Board of Directors had handled and approved this Tuesday the week before, which the exchange requested the Certified Adviser to explain.

In accordance with the Rulebook for First North Rule 5.2, a company’s Certified Adviser among other things shall monitor the Company’s compliance with First North’s disclosure requirements along with advice, support and update the Company on its obligations on First North.

It appeared from the explanation that the company had held the board meeting on Tuesday with participation of the audit and that the Board had several questions and remarks which led to changes in the draft annual report, primarily of editorial character. These together with minor numerical adjustments as a consequence of the completion of the revision of the annual report was included in the final draft for the annual report, which according to the explanation was approved by the Board not before Monday morning 6 days later.

Based on the information the exchange found that the company's annual report was approved with the proposed changes by the Board on the board meeting which took place Tuesday the week before the publication.

The exchange did not by default find anything wrong with this procedure, but it is a prerequisite that the proposed changes by the Board after the completion of the board meeting, are incorporated within such time that the publication still take place as soon as possible after the approval.

The fact that the publication of the annual report did not take place until 6 days after the Board's approval gives the impression that the annual report was not published as soon as possible, and on this basis the exchange reprimanded the Certified Adviser that they as Certified Adviser for the company did not make sure that the company published the annual report as soon as possible after the approval by the company, cf. Rulebook for First North Rule 5.2.

1.9 Failure to publish annual report

(Travelmarket A/S)

A company admitted to trading on First North published its financial statement (annual earnings figures) for the financial year 2010/2011. However the company's annual report had been available on the company's website and on NASDAQ OMX's website for about 14 days prior to the publication.

It appears from rule 4.2 (d) in the First North rulebook, that information to be disclosed according to this Chapter shall be disclosed in a manner that ensures fast public access to such information on a non-discriminatory basis.

It furthermore appears from rule 4.6 (a) in the First North rulebook, that after the Company's Board of Directors has approved the annual accounts, the Company shall immediately publish a report of annual earnings figures containing the most important information from the forthcoming annual report.

Consequently NASDAQ OMX Copenhagen (the exchange) requested the company and the company's Certified Adviser specifically and in detail to explain the procedure prior to the publication.

Based on the explanation from the company respectively the Certified Adviser the exchange took into account:

- that the annual report from the company by mistake was not published to the market
- that the annual report from the company had been available in about 2 weeks before the correct publication
- that the company regarding the first attempt to publish follows the company's "normal" procedure
- that the company afterwards receives an e-mail from the company's service provider of which it appears that the company's annual report is published

- that the company checks that the annual report appears on NASDAQ OMX's website and hereafter publish the annual report on the company's own website.

Even though the exchange had an understanding of how the company could have been led to believe that a correct publication of the company's annual report had happened, this was however not the case and the exchange reprimanded the company that the company did not publish its annual report 2010/2011 to the market as soon as possible after the Company's Board of Directors had approved the annual accounts, cf. rule 4.6 (a) in the First North rulebook.

1.10 Late publication of the summary from the ordinary general meeting

(Aktiv Formue Forvaltning Stratego A/S)

The exchange found that a company admitted to trading on First North had not disclosed decisions made on the company's general meeting immediately after the completion of the general meeting, cf. Rulebook for First North rule 4.9 (b). Not until four days after the completion of the general meeting the summary was disclosed.

From the explanation by the company it appeared that the summary was completed the day after the completion of the general meeting, and immediately hereafter was e-mailed to the Certified Adviser for approval. One day after the reception the Certified Adviser approved the summary by e-mail, and the summary was thus disclosed four days after the completion of the general meeting.

On this basis the exchange reprimanded the company for not having disclosed a summary immediately after the conclusion of the general meeting, cf. Rulebook for First North rule 4.9 (b).

The exchange emphasized the importance of a company admitted to trading on First North being guided by a Certified Adviser.

1.11 Late publication of the summary from the ordinary general meeting

(Deloitte Financial Advisory Services – Certified Adviser for Aktiv Formue Forvaltning Stratego)

The exchange found that a company admitted to trading on First North had not disclosed decisions made on the company's ordinary general meeting immediately after the completion of the general meeting, cf. Rulebook for First North rule 4.9 (b). Not until four days after the completion of the general meeting the summary was disclosed.

According to rule 5.2 in the First North Rulebook a company's Certified Adviser shall monitor the company's compliance with First North's disclosure requirements and advice, support and update the company on its obligations on First North.

This means that the Certified Adviser is committed to actively have ongoing contact with the company and to keep informed of the company's activities. Thus Certified Adviser has an obligation to monitor that the company disclose the required announcements. This includes a control of that the company disclose the summary of the general meeting after its completion.

On the basis of the above mentioned the exchange requested the company's Certified Adviser to explain the process for the disclosure of the summary.

From the explanation it appeared that the Certified Adviser received the summary by e-mail the day after the general meeting. The Certified Adviser read and approved the summary the day after the reception.

On this basis, the exchange reprimanded Certified Adviser that they as Certified Adviser for the company, did not adequately make sure that the company complied with the disclosure requirements and therefore did not disclose decisions made on the general meeting immediately after the completion of the general meeting, cf. rule 5.2 in the First North Rulebook.

The exchange emphasized the importance of a company admitted to trading on First North being guided by a Certified Adviser.

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