Takeover rules for certain trading platforms

The Stock Market Self-Regulation Committee
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In case of discrepancies between the language versions, the Swedish version is to apply.

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Introduction

The Swedish Takeovers Act (2006:451) contains basic provisions regarding takeover bids for shares in companies whose shares are admitted to trading on a regulated market in Sweden. The Act also contains provisions on mandatory offers and defensive measures.

In addition, the Swedish Securities Market Act (2007:528) stipulates that a stock exchange is to have rules regarding takeover bids for shares admitted to trading on a regulated market operated by the relevant stock exchange. The Nasdaq Stockholm AB and Nordic Growth Market NGM AB exchanges have such rules today.
The Stock Market Self-Regulation Committee, (Aktiemarknadens självregleringskommitté, ASK), recommends that essentially the same rules apply to companies whose shares are traded on the Nasdaq First North Growth Market, Nordic SME and Spotlight Stock Market trading platforms.

The rules below are to be observed by offerors and offeree companies. When the term "Marketplace" is used in the rules, this refers to the trading platform on which the shares of the offeree company in question are traded following application. It is of the utmost importance for public confidence in the stock market and in the business community that the rules are also respected by other actors, including those who provide advice or otherwise assist offerors, offeree companies or other parties involved in takeover bids in various capacities.

The specific provisions apply to the various stages of an offer, and broadly follow the chronological order of events in the offer process. On a detailed level, the circumstances often differ from one offer process to another. As a result, the provisions are for the most part relatively general. The Swedish Securities Council, whose task it is to promote generally accepted practices on the Swedish stock market, e.g. by issuing statements on individual cases, may issue rulings concerning the interpretation and application of the rules and how different parties should proceed in specific situations. It is the responsibility of anyone who has contact with the Council regarding a ruling to provide relevant, exhaustive, accurate and clear information. Questions from the Council are to be answered without delay and all contact with the Council is to be characterized by transparency and urgency.

The provisions are to be interpreted in the light of their purpose. This means that not only the wording of the provisions is to be respected, but also their objectives.

The rules are based on certain principles derived from the European Union's Directive on Takeover Bids (2004/25/EC). These principles should provide guidance in situations not covered specifically by the rules or where the rules do not prove to be appropriate in a specific case.

These principles are as follows:

a) All holders of the same class of securities in an offeree company must be treated equally, and if a person acquires control of a company, other holders of securities are to be protected.
b) Holders of securities in an offeree company are to be given sufficient time and information to reach a well-founded decision regarding the offer. When the board of the offeree company gives advice to the holders of its securities, it is to give its opinion on how implementation of the offer will affect the number of employees, employment conditions and the location of the company's operations.

c) The board of the offeree company is to take into account the interests of the company as a whole and may not deny holders of securities the opportunity to form a conclusion regarding the offer
d) The markets on which securities in the offeree company, the company making the offer, or any other company affected by the offer are traded may not be manipulated in a manner that causes the price of the security to rise or fall artificially and that distorts the normal functioning of the markets.
e) An offeror may not announce an offer until it has been ascertained that cash consideration, where offered, can be paid in full and only after all reasonable steps have been taken to ensure payment of all other forms of consideration.
f) An offer concerning securities in an offeree company may not prevent the company from conducting its business for a period that is longer than is reasonable.

To the extent possible, a takeover bid is to be structured in a way that is simple and clear and so that complex elements can be understood.

From a minority shareholder protection perspective, similar interests worthy of protection are relevant irrespective of whether the takeover of an offeree company is carried out in the form of a takeover procedure or, for instance, through a merger process. Section VI therefore stipulates that, in most respects, the rules are to be applied equivalently to mergers and merger-like processes, and that certain provisions of the Swedish Companies Act (2005:551) regarding voting at shareholders' meetings are to be applied equivalently even when these provisions are not directly applicable.

I General provisions

Scope of the rules

I.1 These rules are applicable to any situation in which someone (the offeror) invites holders of shares issued by a company, which after an application by the company are traded in the Marketplace (the offeree company), to sell all or some of the shares to the offeror (a takeover bid).

With respect to such takeover bids, references to shares also apply, to the extent applicable, to convertible securities, warrants, principal-linked participating debentures, dividend-linked participating debentures, subscription rights and other equity-related transferable securities issued by the company whose shares are the target of the takeover bid (the offeree company). Holders of such securities are thus to be regarded as shareholders.

Provisions regarding shares are also to apply to shareholders' rights regarding parties holding shares on their behalf (depository receipts).

The rules are not applicable to takeover bids for shares that have been issued by the offeror.

Mergers and merger-like processes are governed by the provisions in Section VI.

Commentary

The *first paragraph* states that the rules apply to such takeover bids for shares issued by a company whose shares are traded on the Marketplace following an application by the company. This means that the rules as a whole apply not only in cases where the shares are traded exclusively on the Marketplace, but also in cases where the shares are traded on both the Marketplace and a foreign marketplace. Section II.21 (Defensive measures) and Section III (mandatory offers) stipulate that those provisions, which apply only to offeree companies that are Swedish limited companies, have a different scope than Rule I.1.

Application of the rules is not dependent on the national domicile of the offeror and the rules do not distinguish between offerors who are natural persons or legal entities.

Situations arise, also in cases other than those mentioned above, in which the offeror is required not only to observe the Swedish rules but must also take into account rules in one or more foreign jurisdictions. Drawing up an offer to meet the requirements in all of the jurisdictions concerned can be very time-consuming and costly. In such circumstances, in accordance with Rule I.2, the offeror may request an interpretation of the rules by the Swedish Securities Council and, where required, an exemption from the obligation to address the offer to shareholders in all jurisdictions and from the obligation to apply the Swedish rules fully in all respects. There is no need to apply for exemption regarding shareholders in jurisdictions outside the European Economic Area provided that, at the time the offer is made, the number of shares held by shareholders in such a jurisdiction can be assumed to represent only a negligible proportion of the total number of shares in the company (up to three per cent), the shares in question are not admitted to trading on a marketplace in the jurisdiction and there are no other circumstances of sufficient importance to justify any other procedure. This also applies to offers subject to mandatory bid provisions in accordance with Section III below.

The rules apply not only to offers for all of the shares in the offeree company, but also to partial offers. Rule II.16 contains certain provisions that apply exclusively to partial offers.

According to the *second paragraph*, unless otherwise stated, when applying the rules references to shares also apply, to the extent appropriate, to convertible securities, warrants, dividend-linked participating debentures, principal-linked participating debentures, subscription rights and other equity-related transferable securities issued by the company whose shares are the target of the takeover bid. An example of the latter is call options regarding shares issued by the offeree company. Holders of such securities are to be regarded as shareholders in this context. However, the rules do not apply to takeover bids involving call options issued by a party other than the offeree company.

Securities which are not transferable securities, such as non-transferable employee options, are not covered by the rules, irrespective of whether they are issued by the offeree company or a third party.

According to the *third paragraph*, depository receipts are equated with shares.

In these rules, subject to certain exceptions, the terms "share" and "shareholder" are also used when reference is made to other securities equated here with shares and holders of such securities.

The *fourth paragraph* states that the rules do not apply to the acquisition of own shares by a company in the form of a repurchase offer to shareholders. However, for Swedish limited companies whose shares are traded on a trading platform, this option is not available.

Mergers and merger-like processes fall outside the scope of Rule I.1. The provisions of Section VI apply to such processes. The *fifth paragraph* contains a reference to this.

Asset transactions, i.e. when a purchaser acquires a company's entire operation or what in practice constitutes the entire operation, also fall outside the scope of application of these rules. However, in asset transactions in a listed company, similar minority interests worthy of protection are relevant. It is the responsibility of the Swedish Securities Council to determine what requirements apply to an asset transaction, for example with regard to disclosures and decision-making procedures.

Authority of the Swedish Securities Council to interpret the rules and grant exemptions

I.2 The Swedish Securities Council may issue rulings regarding the interpretation and application of the rules. The Council may also grant exemptions from the rules where there is special cause to do so. The Council may stipulate conditions for such exemptions.

Commentary

A regulatory framework for takeover bids is unable to cover in detail all of the issues that may arise in practice in connection with such offers. It is therefore of the utmost importance that there is a body that can provide authoritative rulings on the interpretation and application of the rules. The Swedish Securities Council has been assigned this role.

The rules are to be interpreted and applied in a manner which is compatible with their aims. Any uncertainty regarding the meaning of a provision in a specific case should be eliminated by submitting an enquiry to the Council.

Certain provisions state that special cause may justify deviation from the rule. In cases where the commentary on the provisions does not provide sufficient guidance, the Council should be consulted.

The circumstances in different takeover bids are rarely identical. It is not possible to take such differences into account fully when formulating rules intended for general application. It is therefore necessary to combine the rules with a body to permit exemptions from all or individual rules where there is specific reason for doing so. This role is also performed by the Council. Issues regarding exemptions may arise, for example, in relation to mandatory offers, (see Section III).

Within the scope of its general responsibilities, the Council may also issue statements regarding generally accepted practices on the stock market in matters relating to a takeover bid. For example, if it is deemed necessary, the Council may provide instructions on how parties should act in a situation where there are competing offers, e.g. with regard to the timetables of the bids.

From a minority shareholder protection perspective, similar interests worthy of protection are relevant irrespective of whether the acquisition of an offeree company is carried out in the form of a takeover or, for instance, through a merger process. Section VI addresses the rules applicable in the case of mergers and merger-like processes. One consequence of the scope of Section VI is that the rules may conflict with company law regulations applicable in countries in which relevant parties are domiciled. It may also be the case that the rules in a particular foreign jurisdiction provide satisfactory protection for minority shareholders in a way that differs from that specified in Section VI. In these and other cases, the Securities Council may issue rulings regarding the manner in which the rules are to be applied, or grant exemptions from them.

Actions taken by parties closely related to the offeror

I.3 Actions taken by the following parties and covered by the rules to the extent provided therein are to be regarded as taken by the offeror:

a) any company in the same group as the offeror,

b) the spouse or cohabitee of the offeror,

c) any child of the offeror who is in the custody of the offeror,

d) any party with whom an agreement has been reached to take a long-term common position with the purpose of achieving a controlling influence over the management of the offeree company through a coordinated exercise of voting rights,

e) any party who cooperates with the offeror for the purpose of facilitating the implementation of the offer,

f) any party who cooperates with the offeror for the purpose of acquiring control of the company.

Commentary

This rule lists the parties who, in certain cases, are to be equated with the offeror. This applies in cases where so specifically stated in the rules. When assessing whether a mandatory offer has been triggered, the term "offeror" applies to acquirers as described in Rule III.1.

In *subsection a)*, any undertaking which is a member of the same group of companies as the offeror is equated with the offeror. The definition of a group is the same as that in the Swedish Companies Act, although the statutory provisions regarding parent companies also apply in this context to natural persons and legal entities other than limited companies. This means, for example, that this rule may also apply even if the offeror is a member of a foreign group of companies.

In *subsection b)*, the offeror's spouse or cohabitee (civil partner) is equated with the offeror. The definition of a civil partner is the same as that in the Swedish Civil Partnership Act (2003:376), i.e. two persons living together on a permanent basis as a couple and with a shared household.

In *subsection c)*, any children who are in the offeror's custody are equated with the offeror.

A close relationship as described in *subsection d)* assumes the existence of a written or oral agreement between the offeror and another natural or legal person to take a long-term common position with the purpose of achieving a controlling influence over the management of the company through a coordinated exercise of voting rights. This provision may apply, for example, if there is an agreement to coordinate the exercise of voting rights over an extended period of time, i.e. several financial years, to ensure the election of such a number of directors as is sufficient at least to constitute a majority on the board. This provision is not designed, however, to cover temporary or only occasional cooperation prior to the election of a board of directors or other shareholder resolutions, e.g. within the scope of a nominating committee.

Subsection e) assumes that a party is cooperating with the offeror by virtue of an agreement for the purpose of facilitating the implementation of an offer. This provision may apply, for example, where a party acquires shares for the purpose of selling the shares to the offeror. Another example is where a party acquires shares in order to hold them on behalf of the offeror, (known as a parking arrangement). Thus, in these cases, the price paid by the cooperating party for the shares is to be "attributed to" the offeror. This provision is not intended to apply to cooperation with investment banks, lawyers, auditors or other advisers who act in such capacity.

Subsection f) is relevant only to the question of whether a mandatory offer is required, (see section III). The relationship described requires that in an acquisition situation between the acquirer and one or more physical or legal persons there is a written or oral agreement to cooperate in the acquisition to control the company. The term "control" refers to a shareholding representing at least three tenths of the voting rights for all shares in the company.

Announcements

I.4 Information which is made public as a result of a planned or submitted offer is to be accurate, relevant and clear. The information may not be misleading.

The information is to be disclosed in such a manner that it becomes available to the general public promptly and in a non-discriminatory manner. The information is to be submitted simultaneously to the Marketplace, as well as to the Swedish Securities Council.

The information is to state the time and date on which it was made public and include the name and telephone number of a contact person.

The information is also to be made available on the offeror's website as soon as possible after the announcement unless there are particular reasons for not doing so.

Information which is to be made public by an offeror in accordance with the rules is to be submitted simultaneously to the offeree company and to be made available on the offeree company's website as soon as possible, unless there are particular reasons for not doing so.

Commentary
It is stipulated in several places in the rules that certain information is to be made public. A general requirement is that such information may not be misleading or otherwise inaccurate (*first paragraph*). The information is to be adapted to and focused on the decision or event giving rise to the announcement.

Rules governing the manner in which publication is to take place are contained in Chapter 17, section 2 of the Swedish Securities Market Act and in the Financial Supervisory Authority's regulations governing operations on trading venues (FFFS 2007:17). In practice, the rules mean that an information distributor must be engaged in order to ensure simultaneous dissemination of the information. Distribution exclusively by email directly from the party who is obliged to publish the information is not permitted.

Information to be published through a press release, e.g. a bid announcement in accordance with Rule II.3, is to be provided in the press release itself. It is not sufficient that the information is contained in an attached document or can be accessed via a link in the press release. Stipulations regarding publication of offer documents and any supplementary documents are contained in the rules - see Rule II.6.

The *second paragraph* stipulates that the information which is to be made public is also to be submitted to the Marketplace and the Swedish Securities Council no later than the same time and date.

The *third paragraph* states that the information which has been made public is to include the time and date of its publication. The information is also to include the name of the contact person in the matter.

The information which is to be made public is also to be made available on the offeror's website as soon as possible after the announcement. This is stipulated in the *fourth paragraph*. However, there may be particular reasons – such as the fact that the offer is not addressed to shareholders in certain jurisdictions (cf. the commentary on Rule I.1) – which justify the information not being made universally available in this manner. The information is to remain available on the website at least until the six-month period specified in Rule II.15 expires or, if that period does not commence, for six months from date of the offeror's latest press release regarding the offer. If the offer is followed by the offeror initiating compulsory acquisition of remaining shares, the information is to remain available as long as the arbitration proceedings are in progress.

In order to make it easier for the offeree company's shareholders to receive information relating to a takeover bid for their shares, an offeror who makes information public in accordance with the rules, (such as in a press release in accordance with Rule II.3), is to submit that information simultaneously to the offeree company – usually to the board of the offeree company – which is then to make the information available on the offeree company's website or to provide a link from the company's website to the information on the offeror's website. A

provision on this is contained in the *fifth paragraph*. In keeping with the aims of the rules, the offeree company may be required to make the information available in a manner which makes it easy for the shareholders to find the information. However, there may be particular reasons – such as the fact that the offer is not addressed to shareholders in certain jurisdictions – which justify the offeree company not making the information universally available in this manner.

II Rules governing the procedure, the structure of the offer etc.

Prerequisites for making an offer

II.1 A takeover bid may only be made after preparations have been made which demonstrate that the offeror is capable of implementing the offer.

Commentary

A takeover bid usually has an impact on the offeree company's share price. In some cases, it also affects the price of the shares of the offeror company. Thus, a takeover bid has a considerable impact on share trading, but it also impacts the offeree company's board and senior management, and it may also have an impact on the operations of the company.

In light of the above, it is important that an offer is made public only if the offeror has a serious intention to implement the offer and has made thorough preparations for its implementation. "Indicative bids" or other "trial balloons" are not in accordance with the rules as such or with the principles upon which the rules are based. It is assumed that such press releases (other than in connection with a leak or risk of a leak) are not issued without the consent of the Swedish Securities Council. Note that press releases in response to a leak may be issued in certain circumstances (see Rule II.3). The rules only address press releases from offerors in connection with leaks. However, in the event of a leak, the offeree company may be obliged to disclose certain information to the market pursuant to its obligations as a listed company.

The requirement for preparation includes a requirement that the offeror is to have engaged expertise from parties familiar with the Swedish stock market and its rules and regulations.

According to this rule, the preparations are to have established that the offeror is able to execute the offer. In the case of an offer wholly or partly in cash this means, for instance, that the offeror is to have ensured that it has sufficient financial resources to complete the transaction (cf. the principle to this effect stated in the Introduction). If conditions for the payment of a required acquisition credit are not included as terms of completion of the offer, (the scope of such conditions for completion is limited, see also Rule II.4), these must be conditions that the offeror can ensure are met in practice. The requirement of available funding means that the full offer consideration, assuming full take up of the offer, is to be available for withdrawal under the conditions stated above at the time the offer is announced.

From the perspective of the Takeover Code, it is not necessary for the offeror to have ensured access to credits for any refinancing of the offeree company's debts upon completion of the takeover process. However, in their own interest, there is still reason for the offeror to ascertain before submitting its offer that the offeree company has financing available after the offer has been completed. The scope for combining the offer with fulfilment conditions related to the offeree company's financing, and thus in practice making the offeree company's shareholders bear the risk, is very limited.

The requirement regarding available funding means that any regulatory approvals or similar needed for the offeror to be able to pay the consideration, and which the offeror cannot in practice ensure are obtained, are to have already been obtained when the offer is published.

The necessary financing is to be available throughout the entire offer period, including such extensions of the acceptance period as may reasonably be expected.

The offeror must subsequently be able to show how the preparatory process has been carried out, e.g. by means of written documentation.

This rule is not to be interpreted as meaning that the offeror must have ensured that any requisite regulatory approvals will be granted, other than those relating to the financing of the offer. Nor does it mean that the offeror must have ensured that any necessary shareholders' meeting resolutions will be passed. However, if the offeror is dependent on the implementation of a cash issue in order to finance the offer, the preparation requirement means that the offeror must have acquired guarantees to ensure that the issue will be sufficiently subscribed.

Binding force of statements

II.2 Any statement by an offeror that the offeror will or will not act in a certain manner with respect to its offer is binding if the purpose of the statement is to create legitimate trust on the market.

Commentary

This rule flows from the general stock market principle that it is not allowed to deviate from a declaration of intent which has been announced to the stock market. However, it also relates to the principle stated in the Introduction that the markets for the securities of the offeree company, the offeror company or any other company affected by the offer may not be manipulated in such a manner that the price of the security rises or falls artificially and the normal functioning of the markets is distorted.

The application of the rule does not assume that the offeror's statement has an impact on share prices, only that the statement is designed to create legitimate trust on the market in some aspect that is relevant to the offer.

The rule primarily refers to public statements through press releases, in the offer documents or in any other manner made by the offeror and aimed at the stock market in general, the shareholders of the offeree company or holders of other securities issued by the offeree company or equivalents in the offeror company. A statement issued within the scope of private negotiations does not constitute such an announcement.

Where clear reservations or qualifications are attached to a statement when it is released, the offeror may go back on the statement in accordance with such reservations or qualifications.

The rule means, for example, that the acceptance period for the offer may not be extended if the offeror has stated that an extension will not take place; that the offer may not be increased if the offeror has stated that no increase will take place; and that conditions regarding completion may not be withdrawn if the offeror has stated that such a withdrawal will not take place.

The rule applies only to statements announced by the offeror. However, within the scope of its general mandate, the Securities Council can issue statements regarding the circumstances in which parties involved in an offer process may or may not deviate from public statements they have made as a consequence of the offer. The Council is therefore also the body that issues opinions regarding the scope in a takeover situation of the general stock market principle that deviation from a declaration of intent is not permitted.

It is also the role of the Council to determine the circumstances under which the offeror's statements regarding a submitted offer remain binding after the offeror has withdrawn the original offer and submitted a new one, (cf. Rule II.24).

The offeror's obligation to make an offer public

II.3 Following a decision to submit an offer as referred to in Rule I.1, the offeror is to announce the offer as soon as possible in a press release containing the following information:

- **the identity of the offeror,**
- **the number of shares in the offeree company currently held or otherwise controlled by the offeror and the proportion of the share capital and voting rights for all of the shares in the offeree company represented by these shares,**
- **any holdings of financial instruments which give the offeror financial exposure equivalent to a shareholding in the offeree company,**
- **the extent to which the offeror has received binding or conditional commitments to accept the offer from shareholders of the offeree company or whether shareholders have expressed favourable opinions concerning the offer, and the extent to which the offeree company has committed to an offer-related arrangement vis-à-vis the offeror,**
- **any bonus arrangements or similar offered by the offeror to employees of the offeree company prior to the announcement of the offer,**
- **the securities that are covered by the offer,**
- **the main terms and conditions of the offer, including the price, any premium and the basis for calculating the premium,**
- **the manner in which the offer is to be financed,**
- **any conditions for completion of the offer (completion conditions),**
- **an assurance that the offer complies with these takeover rules,**
- **any statements by the Swedish Securities Council regarding the offer,**
- **the extent to which the offeror has received information indicating that shareholders of the offeror company intend to vote in favour of a requisite resolution regarding the offer at a shareholders' meeting of the offeror company,**
- **any subscription or underwriting commitments received in respect of a cash issue necessary for completion of the offer,**
- **a brief summary of the reasons for the offer and, if the consideration is to consist of shares or equity-related securities issued by the offeror, to the extent practicable, the impact of the acquisition – immediately and in the future – on the offeror company's earnings and financial position - also expressed on a per-share basis where this is meaningful,**
- **the anticipated publication date of an offer document and a timetable for implementation of the offer that is as precise as possible,**
- **the information required by Rule IV.5 if any person referred to in Rule IV.1 is submitting or participating in the offer or if a parent company is submitting or participating in an offer for the shares in a subsidiary.**

Anyone who is considering submitting an offer and knows or has a legitimate reason to believe that information about the offer has been leaked or may be leaked may issue a separate press release, (a press release regarding a leak), for the purpose of establishing a level informational playing field. This press release is to clearly state that it is not a press release regarding an offer as referred to in the first paragraph. It is also to state the reason for issuing the press release. If the press release contains information corresponding to information which, in accordance with the first paragraph, is to be contained in a press release regarding an offer which has been submitted, the provisions

of the first paragraph are to be equivalently applicable as far as possible. If possible, the press release should also state the date on which an offer is expected to be made. The Securities Council may set a deadline by which the offer must be submitted and, in connection with this, in the event the offer is not made, may also set the earliest date on which the offeror, or a party which is closely related to the offeror according to Rule I.3, may subsequently submit an offer for the shares in the company.

Commentary
When someone has made a decision to submit a takeover bid, it is of the utmost importance that the offer be made public as soon as possible, not least due to the impact on share prices. This is to take place through a press release which, as far as possible, presents facts relevant to the share price. The *first paragraph* stipulates what the press release is to include.

The press release is to state the *identity of the offeror*. If the offeror is a listed company or otherwise bound by regulations that mean that the circumstances of the offeror must be similarly transparent, it is generally sufficient to indicate the offeror's name and to refer to the offeror's website. In other cases, the offeror is to be presented in a manner which is relevant to the shareholders of the offeree company and to the stock market. The presentation is to include the offeror's legal corporate domicile, the address of its head office, an outline of its ownership structure and the nature and size of its operations.

The press release is to indicate the *number of shares in the offeree company held or otherwise controlled by the offeror*, e.g. through option contracts, and the proportion of the total number of shares and voting rights in the offeree company represented by these shares. The terms and conditions relating to any options arrangement are to be described so that the circumstances in which the offeror's option will not apply are clear. If the offeror holds warrants or convertible securities issued by the offeree company, this information is to be included in the description of the number of shares controlled by the offeror. Relevant information about any prior transactions as described in Rule II.13 is to be provided. This also applies to acquisitions made by parties closely related to the offeror if the acquisition constitutes a prior transaction as described in Rule II.13. If the offeror has made indirect acquisitions during the pre-term period, the information required by the second paragraph of the comment on item II.13 is to be provided.

In the press release, the offeror is to disclose any holdings of *financial instruments which give the offeror financial exposure equivalent to a shareholding in the offeree company*, e.g. cash-settled equity swaps.

If the offeror has secured conditional or unconditional *acceptances from shareholders* of the offeree company, this is to be stated in the press release. If no such acceptances have been secured, no specific statement on this matter is required. One example of a conditional acceptance is a declaration by a shareholder that they will accept the offer provided that no other party makes a more favourable offer. In such cases, the conditions are to be reported so that the circumstances in which the shareholder is not bound by the acceptance commitment are clear. If approaches to shareholders to sound out their views on the offer have only resulted in favourable opinions, this is to be stated. In such cases, it is important that the press release clearly states that such expressions of opinion do not constitute binding undertakings. If the offeree company has committed to an *offer-related arrangement* with the offeror, (see Rule II.17a, according to which such

arrangements are not to occur as a starting point), this must be stated in the press release so that the essential content of the arrangement is clear.

If the offeror has offered employees of the offeree company a *bonus arrangement or similar* prior to the announcement of the offer, an arrangement which is conditional on the prior approval of the board of the offeree company (see the commentary on Rule II.17), details of this arrangement are to be included in the press release. Such arrangements may include, for example, one in which employees are promised in advance that they may participate in a bonus programme after the implementation of the offer or that they will receive a certain cash payment if they remain with the company for a certain period of time after the offer has been completed.

The press release is to state *which securities are covered by the offer*. If, for example, the offer applies to shares and warrants or convertible securities issued by the offeree company, this is to be stated in the press release.

The press release is to state the *main terms and conditions of the offer*, for example the form and amount of consideration. Details are to be provided of any premium which the offered consideration entails compared with the share price. The premium is to be stated relative to the share price immediately prior to the announcement of the offer and relative to the average share price during an appropriate period of time immediately prior to announcement. The basis for calculating the premium is to be described. If the offered consideration is less than the quoted share price, the corresponding information is to be provided.

If the offeror reserves the right to extend the acceptance period or to postpone the payment of the consideration, this is to be stated in the press release and the offer document (see Rule II.7).

The press release is to describe the *manner in which the offer is to be financed*. This means that the press release is to state the extent to which the offer is being financed by the offeror's own resources or by borrowed funds. If relevant financial information about the offeror is not already publicly available, financial key ratios that are relevant for the assessment of the offeror's ability to pay should be included. If the offeror's execution of the offer is dependent on contributions or other financing by shareholders or third parties, the relevant information is to be provided. If the conditions governing the payment of a required acquisition credit comply with the requirements of these rules and do not deviate from what may otherwise be expected for such an arrangement, it is sufficient to provide a short statement regarding the existence of an acquisition credit on usual terms. For details of the conditions which may be imposed by the lender or invoked by the offeror for not completing the offer, see Rules II.4 and II.5. The disbursement terms and conditions may not be structured in a way that conflicts with the requirement in Rule II.1 that the offeror is to have ensured that it has sufficient financial resources to fulfil the offer.

If the offeror stipulates *conditions regarding completion of the offer*, these conditions are to be stated in the press release.

According to the fifth paragraph of Rule II.4, if conditions linked to completion are stipulated, it is also to be stated that the offeror may normally withdraw the offer based on a stated condition only if non-fulfilment of the condition is of material importance to the acquisition of the offeree company by the offeror.

Rules II.4 and II.8 mean that the offeror may reserve the right to control, i.e. waive in whole or in part, one or more of the stipulated conditions for completion.

If a reservation of this nature has been made, this is to be stated in the press release and in the offer document.

The offeror must state *that these takeover rules issued by the Stock Market Self-Regulation Committee apply to the offer*. These rules thus become part of the contractual relationship between the offeror and the shareholders of the offeree company. This means that the offeror and the offeree company's shareholders are bound by any ruling by the Swedish Securities Council on interpretation or application of the rules with regard to a specific issue (cf. Rule I.2). This is the case irrespective of whether the Council has issued a ruling at the direct request of the offeror or a third party regarding their specific case or whether the ruling has been issued in another context but addresses a question of interpretation which is also of immediate relevance to the current situation. In the latter case, it is assumed that the Council's ruling has been made public so that the offeror can be aware of it.

If the Council has issued a *ruling with regard to the offer*, e.g. an interpretation indicating that a certain condition related to the offer is permitted or an exemption from the obligation to include shareholders in certain countries in the offer, the offeror is to include details of the ruling in the press release. If the offeror has chosen another solution than that ruled on by the Council, no statement on the ruling is required unless the Council has specifically instructed the offeror to provide such information.

If the offeror is dependent on the adoption of a specific resolution regarding the offer at a shareholders' meeting of the offeror company, e.g. *a resolution to issue new shares which are to constitute consideration under the offer*, the press release is to contain details of the extent to which the offeror has received information that the company's shareholders intend to vote in favour of such resolution at the shareholders' meeting. Correspondingly, the offeror is to disclose *any subscription or underwriting commitments received in respect of a cash issue that is necessary in order to fulfil the offer* (cf. the commentary on Rule II.1).

The offeror is to state the *anticipated publication date of an offer document and as precise a timetable for implementation of the offer as possible*. If it later transpires that the offer document will be published significantly later than stated in the press release, it is appropriate to announce this in a separate press release. If it transpires instead that the offer is expected to be completed in a shorter period than is provisionally stated in the press release, the final timetable included in the offer document should be amended. However, prior to a significant shortening of the period, the offeror is to solicit the views of the offeree company's board regarding contraction of the timetable. If the opinions of the offeror and the offeree company's board differ, guidance from the Swedish Securities Council should be requested.

Rule IV.5 contains provisions regarding supplementary information in the press release when *any person as referred to in Rule III.1 is submitting or participating in the offer or if a parent company is submitting or participating in an offer for the shares in a subsidiary*.

In light of Rule II.1, as a starting point no party need announce an intention to make a takeover bid or that it is considering doing so, (a pre-announcement). However, this does not prevent a party who is considering making an offer from issuing a special press release aimed at establishing a level informational playing field if that party knows or has reason to believe that information about the offer has been, or may be, leaked before an obligation to issue a full press release has been triggered. The *second paragraph* supports the issuing of a press release in

response to a leak under such circumstances, something which is probably appropriate in most situations where there has been a leak.

Such a press release is to clearly state that it is not a press release regarding an offer which has been submitted as defined in the first paragraph. It is also to state the reason for issuing the press release. The amount of detail which the press release is to contain may be determined on a case-by-case basis in light of issues such as what information has been leaked and how far advanced the planning related to the offer is. If a press release in response to a leak contains information corresponding to information which, in accordance with the first paragraph, is to be contained in a press release regarding a submitted offer, the provisions of the first paragraph are to apply equivalently as far as possible. The more detailed the information provided in a press release in response to a leak, the more important it is that the press release also contain information regarding the date on which an offer is expected to be submitted and which steps need to be completed before the offer can be submitted. In order to avoid an extended period of uncertainty, the Securities Council can, either upon request or on its own initiative, set a deadline by which the offer must be made. In keeping with the principle stated in the Introduction that an offer may not prevent the company from conducting its operations for a period that is longer than reasonable, in this context the Council may also set the earliest date on which – in the event the offeror does not make an offer within the stipulated period – the offeror, (including closely related parties as referred to in Rule I.3), may subsequently make an offer to acquire the shares of the company. Such a ruling by the Council may be combined with specific terms, for example, that an offer may be made before the stipulated date if a third party makes an offer to acquire shares in the offeree company.

It is the Council's responsibility to determine whether there are grounds for setting a deadline by which an offer must be made in cases other than when a press release is issued in response to a leak. Such grounds might be, for example, that a planned offer is preventing the offeree company from conducting its operations for a period that is longer than is reasonable, (cf. the principle to this effect stated in the Introduction).

As stated in the commentary on Rule II.1, press releases regarding an intention or similar to submit an offer, (other than in connection with a leak or risk of a leak), are not to be issued without the Council's consent.

Scope for the offeror to stipulate conditions for completion of the offer

II.4 The offeror may stipulate conditions for completion of the offer (completion conditions).

A condition for completion is to be formulated in such a way that it can be determined objectively whether or not the condition has been fulfilled. The condition may not be formulated in such a way that the offeror has a decisive influence over its satisfaction.

Notwithstanding the first sentence of the second paragraph, completion of the offer may be conditional on the offeror being granted requisite regulatory approvals on terms which are acceptable to the offeror.

The offeror may make the offer conditional on a lender disbursing the acquisition loan. However, conditions for disbursement of the loan which are stipulated in the acquisition loan agreement may not be invoked by the offeror as grounds for not completing the offer. In order for the offeror to be able to invoke such conditions, they are to be stipulated as conditions for completion

of the offer and must therefore satisfy the requirements set forth in the second paragraph.

If conditions for completion are stipulated, the offeror is to state that the offer may be withdrawn based on a condition for completion only if the non-fulfilment of the condition is of material importance to the acquisition of the offeree company by the offeror. However, this does not apply to conditions regarding achievement by the offeror of a certain level of acceptances of the offer.

A condition for completion may be waived, in whole or in part, if the offeror has reserved the right to do so.

Commentary

Takeover bids in the stock market have considerable implications for the pricing of the shares of the companies concerned and, as a result, for trading in such shares. By definition, a takeover bid is addressed to a wide group of shareholders with varying capacities to assess the offer. It is therefore important that, to the extent possible, offers are formulated with simplicity and clarity. Against this must be weighed the fact that a decisive factor for the offeror's interest in and ability to complete the offer may be that certain circumstances pertain when the offer is completed and, as a result, the offeror may need to stipulate conditions for completion of the offer. The *first paragraph* states that such conditions are, in principle, permitted. This may, for example, involve conditions meaning that a specific level of acceptance of the offer be achieved, that requisite regulatory approvals be granted, that no other party announces an offer to acquire shares in the offeree company on terms which are more favourable for the holder than the offeror's proposal or that the offeree company does not take any of the measures referred to in Rule II.21.

The *second paragraph* states that a condition for completion is to be structured in a manner that makes it possible to determine objectively whether or not it has been fulfilled. Consequently, the determination of this issue may not be dependent on the offeror's subjective judgment. The aim should be that it is possible for a third party to verify whether or not the condition has been fulfilled. According to the second sentence of the paragraph, a condition for completion may not be drafted in a manner which gives the offeror a decisive influence over its satisfaction. Consequently, the offeror may not stipulate conditions which, in practice, entitle the offeror to determine at its own discretion whether or not it wishes to complete the offer. Obviously, the offeror is obliged to endeavour to ensure that stipulated conditions are satisfied, for example by applying for clearance from a competition authority if the offer is conditional on such clearance being obtained.

The offeror often stipulates as a condition for completion that the offeror be entitled to withdraw the offer if, after the offer has been made public, information concerning the offeree company comes to light which differs significantly from what the offeror had reason to expect given the information published or provided by the offeree company. Such a condition is also to be formulated with sufficient precision to allow for objective determination of whether the condition has been fulfilled.

A certain degree of subjective assessment must be accepted for some types of condition where it is not possible to rely solely on objective criteria. Regulatory approvals which the offeror has stipulated a proviso may be associated with such requirements that only the offeror can determine whether or not the prerequisites

for completing the offer still apply. This may be the case, for example, with respect to decisions by competition authorities. Consequently, the *third paragraph* makes an exception from the principle stated in the second paragraph, specifically relating to regulatory approvals. The circumstances may sometimes be such that it is the parent company of the offeror company or one of several co-offerors that requires approval from the authorities or are impacted by any conditions relating to the acquisition of regulatory approval. A fulfilment condition regarding regulatory approval on conditions acceptable to the offeror will normally be considered to also include such situations.

The offeror can make the offer conditional on a lender disbursing the acquisition loan. A completion condition of this nature gives the offeror an opportunity not to complete the offer in the event that the lender fails to disburse the loan in breach of the loan agreement, e.g. due to insolvency on the part of the lender. According to the *fourth paragraph*, conditions for disbursement of the loan contained in the acquisition loan agreement may not be invoked as grounds for not completing the offer. In order for the offeror to be able to invoke such conditions, they are to be stipulated as conditions for completion of the offer. As a result, reliance on such a condition may be subject to an assessment of materiality by the Securities Council, in accordance with Rule II.5. However, notwithstanding the aforementioned, the offeror may accept that the lender stipulates conditions for disbursement of the loan which are not included as conditions to completion of the offer. However, in order to ensure that such conditions do not conflict with the requirement in Rule II.1, that the offeror is to have ensured that it has sufficient financial resources to implement the offer, the conditions must be of such a nature that the offeror is personally able to ensure in practice that the conditions can be met. This may include, for example, conditions that agreed security will be provided and the requisite loan documentation signed. Non-fulfilment of such conditions may not constitute the basis for withdrawing the offer and, consequently, the offeror itself bears the risk that the loan will not be disbursed for such reasons.

Rule II.5 states that, subject to a certain specified exception, the offeror may withdraw an offer based on a stipulated completed condition only if the non-fulfilment of the condition is of material importance to the acquisition of the offeree company by the offeror. The *fifth paragraph* prescribes that this must be stated together with conditions for completion included in the press release and the offer document. If non-fulfilment of a particular condition can practically never be assumed to be of material importance for the offeror's acquisition, the condition may not be stipulated other than where the Securities Council has granted an exemption due to the circumstances in the individual case. A completion condition that means the offeree company's board is to recommend that the shareholders accept the offer is usually not deemed to be of material importance to the acquisition of the offeree company and may therefore normally not be stipulated. This also applies to a condition that the board of the offeree company does not withdraw a positive recommendation which it has previously made.

The *sixth paragraph* states that a completion condition may be waived if the offeror has reserved the right to do so. If a reservation of this nature has been made, it is to be stated in the press release regarding the offer and in the offer document.

The offeror's obligation to honour its offer

II.5 The offeror may not withdraw an offer which has been submitted.

Notwithstanding the first paragraph, the offeror may withdraw the offer if:

- **the offeror has made the offer conditional on the offeror achieving a given level of acceptance of the offer and it is clear that this condition has not been, or cannot be, fulfilled, or**
- **the offeror has stipulated some other condition for completion of the offer and it is clear that this condition has not been, or cannot be, fulfilled, and this is of material importance to the offeror's acquisition of the offeree company.**

If the offeror decides to withdraw the offer in accordance with the second paragraph, this is to be announced publicly immediately.

Commentary

The Takeover Code is based on the offeror being bound by its offer. Consequently, the *first paragraph* stipulates that, as a general rule, the offeror may not withdraw an offer which has been submitted.

The *second paragraph* allows two exceptions from the principle that the offeror is obliged to honour its offer. These assume that the offeror has stipulated conditions for completion of the offer. Firstly, the offer may be withdrawn if the offeror made the offer conditional on the achievement of a certain level of acceptance of the offer and it is clear that the condition has not been, or cannot be, fulfilled.

Secondly, an offeror who has stipulated some other completion condition, in accordance with Rule II.4, is entitled to withdraw the offer if it is clear that the condition has not been, or cannot be, fulfilled. However, the right to withdraw the offer in such a case is not unlimited. The offeror must carefully consider whether developments justify withdrawal of the offer. The offer may be withdrawn only if non-fulfilment of the condition is of material importance to the offeror's acquisition of the offeree company. What is considered to be of material importance may be determined in light of the nature of the condition and the circumstances in the particular case. However, more stringent demands are usually imposed regarding the offeror's ability to demonstrate that non-fulfilment of the condition is of material importance to the acquisition of the offeree company if the condition is drafted in relatively general terms.

It is not uncommon for an offeror to make the offer conditional on no other party announcing an offer to acquire shares in the offeree company on terms which are more favourable for the holder than the offeror's proposal. The use of alternative forms of consideration, as well as increasingly complex consideration structures, often makes it difficult to determine immediately whether one offer is more favourable than another. The non-fulfilment of a condition of this nature does not automatically confer a right to withdraw the offer. The situation must instead be assessed based on the second point.

It is also not uncommon for an offeror to make completion of the offer conditional on the adoption of a specific resolution regarding the offer by shareholders at a shareholders' meeting of the offeror company or the offeree company. An assessment of whether the non-fulfilment of such a condition entitles the offeror to withdraw the offer must also be made on the basis of the second point. In certain cases, it may be clear that non-fulfilment is of material importance to the acquisition of the offeree company by the offeror, such as where the shareholder resolution in question is required in order to issue the shares which are to constitute consideration under the offer.

The Swedish Securities Council can grant exemptions from the requirement of material importance. In certain circumstances, for example, this may be justified in the case of negotiated offers and offers which take the form of a merger between two companies. It is the responsibility of the Council to decide in advance or retrospectively whether the circumstances justify a waiver of the materiality requirement without neglecting the interests of the shareholders.

The purpose of this rule is that the offeror must always actively endeavour to implement the offer. Such active conduct on the part of the offeror is particularly important if withdrawal of the offer would be detrimental to the offeree company's shareholders. It is, for example, deemed incumbent on an offeror who has made the offer conditional on a certain regulatory approval being obtained to submit or supplement an application for such an official clearance. However, it cannot be required that the offeror take actions which would increase the costs of implementing the offer more than marginally. The offeror is at no time obliged to pay a higher price for the shares or to buy shares on the market in order to satisfy a condition requiring a specific level of acceptance of the offer. The offeror is also not obliged to extend the acceptance period in order to make it possible for a condition to be satisfied. See, however, the commentary on Rule II.7 regarding a specific situation. Rule II.7 also contains a stipulation regarding the offeror's obligation to withdraw the offer in certain circumstances where the regulatory approval process proves very time consuming.

If the offeror decides to withdraw the offer, the *third paragraph* states that this is to be announced publicly immediately.

The offeror's obligation to prepare and publish an offer document

II.6 The offeror is to publish an offer document within six weeks of submission of the offer.

If, prior to the expiry of the acceptance period of the offer, any significant new circumstances arise or any factual or other error is discovered in the offer document which may affect the assessment of the offer, a supplement to the offer document is to be drawn up and published.

The offeror may prepare an information brochure to supplement the offer document. Provisions concerning the contents of the offer document and the information brochure are presented in Part V.

Commentary

The *first paragraph* states that the offeror is to publish an offer document within six weeks of submission of the offer. The publication is to occur in accordance with the stipulations in the Financial Instruments Trading Act (1991:980). Chapter 2a, Section 11 of the Act refers to the provisions in the European Parliament and European Council's Regulation (EU) 2017/1129 (EU Prospectus Regulation) that also apply to offer documents. These provisions primarily mean that the offeror may publish the offer document on its website, for example. However, shareholders who so request are to receive a hard copy of the offer document free of charge. At the time of publication, Rule I.4 also applies, which means for example that the offer document is also to be sent to the Marketplace and to the Swedish Securities Council, as well as to the offeree company in order for it to be made available on the offeree company's website.

The circumstances in a specific case may be such that it is impossible to adhere to the six-week deadline, e.g. in the case of an offer where the consideration is to

consist of newly-issued shares or an offer that involves foreign markets. In such cases, the Swedish Securities Council may grant an exemption from the six-week deadline if so requested by the offeror.

The *second paragraph* states that a supplement to the offer document is to be prepared and published if, prior to the expiry of the acceptance period of the offer, new circumstances arise or any factual or other significant error is discovered in the offer document which may affect assessment of the offer.

The fifth paragraph of Rule II.8 allows the withdrawal of an acceptance within five business days of the publication of a supplement. The supplementary offer document is to provide information regarding the right to withdraw acceptance and the applicable withdrawal period, which is to be at least five business days.

The *third paragraph* states that the offeror may prepare a short information brochure as a supplement to the offer document to facilitate the dissemination of information concerning a takeover bid and make the contents of the offer more easily accessible. Provisions concerning the contents of the information brochure are presented in Rule V.4. An offer acceptance form may be included with both the offer document and the brochure.

Acceptance period

II.7 The acceptance period for the offer is to be no shorter than three weeks and no longer than ten weeks. The period may not commence until the offer document has been published. Rule IV.2 states that in certain cases the acceptance period is to be no shorter than four weeks.

The acceptance period may be extended if the offeror has reserved the right to do so or if payment of consideration to those who have already accepted the offer is not delayed by the extension. Payment of the consideration may only be postponed if a reservation to that effect has been stipulated. The acceptance period may not be extended indefinitely.

The total acceptance period may not exceed three months. If the offer is conditional on regulatory approvals being obtained, the total acceptance period pending such approval may, however, be extended to up to nine months. If it is clear that the required approvals will not have been granted by the end of the nine-month period, the offeror is obliged to withdraw the offer without delay or to request a dispensation to extend the acceptance period beyond the nine-month deadline. The offeror is to announce which of these options it chooses as soon as possible. If the offeror chooses to apply for a dispensation but no such dispensation is granted, the offeror is to withdraw the offer as soon as possible.

Notwithstanding the above, the acceptance period may be extended without limitation once the offeror has completed the offer.

Commentary

According to the *first paragraph*, the acceptance period for the offer is to be no shorter than three weeks (or, in respect of offers covered by Part IV, four weeks) and no longer than 10 weeks. The acceptance period may commence until the offer document has been published. The rule does not stipulate a deadline by which the acceptance period must commence. In keeping with the principle stated in the Introduction that an offer may not prevent the company from conducting its operations for a period that is longer than is reasonable, the acceptance period should usually commence close to publication of the offer document, but the

circumstances in a specific case may be such that it is justifiable for the acceptance period to commence at a later date.

In determining the duration of the acceptance period, the offeror is to take into consideration the completion conditions stipulated in the offer. For example, if the offeror stipulates a condition regarding regulatory approval, the acceptance period must be at least long enough to ensure that there is a reasonable opportunity to obtain the required approval in such time that the offer can be completed in connection with the announcement of the outcome after the expiry of the initial acceptance period. The offeror is not to propose to the shareholders a shorter acceptance period than is realistically expected to be the case as a consequence of the authority's processing of the application. The offeror does not need to assume that the maximum processing time will be required, but if a shorter initial acceptance period is stipulated, the offeror is obliged to extend the acceptance period if necessary should the approval process take longer than anticipated. Where the offer is conditional on clearance from a competition authority, the initial acceptance period may be determined without taking into consideration any delay which arises if the competition authority initiates a special investigation or an equivalent in-depth investigation (known as a Phase 2 investigation). If the offeror stipulates a shorter initial acceptance period than the authority's longest Phase 1 handling procedure, but the decision is delayed nonetheless, the offeror is obliged to extend the acceptance period until such time as the Phase 1 decision has been made, (but no longer, even if a Phase 2 investigation is begun).

The *second paragraph* states that the acceptance period may be extended if the offeror has reserved the right to do so or if payment of the consideration to those who have already accepted the offer is not delayed by the extension. The period may not be extended indefinitely. The second paragraph also states that payment of the consideration under the offer may be postponed only if a provision is stipulated to this effect. If the offeror reserves the right to extend the acceptance period or to postpone payment of the consideration, this must be stated in the press release regarding the offer and in the offer document.

The offeror may not unilaterally shorten the acceptance period unless an express reservation has been made regarding the matter, and any reduction of the period is to be announced no less than two weeks before the new acceptance period expires. Before a significant shortening of the acceptance period, the offeror is also to solicit the views of the offeree company board regarding a reduction of the acceptance period. If the opinions of the offeror and the offeree company board differ, a ruling from the Swedish Securities Council should be requested.

In keeping with the principle stated in the Introduction that an offer may not prevent the company from conducting its operations for a period that is longer than is reasonable, the *third paragraph* stipulates that the total acceptance period may not exceed three months. If the offer is conditional on regulatory approval being obtained, the total acceptance period pending such approval may not exceed nine months. The Securities Council may grant an exemption from the time limits if the offeror so requests (cf. Rule I.2).

The third paragraph further states that if it is clear that the required regulatory approvals will not have been obtained by the end of the nine-month period, the offeror is to either withdraw the offer or to seek a dispensation to extend the acceptance period beyond the nine-month deadline without undue delay. The offeror can therefore not wait passively until the end of the acceptance period without either seeking the necessary dispensation or withdrawing the offer. The

offeror is to announce as soon as possible which of the options it chooses. Dispensation for further extension may normally be granted only if the offeree company also agrees that an extension should be granted. If no dispensation is granted, the offeror is to withdraw the offer as soon as possible. Rule II.24 states that if the offeror announces at the time of withdrawal of the offer that it intends to continue trying to obtain the required regulatory approvals in order to subsequently return with a new offer, the offeror may return with a new offer within four weeks of receipt of the approvals, without prejudice to the twelve-month stipulation in Rule II.24.

The *fourth paragraph* states that the rule does not prevent the offeror from extending the acceptance period after the offeror has announced the completion of the offer, since such an extension can be viewed as a service to the shareholders.

The shareholders' obligation to honour their acceptance of the offer

II.8 A shareholder who has accepted the offer may not withdraw acceptance other than in the circumstances specified in this rule.

If the offeror has made the offer subject to the fulfilment of certain conditions which the offeror has reserved the right to waive, the shareholder is entitled to withdraw acceptance up until the offeror announces that all such conditions have been fulfilled or, if no such announcement is made, until the date stated in the offer as the deadline for acceptance. If conditions in accordance with the first sentence continue to apply in the event of an extension of the acceptance period for the offer, the right to withdraw acceptances applies in a corresponding manner during the extension period.

If the total acceptance period following an extension exceeds 10 weeks, any shareholder who accepted the offer is entitled to withdraw acceptance from commencement of the eleventh week.

If an offer involving consideration in the form of shares or equity-related securities issued by the offeror has been reviewed by a competition authority and regulatory approval requires that material changes be made to the operations of the offeree company or the offeror, the shareholder is entitled to withdraw acceptance. The offeror is to announce the right to withdraw acceptance and to state the period during which the right of withdrawal may be exercised. The period during which the right of withdrawal may be exercised may not be shorter than one week from the date of the announcement.

Shareholders are entitled to withdraw acceptance within at least five business days from the announcement of a supplementary offer document in accordance with Rule II.6, second paragraph.

Commentary

The main principle is that a shareholder who has accepted the offer is bound by this decision. This applies in all cases where the offer does not contain any conditions which the offeror has reserved the right to waive (in whole or in part). If, however, the offeror has stipulated conditions which the offeror has reserved the right to waive, the shareholders should be allowed to withdraw their acceptance (see the *first and second paragraphs*). One example of such a condition is where the offer is conditional on the offeror achieving a holding of more than 90 per cent of the shares in the offeree company, but the offeror also reserves the right to complete the offer in the event of a lower level of acceptance. Rule II.4 states that

implementation of an offer may be made conditional on the offeror being granted requisite regulatory approval on terms which are acceptable to the offeror. The fact that a condition of this nature contains a subjective element does not mean that the offeror is deemed to have reserved the right to waive it.

In order to avoid any uncertainty regarding the obligation to honour an acceptance, if such conditions are stipulated the offeror is to clearly state in the offer document the prerequisites for withdrawal of acceptance by shareholders (cf. the Appendix).

An acceptance may normally be withdrawn up until the deadline for acceptance stated in the offer. However, in certain cases, the right to withdraw lapses prior to this deadline; in other cases, it remains in force after the deadline. If the offeror's conditions are satisfied prior to the expiry of the acceptance period and the offeror has announced this, it is not reasonable for a shareholder to continue to be able to withdraw acceptance. The second paragraph has been drafted with this in mind. For the sake of clarity, it should be emphasised that a shareholder's right to withdraw acceptance does not expire simply because the offeror has announced during the acceptance period that it is waiving a condition stipulated in the offer. The idea behind this is that if the offeror reserves the right to control the stipulated conditions by waiving them, the shareholders who have accepted the offer should maintain a corresponding control over their acceptance, regardless of whether the offeror exercises its right of waiver or not.

The right to withdraw acceptance remains in place after the deadline for acceptance stated in the offer if the offeror's conditions and the reservation regarding the right to waive the conditions also remain in force during an extension of the acceptance period.

The provision does not prevent the offeror from granting in the offer the right for shareholders to withdraw acceptance in cases other than those stated.

According to Rule II.7, the acceptance period may not exceed 10 weeks, but this may be extended if the offeror has reserved the right to do so or if the payment of consideration to those who have already accepted the offer is not delayed by the extension. The *third paragraph* states that an extension which results in the total acceptance period exceeding 10 weeks is permitted only if the shareholders who have already accepted the offer, or who intend to accept the offer during the extension, are granted the right to withdraw their acceptance from the beginning of the eleventh week. The rule does not apply if the offeror has completed the offer (declared the offer unconditional) and thereupon extended the acceptance period, or if the offer was unconditional when it was submitted.

In connection with a takeover bid, a competition authority may sometimes require undertakings regarding divestment of certain parts of the business or similar measures as a condition for granting approval for the acquisition. If such a requirement is so far-reaching that the fulfilment of the requirement would result in a material change to the operations of the offeree company or the offeror, but the offeror nonetheless wishes to complete the offer, it is reasonable with respect to offers for shares that shareholders who have accepted the offer be given the opportunity to reconsider their decision. A rule of this nature is stipulated in the *fourth paragraph*.

The offeror is to announce that shareholders have the right to withdraw acceptance and to specify the period during which the right of withdrawal may be exercised. This period is to be no shorter than one week from the date of the announcement. This applies even if the acceptance period has expired.

The *fifth paragraph* states that the right of withdrawal remains in place for at least five business days from the publication of a supplement to the offer document in accordance with Rule II.6, second paragraph. A corresponding rule is found in Article 23.2 of the EU Prospectus Regulation, to which reference is made in Chapter 2(a), section 11 of the Financial Instruments Trading Act. The withdrawal period in this provision is longer than that required by the Regulation. The supplementary offer document is to provide information regarding the right of withdrawal and the applicable withdrawal period, which is to be at least five business days.

The right of withdrawal refers to a right, in certain circumstances, to withdraw a submitted acceptance even if such a right would not otherwise have existed. Upon acceptance of an offer which is unconditional at the time of acceptance, the acceptance immediately results in a binding agreement regarding the sale of the shares in question. The right of withdrawal does not imply a right to withdraw from any such agreement.

Revision of an offer that has been submitted

II.9 The offeror may amend conditions of an offer that has been submitted if the revised conditions make the offer more favourable for the shareholders and there are at least two weeks of the acceptance period remaining following the amendment.

The first paragraph does not prevent the offeror from adjusting the value of the consideration in light of any dividend paid or other value transfer made by the offeree company during the offer period if a reservation for this has been stated in the offer.

Commentary

There are several reasons why the conditions of an offer that has been submitted may need to be amended. For example, an amendment may be necessary because the offeror has carried out one or more transactions on the side at a price or prices higher than the consideration under the offer. As a result, the offer must be adjusted on the basis of the side transactions (cf. Rule II.14, first paragraph). It may also be the case that, in the case of an offer where the consideration consists of shares in the offeror company, the extent of side transactions carried out by the offeror in exchange for cash consideration is such that inclusion of a cash option in the offer is required (cf. Rule II.14, fourth paragraph). An offeror may, of course, also wish to amend the conditions voluntarily.

According to the *first paragraph*, amendments to conditions are permitted provided that the offer becomes more favourable for the shareholders as a result of the amendments and that at least two weeks of the acceptance period remain following the amendment. The assessment as to whether the offer becomes more favourable for the shareholders as a result of an amendment is to be made based on each individual condition. For example, it is permitted to increase a cash offer or to increase the cash consideration in an offer which consists of a combination of shares and cash. On the other hand, it is not permitted, for example, to reduce the share consideration even if the cash consideration is increased simultaneously. What changes are permitted in each individual case is for the Swedish Securities Council to determine.

This rule does not apply where the offeror stipulates in the original conditions of the offer that a certain alternative form of consideration will lapse after a certain period of time and will therefore not be available for the entire acceptance period.

The principles underlying Rules II.7 and IV.2 mean that the acceptance period for all alternative forms of consideration must be no shorter than three weeks or, with regard to offers covered by Section IV, no shorter than four weeks. Furthermore, this rule does not apply where the offeror, according to a provision to this effect, waives or moderates one or more of the stipulated conditions for completion, e.g. where a condition which states that completion of the offer is conditional on the offeror acquiring more than 90 per cent of the shares in the offeree company is amended to acquisition of more than 50 per cent of the shares in the offeree company.

The requirement that at least two weeks of the acceptance period must remain following the amendment means that the offer may not be amended during the last two weeks of the acceptance period unless the offeror extends the acceptance period in connection with the amendment of the offer and in accordance with the provisions of Rule II.7. The two-week period is to be calculated from the date of publication of the amendment.

Provisions regarding the obligation of the board of the offeree company to also state its opinion on a revised offer are contained in the final paragraph of Rule II.19.

The *second paragraph* states that an offeror may in the terms of the offer reserve the right to adjust the value of the consideration in light of any dividend paid or other value transfer made by the offeree company during the offer period. Such an adjustment is not incompatible with the principle of equal treatment, for example as expressed in the rules concerning prior transactions. There is nothing to prevent the offeror from reserving the right to cite the value transfer as grounds for withdrawing the offer instead. However, it should be noted that withdrawal of the offer on these grounds is conditional on the event being of material importance to the offeror's acquisition of the offeree company (cf. Rule II.5).

The offeror's obligation to treat equally all holders of shares with identical terms and conditions

II.10 The offeror is to offer all holders of shares with identical terms and conditions identical consideration per share. However, if special cause applies for certain shareholders, these may be offered consideration in a different form, but of the same value.

If an offer applies to both shares and call options in respect of such shares covered by the offer, the consideration for the call options and the shares together may not be greater than the consideration for corresponding shares to which the call options do not relate.

Commentary

A fundamental principle is that shareholders of the offeree company are to be treated equally. This principle is reflected, for example, in this provision.

The *first paragraph* states that all holders of shares with identical terms and conditions are to be offered identical consideration per share, both in terms of form and value. The expression "identical terms and conditions" refers primarily to the rights conveyed by shares in financial terms and in terms of influence according to the law and the company's articles of association. Typically, this involves the right to receive dividends and the right to participate with certain voting rights in the decision-making procedures at shareholders' meetings.

The consideration usually consists of shares in the offeror company, cash or a combination of shares and cash. However, other assets may also serve as consideration.

This rule does not prevent the offeror from offering the shareholders the opportunity to choose between different forms of consideration, such as shares and cash, or from assigning different values to these forms of consideration. It is also permitted to stipulate that one or more forms of consideration will no longer be available after a certain period of time. However, the principles underlying Rules II.7 and IV.2 mean that all alternative forms of consideration must be available for at least three weeks or, in the case of offers covered by Section IV, four weeks.

In cases of combined consideration, e.g. shares and cash, shareholders may be granted the opportunity to choose to sell a large proportion of their shares in the offeree company in exchange for cash or shares, provided that the choice can be matched with the choices of other shareholders, as long as this opportunity is available to all of the shareholders.

In certain circumstances, deviations may be made from the principle that all holders of shares with identical terms and conditions are to be offered identical consideration per share in terms of both form and value. One example is where certain shareholders are unable for legal or similar reasons to receive consideration in the form the offeror intends to offer the other shareholders. There may also be important practical reasons to justify a deviation from the general principle. For example, in the case of offers for companies with a very large number of shareholders, it may be justifiable to offer payment in cash for small blocks of shares, despite the fact that another form of consideration is paid in other cases, provided that the value of this cash payment does not differ from the value of the consideration which is offered to the other shareholders at the time the offer is made. However, structuring the offer in such a way that all shareholders are offered payment in cash for a certain number of shares is not compatible with the principle of equal treatment.

In principle, this rule does not prevent the consideration being structured so that shareholders with large holdings receive the consideration in foreign currency, e.g. euros, while the consideration to shareholders with limited holdings is automatically converted into Swedish krona at the exchange rate applicable at the time the consideration is delivered. However, in this case, the procedure must be arranged so that on the day or days on which the offeror places the amount to be paid at the disposal of the payer bank, shareholders who receive the consideration in Swedish krona receive consideration expressed as the corresponding value of the other currency which is equal to the consideration received by the shareholders in that currency.

The principle that all holders of shares with identical terms and conditions are to be offered identical consideration per share, in terms of both form and value, also means that the offeror is prevented, for example, from offering a specific shareholder or shareholders the opportunity to acquire shares in the offeror company or in another company or to acquire other assets within the scope of the offer. Such arrangements are not permitted within the scope of the offer, irrespective of the value of the assets. Another situation may arise whereby one or more shareholders of the offeree company participate in the offer in their capacity as shareholders of the offeror company. This may involve, for example, several major shareholders of the offeree company cooperating with a private equity firm to make an offer to acquire the shares in the offeree company through a jointly

owned offeror company created specifically for this purpose. Whether such a procedure is compatible with the principle of equal treatment is to be determined on a case-by-case basis through an overall assessment in which the main issue is whether the parties in the offeror company/consortium are de facto the offeror or shareholders of the offeree company enjoying special treatment. Circumstances to be taken into account in making such an assessment may include the number of shareholders who were contacted concerning ownership stakes in the offeror company, the type of shareholder involved, on whose initiative and when the discussions regarding cooperation began, the manner in which the shareholder in question has contributed to the financing of the offeror company and the terms and conditions applicable to ownership stakes in and exit from the offeror company. It cannot be considered compatible with the rules for a shareholder to act as an offeror by participating in the offeror company while at the same time retaining all or part of a shareholding in the offeree company, thus being included in the offer as well. However, this does not prevent the members of a bidding consortium from contributing their shares to a joint offeror company after it has been established that the offer will be completed. See also the commentary on the fourth paragraph of Rule II.13.

Reference is made in the commentary on Rule I.1 to certain specific problems which may arise if the offeree company has foreign shareholders.

The *second paragraph* states that the offeror's total consideration for a share and an expiring call option regarding the share in question may not exceed what is paid for other shares of the same type and which do not constitute an underlying asset to the call option. It is to be considered up to the shareholder to release shares from any obstacles to acceptance of the offer. An issued call option is such an obstacle, which means that the shareholder must divest the option bond in order to be able to accept the offer for the share without committing a breach of contract. If the offeror, on behalf of the shareholder, eliminates this obstacle by directing the offer also to the call option holders, the cost of this – the consideration offered for the call options – is to be borne by the shareholder by offering a correspondingly lower price for the shares. However, this does not normally apply when the offeror itself is the option issuer. It is for the Swedish Securities Council to decide whether a specific arrangement constitutes a circumvention of the principle of equal treatment.

Treatment of holders of shares with non-identical terms and conditions

II.11 If the offeree company has different classes of shares, the same form of consideration is to be offered for all classes of shares.

If the offer applies to different classes of shares which differ in terms of the financial rights carried by the shares, the difference in terms of the value of the consideration may not be unreasonable.

If the offer applies to different classes of shares which only differ in terms of the voting rights and if all classes of shares are not admitted to trading on the Marketplace, the value of the consideration is to be the same for all shares.

If the offer applies to different classes of shares which only differ in terms of the voting rights and if all classes of shares are admitted to trading on the Marketplace, the general principle is that the value of the consideration is to be the same for all shares. Subject to the Swedish Securities Council's consent, the offeror may offer a price for each class of shares which is equal to the listed price of the shares and may in addition offer a premium which for each class

of shares represents an equal percentage of the price of all such classes of shares. The Council may only consent to this type of consideration structure if:

- **the liquidity in the relevant classes of shares is sufficient to provide a fair and true price structure,**
- **the price difference is not merely temporary and**
- **the price difference is not due solely to demand from only one or a small number of buyers.**

Commentary

The *first paragraph* states that if the offeree company has different classes of shares, the same form of consideration is to be offered for all classes of shares. This means, for example, that an offeror may not offer shares in the offeror company to holders of one class of shares and cash to holders of another class of shares.

The principle that the same form of consideration is to be offered for all classes of shares does not prevent an offeror from offering shares carrying high voting rights in the offeror company as consideration for shares carrying high voting rights in the offeree company and offering shares carrying lower voting rights as consideration for shares carrying lower voting rights in the offeree company. However, the stipulation that the value of the consideration is to be the same for all shares also applies in such a case.

The *second to fourth paragraphs* address the issue of the value of the consideration. If the offer relates to different classes of shares carrying different financial rights in the company, (such as ordinary shares and preference shares), the offeror may offer the holders of each class of share consideration which differs in terms of value. A difference in terms of the value of the consideration might arise, for example, where one of the classes of shares involves shares carrying no rights or limited rights to a share in the growth in value of the company. However, the difference in terms of the value of the consideration offered may not be unreasonable.

In cases where the difference between the classes of share relates only to the voting rights carried by the shares, (e.g. class A and class B shares), a distinction is made between cases where shares of only one class are admitted to trading on the Marketplace, (which is the most common in practice), and cases where both classes of share are admitted to trading on the Marketplace.

If only one class of shares is admitted to trading on the Marketplace, the principle is that consideration of the same value is to be offered for all classes of shares. If, for example, class B shares are admitted to trading but class A shares are not, consideration of the same value must be offered for both class A and class B shares.

If all classes of shares are admitted to trading on the Marketplace, the general principle is that the offeror is to offer consideration of the same value for all classes of shares. However, if the listed price differs for different classes of shares, the offeror may apply to the Securities Council for permission to offer consideration of a different value for the shares in question. The fourth paragraph states that the Council may grant such a request only if three specified requirements are met. The first requirement relates to the liquidity in the classes of shares concerned. The liquidity in the classes of shares concerned need not be identical, but it must be sufficient to provide a fair and true price structure. The second requirement relates to the stability of the price difference. The third and final requirement is that the

price difference is not to be due solely to the acquisition of a certain class of shares by one or a small number of buyers.

According to Rule I.2, the Council may also consent to consideration of different value being offered for different classes of shares in other cases. However, in light of the wording of the rule, this can take place only in very specific circumstances, namely where an overall assessment leads the Council to conclude that this type of consideration structure would be in the interests of all of the shareholders and would not diminish public confidence in the rules.

Treatment of holders of equity-related transferable securities other than shares

II.12 If the offer also applies to equity-related transferable securities issued by the offeree company other than shares, the consideration for these securities is to be reasonable.

The offeror may exclude from the offer holders of equity-related transferable securities issued within the scope of an incentive programme of the offeree company only if the holders are otherwise afforded reasonable treatment.

Other than in circumstances specified in the second paragraph, the offeror may only exclude from the offer holders of a certain class of equity-related transferable security issued by the offeree company where it can be assumed that the price of these securities would not be materially affected by the delisting of the shares or other securities to which the offer relates.

Commentary

The *first paragraph* addresses situations where the offer also applies to equity-related transferable securities issued by the offeree company other than shares, such as convertible securities or warrants (cf. also the commentary on Rule I.1).

The consideration for other equity-related transferable securities to which the offer relates is to be reasonable, i.e. neither too low nor too high. The manner in which the consideration should be calculated may differ from case to case. Consideration which corresponds to the see-through value of the security calculated based on the consideration offered for the shares is normally deemed to constitute reasonable consideration for the security. If, for example, a warrant has an exercise price of SEK 75 and the consideration offered for the shares is SEK 100, SEK 25 is normally to be regarded as reasonable consideration for the warrant. However, the conditions governing a particular security, its market value, term to expiry as well as other relevant circumstances may mean that the consideration should be calculated in another manner. If, for example, a calculation of the theoretical value of a warrant based on the circumstances pertaining immediately prior to the offer – i.e. without taking into account the consideration offered for the shares and without taking into account the possibility that, at a later stage, the warrant may become worthless as a consequence of the final date for subscription or conversion being brought forward, e.g. as a consequence of a demand for compulsory acquisition – yields a higher value, this value should constitute the basis for the offered consideration. It may be necessary to add to this a premium in order to satisfy the requirement of reasonableness in relation to the shareholders. However, calculating the theoretical value of the warrants based on the value of the shares being equal to the consideration offered for the shares normally results in pricing which is higher than is acceptable.

The requirement that the consideration offered for the shares is to be taken into account is primarily a rule to protect the holders of the securities referred to in this provision – the price must not be too low. However, it also functions as a rule to protect shareholders if the securities in question represent a potentially substantial proportion of the shares or voting rights. Where the securities have been issued to such a limited extent that the consideration offered for the securities cannot be assumed to affect the pricing of the shares in the offer, (which is often the case if the securities have been issued to employees), there is usually no reason to take into account the consideration offered for the shares other than as a circumstance relevant for determining the minimum amount that must be offered for the securities.

The general requirement that shareholders of the offeree company must be treated equally means that, in cases where certain holders of other securities are also shareholders, the offeror may not set the price of the securities in a way which results in part of the price in reality being attributed to the shares.

The *second paragraph* prescribes that equity-related transferable securities which are issued within the scope of an incentive programme of the offeree company may be excluded from the offer. In such cases, the holders of such securities must instead be afforded reasonable treatment outside the offer, for example in the form of cash consideration or participation in an incentive programme offered by the offeror, (see the commentary on Rule II.17 regarding certain cases of offers to employees of the offeree company). Securities held by a wholly-owned subsidiary of the offeree company may be excluded from the offer without payment of consideration.

The *third paragraph* states that an offer must otherwise always apply to all transferable securities, (both listed and unlisted), issued by the offeree company which are related to another class of security if the pricing of the former is materially affected by the price of the latter. There is usually an impact on the price if the shares and any other securities to which the offer is primarily intended to relate were to be delisted. Consequently, the offer must apply, for example, to securities which can be converted into such shares or which entitle the holder to subscribe for new such shares which may be delisted as a result of the offer. This also applies to securities where the interest rate or repayment of principal is linked to the company's share price or similar.

The purpose of the rule entails that it is not necessary for the offeror to make an offer to acquire outstanding warrants issued by the offeree company if their value is negligible or virtually negligible and it cannot be assumed on any other grounds to be in breach of generally accepted practices on the stock market to exclude the warrant holders from an offer. However, the offeror is usually required to make an offer to acquire outstanding convertible securities issued by the offeree company, even if the value of the conversion right is negligible or virtually negligible. The debt instrument may in fact have a value per se. However, the Securities Council may grant an exemption from this obligation, depending on the circumstances of the individual case.

Acquisitions prior to the offer period

II.13 If the offeror has acquired shares in the offeree company in the six months prior to publishing an offer, directly or indirectly, other than through a previous takeover bid for the offeree company, (a prior transaction), the terms and conditions of the offer may not be less favourable than the terms

and conditions of the prior transaction. If the offeree company has different classes of shares, the consideration under the offer is to be governed by the provisions of Rule II.11.

Notwithstanding the first paragraph, when determining the terms and conditions for the offer, the offeror may take into account any fall in the price of the offeree company's shares that occurs in the period between the prior transaction and the announcement of the offer and which is substantial and not merely temporary. However, if the offeror paid a premium in relation to the offeree company's share price in the prior transaction, an equivalent premium in percentage terms is to be provided in the offer.

If any party other than the offeror announces an offer during the period referred to in the first paragraph to acquire shares in the offeree company on terms which are less favourable for the holder than the terms and conditions of the prior transaction, the offeror is no longer bound by the prior transaction when structuring the offer.

If the offeror during the period referred to in the first paragraph has acquired more than ten per cent of the shares in the offeree company in exchange for cash consideration and other than through a previous takeover bid for all of the shares in the offeree company, the offer is to contain an alternative form of consideration which entitles shareholders to receive payment in cash.

If the offeror during the period referred to in the first paragraph has acquired more than ten per cent of the shares in the offeree company in exchange for consideration in the form of shares or other securities and other than through a previous takeover bid for all of the shares in the offeree company, the offer is to include an equivalent alternative form of consideration and, unless the seller in the prior transaction is obliged to retain the consideration shares until the offer is either withdrawn or payment of the consideration has commenced, a cash alternative. If a prior transaction has been conducted in exchange for consideration in the form of unlisted shares, the stipulations in this paragraph apply regardless of how large a proportion of the shares in the offeree company has been acquired in this manner.

When applying this rule, prior transactions carried out by any party who was closely related to the offeror as defined in Rule I.3 on the date of the prior transaction are to be equated with prior transactions carried out by the offeror.

Commentary

The principle that shareholders of the offeree company are to be afforded equal treatment means that in certain cases the terms and conditions of an offer must be adjusted based on the terms and conditions of other acquisitions of shares carried out by the offeror. Consequently, in accordance with the *first paragraph*, an offer which is announced after an acquisition of shares is to be at least as favourable for recipients of the offer as the previous acquisition (the prior transaction) if less than six months have elapsed between the prior transaction and the offer. If a prior transaction is designed in a certain way in order to circumvent the aim of the rule, it may be deemed to have been conducted at a different price than otherwise results from the rule. It is the responsibility of the Swedish Securities Council to make such an assessment if so requested.

This rule also applies to indirect acquisitions, e.g. when the offeror has acquired control of a company, (hereafter referred to as the holding company), which in turn owns shares in the offeree company. In such cases, the prior transaction is to be considered as conducted at a price per share corresponding to the volume weighted average price of the share during the 20 trading days preceding the date of acquisition of the holding company. If, when acquiring the holding company, the offeror has assigned a higher price for the offeree company shares (i.e. if the part of the purchase price of the holding company that the offeror allocated to the offeree company shares means a higher price per offeree company share than the 20 day average), the prior transaction is instead to be considered as conducted at a price per share corresponding to that assigned price. In the press release regarding the offer and in the offer document for an offer whose remuneration is determined using the terms of this paragraph, the offeror is obliged to provide information on the purchase price for the holding company, how the purchase price was allocated between the offeree company shares and other assets and the reasoning that led to this allocation. The purchase price allocation referred to here is the offeror's actual allocation at the time of the acquisition, meaning that it is not immediately relevant what accounting or tax rules may subsequently lead to.

The adjustment requirement means that a comparison must be made between the terms and conditions of the prior transaction and the terms and conditions of the offer. This comparison is to include the value of the consideration paid and the consideration offered, where the consideration paid in the prior transaction is normally to be valued based on the prevailing conditions on the contract date of the prior transaction and the terms and conditions of the offer are to normally be valued based on the circumstances prevailing when the offer was issued. This means that if the consideration in the prior transaction consists wholly or partly of shares and the value of the shares has increased, the increase in value of the shares is to be disregarded and the offer must instead be made with consideration which corresponds to at least the price of the consideration shares on the contract date of the prior transaction, (cf. the specific procedure applicable to situations described in the fifth paragraph). In such cases, the volume-weighted average transaction price on the last completed trading day before the prior transaction is normally to be used. Correspondingly, if the prior transaction was carried out in exchange for cash consideration and the consideration in the offer comprises shares, the comparison is normally to be made based on the volume-weighted average transaction price for the consideration shares on the last completed trading day before the offer was issued.

If a prior transaction was carried out as a cash deal but in a currency other than the currency of the consideration under the offer, the value of the prior transaction is to be determined on the basis of the exchange rate at the time of the prior transaction. For example, if the offer is made in Swedish krona and a prior transaction was conducted in US dollars, the value of the prior transaction is to be determined based on the corresponding value of the prior transaction in Swedish krona, using the exchange rate applicable on the date of the prior transaction.

In some prior transactions, the seller may have been offered an additional purchase price payable in the event the offeror in turn sells the relevant shares at a higher price within a certain period of time to a third party, e.g. a competing offeror. Agreements of this nature are not compatible with the principle of equal treatment unless a comparable offer regarding an additional purchase price is made to all of

the shareholders, or unless the Securities Council grants an exemption in an individual case.

In some prior transactions, the offeror may also, prior to an impending offer, promise to pay the seller an equivalent additional purchase price in the event the price under the offer is ultimately higher than the price under the prior transaction. A prior transaction formulated in this manner does not violate the principle of equal treatment.

The equal treatment requirement need not necessarily be adhered to in all situations. The *second paragraph* states that the equal treatment requirement may be derogated from if the price of the offeree company's shares at the time the offer is announced is substantially lower than the price which applied on the date of the prior transaction, and if this decline in the share price is not merely temporary but is of a reasonable duration. The fall in the share price may of course not be taken into account if it is a result of the prior transaction.

If the exception rule is applicable, the circumstances in question may be taken into account when the terms and conditions of the offer are determined, although this does not mean that all connections with the previous acquisition cease to apply. A percentage increment in relation to a listed price in the prior transaction is to be followed by an increment of at least the same percentage in relation to the share price at the time the offer is announced.

Another situation in which the main principle of equal treatment need not necessarily be complied with is addressed in the *third paragraph*. In this case, a party other than the offeror announces an offer to acquire shares in the offeree company during the period referred to in the first paragraph on terms which are less favourable for the holder than the terms and conditions of the prior transaction. In a situation such as this, it is unreasonable for the offeror to be bound by its prior transaction when drawing up the terms and conditions of the offer, as this would mean that offerors were not competing on equal terms. Accordingly, in a situation such as this, the offeror is free to offer terms and conditions that differ from the terms and conditions of the prior transaction.

These provisions apply irrespective of whether the prior transaction was carried out as a stock market trade or otherwise. An executed acquisition is equated with an agreement for a future acquisition and an option that entitles the offeror to acquire shares in the offeree company, as well as other arrangements that give the offeror financial exposure corresponding to a holding of shares in the offeree company and entail or result in shares in the offeree company being sold to the offeror prior to or during the offer or during the period referred to in Rule II.15 or give the offeror the right to acquire shares in the offeree company. Examples of such arrangements include financial contracts where the offeror's co-contractor, (e.g. a bank), ensures that it can fulfil its obligations, (a hedge), by in turn acquiring shares in the offeree company and where the bank is obliged to subsequently transfer the shares to the offeror or such a transfer occurs for another reason. Normally, share acquisitions via capital redemption insurance are also covered.

The provisions do not apply to intra-group transactions or acquisitions through subscription for new shares.

The adjustment requirements primarily address shares with identical terms and conditions. However, the question of adjustment also arises in other cases as a result of the application of the second to fourth paragraphs of Rule II.11 regarding the value of the consideration in cases where the offeree company has different classes of shares.

When making a comparison between the consideration in the prior transaction and the consideration under the offer, dividends payable are to be taken into account. Interest payments to compensate for the time factor may, but need not, be paid to the other shareholders. The offeror's commission or equivalent costs are not to be taken into account. If, during the period between the prior transaction and the offer, the offeree company conducts a share split or reverse share split in respect of shares in the offeree company or carries out a rights issue, this is to be taken into account.

If an offer includes alternative forms of consideration, the offeror may, as a basis for the comparison, select the alternative which at the time the comparison is made appears to be the most favourable for parties to whom the offer is made.

In keeping with the fundamental principle that the offeree company's shareholders be treated equally, the *fourth paragraph* stipulates that if the offeror has acquired more than ten per cent of the shares in the offeree company in exchange for cash consideration and in a manner other than through a previous takeover bid for all of the shares in the offeree company less than six months prior to the announcement of an offer, the offer is to provide for an alternative form of consideration which entitles shareholders to receive payment in cash. The application of this provision is not conditional on the prior transactions having been carried out exclusively in exchange for cash consideration. The provision also applies to transactions involving mixed forms of consideration if the cash proportion of the consideration is sufficiently large that the offeror can be regarded as having acquired shares representing more than ten per cent of the shares in the offeree company in exchange for cash consideration.

The *fifth paragraph* states that if the offeror has acquired more than ten per cent of the shares in the offeree company in exchange for consideration in the form of shares or other securities, an equivalent alternative form of consideration must be included in the offer. This means, for example, that if the offeror has acquired more than ten per cent of the shares in the offeree company through a non-cash issue in a prior transaction, the offer must provide for a share alternative. The provisions of Rule II.11 are applicable in this context. The application of this provision is not conditional on the prior transactions having been carried out exclusively in exchange for consideration in the form of, for example, shares. The provision also applies to transactions involving mixed forms of consideration, if, for example, the share proportion of the consideration is sufficiently large that the offeror can be regarded as having acquired shares representing more than ten per cent of the shares in the offeree company in exchange for consideration in the form of shares.

The rule in the fifth paragraph does not imply that the share alternative in the offer is to be determined on the basis of the value of the prior transaction at the time of the prior transaction, (cf. the first paragraph). The share alternative in the offer is instead to provide the same, or for the shareholders more favourable, exchange ratio as in the prior transaction. In such cases, however, the offer is also to include a cash alternative which corresponds in terms of value to at least the price of the consideration shares on the contract date of the prior transaction. The requirement for a cash alternative does not apply if the seller in the prior transaction is obliged to retain the consideration shares (known as lock-up) until the offer is either withdrawn or payment of consideration has commenced. If the offeree company conducts a split or aggregation of its shares or conducts a new share issue with preferential rights for the shareholders in the period between the prior transaction

and the offer, this is to be taken into account when determining the exchange ratio to be applied in the offer's share alternative.

If a prior transaction has been conducted in exchange for consideration in the form of unlisted shares, the stipulations in the fifth paragraph apply regardless of how large a proportion of the shares in the offeree company has been acquired in this manner. This is stated in the final sentence of the fifth paragraph. Restrictions regarding the possibility to distribute shares in private limited companies, for example, may mean that the provision in the fifth paragraph cannot be complied with in practice. It is up to the offeror not to place itself in such a situation.

The rules in this section address transactions which are carried out with shareholders who would have been covered by the offer if the prior transaction had not been carried out. They therefore do not address the terms and conditions applicable to the participation of one or more shareholders in an offeror company, such as the terms and conditions of the sale of shares by members of a consortium to a jointly-owned offeror company which, in these types of case, may differ from the terms and conditions of the offer. See also the commentary on Rule II.10.

According to the *sixth paragraph*, prior transactions carried out by any party who is closely related to the offeror according to Rule I.3 are to be equated with prior transactions carried out by the offeror. The wording of this provision means that it applies only if the close relationship existed on the date of the transaction in question. However, the purpose of the rule means that a transaction which has been carried out with a party closely related to the offeror is not normally to be equated with a transaction carried out by the offeror if the offeror and the closely related party have implemented, applied and maintained adequate and effective internal systems and procedures which effectively ensure that no one at the closely related party has used any information regarding the impending offer and that no one at the offeror has encouraged, recommended, induced or otherwise influenced anyone at the closely related party to carry out the transaction; cf. Article 9.1 of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse (the Market Abuse Regulation). This may also apply correspondingly within the offeror, for example where the offeror is a financial institution which conducts securities trading operations separately from its other operations in the manner stated above and where a transaction is carried out within the scope of its securities trading operations.

Acquisitions during the offer period

II.14 If the offeror directly or indirectly acquires shares in the offeree company after an offer has been announced, (a "side transaction"), on terms which are more favourable for the holder than the terms and conditions of the offer, the offeror is to adjust the terms and conditions of the offer to a corresponding extent. If the offeree company has different classes of shares, the consideration under the offer will be governed by the provisions of Rule II.11.

The first paragraph applies to side transactions which are carried out outside the offer up until the time of commencement of payment of the consideration under the offer. Rule II.15 applies to acquisitions after this time.

The offeror is to announce the price and, where applicable, other terms and conditions on which side transactions referred to in the first paragraph have been carried out as soon as possible and to disclose the new terms and conditions applicable to the offer as a result of the side transactions.

If the offeror acquires shares in exchange for cash consideration during the period referred to in the first and second paragraphs which, together with shares acquired in the manner referred to in the fourth paragraph of Rule II.13, represent more than ten per cent of the shares in the offeree company and does so in a manner other than through a previous takeover bid for all of the shares in the offeree company, the offer is to provide for an alternative form of consideration which entitles shareholders to receive payment in cash.

If the offeror acquires shares in exchange for consideration in the form of shares or other securities during the period referred to in the first and second paragraphs which, together with shares acquired in the manner referred to in the fifth paragraph of Rule II.13, represent more than ten per cent of the shares in the offeree company and does so in a manner other than through a previous takeover bid for all of the shares in the offeree company, the offer is to provide for an equivalent alternative form of consideration.

When applying this rule, side transactions carried out by any party who on the date of the side transaction was closely related to the offeror according to Rule I.3 are to be equated with side transactions carried out by the offeror.

Commentary

An offeror may acquire shares in the offeree company by means of a side transaction, both on and outside the Marketplace. This type of acquisition may be carried out using the same form of consideration as that under the offer, but it may also be carried out using a different form of consideration. If the terms and conditions of the side transaction are more favourable for the holder than the terms and conditions of the offer, the *first paragraph* states that a corresponding amendment to the terms and conditions of the offer is to be made. A comparison must therefore be made between the terms and conditions of the offer and the terms and conditions of the side transaction. The consideration under the offer and the consideration in the side transaction are normally be valued based on the market conditions at the time of the side transaction. This means, for example, that if the consideration under the offer consists wholly or partly of shares or if shares constitute one or more alternative forms of consideration and the shares have risen in value, side transactions may be carried out at the new share price without any requirement to adjust the offer.

These provisions apply irrespective of whether the side transaction is conducted as a stock market trade or otherwise. An executed acquisition is equated with an agreement for a future acquisition. This is also the case where an option is issued that entitles the offeror to acquire shares in the offeree company. Regarding indirect acquisitions, see the commentary to Rule II.13.

The adjustment requirements primarily address shares with identical terms and conditions. However, the question of adjustment also arises in other cases as a result of the application of the second to fourth paragraphs of Rule II.11 regarding the value of the consideration in cases where the offeree company has different classes of shares.

When comparing the consideration under the offer and the consideration in the side transaction, dividends payable are to be taken into account. Interest payments to compensate for the time factor may, but need not, be paid to the other shareholders. The offeror’s commission or equivalent costs are not to be taken into account.

If an offer contains alternative forms of consideration, the offeror may, as a basis for the comparison, select the alternative which appears to be the most favourable for those who accept the offer at the time the comparison is made.

In cases where side transactions result in an adjustment of the terms and conditions of the offer, the *third paragraph* states that the offeror is to publish the price and, where applicable, other terms and conditions of the side transactions as soon as possible, and to disclose the new terms and conditions applicable to the offer.

In keeping with the fundamental principle that the offeree company's shareholders be treated equally, the *fourth paragraph* stipulates that if the offeror acquires shares which, together with shares acquired in the manner referred to in the fourth paragraph of Rule II.13, represent more than ten per cent of the shares in the offeree company in exchange for cash consideration and does so in a manner other than through a previous takeover bid for all of the shares in the offeree company during the period referred to in the first and second paragraphs, the offer is to include an alternative form of consideration which entitles shareholders to receive payment in cash. The application of this provision is not conditional on the transactions having been conducted exclusively in exchange for cash consideration. The provision also applies to transactions involving mixed forms of consideration if the cash proportion of the consideration is sufficiently large that the offeror has de facto acquired shares representing more than ten per cent of the shares in the offeree company.

The *fifth paragraph* states that if the offeror has acquired more than ten per cent of the shares in the offeree company in exchange for consideration in the form of shares or other securities, an equivalent alternative form of consideration must be included in the offer. This means, for example, that if the offeror acquires more than ten per cent of the shares in the offeree company through a non-cash issue in a side transaction, the offer is to provide for a share alternative. In this context, the provisions of the second to fourth paragraphs of Rule II.11 are to be taken into account with regard to the value of the consideration in cases where the offeree company has different classes of shares. The application of this provision is not conditional on the transactions having been carried out exclusively in exchange for consideration in the form of, for example, shares. The provision also applies to transactions involving mixed forms of consideration if, for example, the share proportion of the consideration is sufficiently large that the offeror can be regarded as having acquired shares representing more than ten per cent of the shares in the offeree company in exchange for consideration in the form of shares. The share alternative under the offer is to entail the same, or for the shareholders more favourable, exchange terms as in the side transaction.

According to the *sixth paragraph*, side transactions carried out by any party who is closely related to the offeror according to Rule I.3 are to be equated with side transactions carried out by the offeror. The wording of this provision means that this applies only if the close relationship existed at the time of the transaction in question. In exceptional cases, the circumstances may be such that the provision, when applied in accordance with its purpose, does not require a transaction made by a closely related party to be equated with a transaction made by the offeror. This may be the case, for example, if the offeror has issued a written instruction to a closely related party not to conduct any side transactions, (i.e. a stop notice), but the related party has mistakenly conducted a side transaction nevertheless.

Where appropriate, the statements in the commentary on Rule II.13 apply equivalently to Rule II.14.

Acquisitions after the offer period

II.15 If the offeror directly or indirectly acquires shares in the offeree company (a "subsequent transaction") within a period of six months after the commencement of payment of the consideration in a takeover bid on terms which are more favourable for the offeree than the terms and conditions of the offer, the offeror is to disclose this as soon as possible and pay compensatory cash consideration to those who have accepted the offer. If the offeree company has different classes of shares, Rule II.11 applies to the consideration under the offer.

The first paragraph does not apply if a party other than the offeror has announced an offer to acquire shares in the offeree company on terms which are more favourable for the shareholder than the terms and conditions in the offer.

In applying this rule, subsequent transactions carried out by any party who is closely related to the offeror according to Rule I.3 at the time of the subsequent transaction are to be equated with subsequent transactions carried out by the offeror.

Commentary

If the offeror acquires shares in the offeree company less than six months after the commencement of payment of the consideration in a takeover bid on terms which are more favourable for the holder than the terms and conditions of the offer, the *first paragraph* states that the offeror is to pay compensatory cash consideration to those who have accepted the offer. A comparison must therefore be made between the terms and conditions of the offer and the terms and conditions of the subsequent transaction.

The consideration under the offer is normally to be valued based on the market conditions at the time of the announcement of completion of the offer, whereas consideration in the acquisitions is normally be valued based on market conditions prevailing at the time of the acquisitions. Thus, the terms and conditions of a subsequent transaction may not be more favourable to the seller in the subsequent transaction than the terms and conditions of the offer at the time of the announcement of the offer's completion.

This provision addresses transactions which are carried out after the offer has been executed. Thus, it does not prevent the offeror from paying consideration at different times in accordance with the original exchange ratio in cases with one or more extensions of the acceptance period in an offer in which consideration consists wholly or partly of shares, regardless of any increase in the price of the consideration share.

This provision applies irrespective of whether the subsequent transaction was carried out as a stock market trade or otherwise. An executed acquisition is equated with an agreement for a future acquisition. This is also the case where an option is issued that entitles the offeror to acquire shares in the offeree company. Regarding indirect acquisitions, see the commentary to Rule II.13.

This provision does not apply to acquisitions which are carried out within the scope of a compulsory acquisition (squeeze-out) procedure where the squeeze-out has been ruled upon by an arbitration tribunal. Nor does the provision apply to a

private offer made by an offeror in connection with a squeeze-out procedure whereby the offeror offers to acquire shares for a price equal to no more than the price claimed in the squeeze-out procedure. However, this does not apply if, in order to circumvent the rules concerning subsequent transactions, the party entitled to exercise squeeze-out rights has submitted the matter to arbitration in order to accept the other party's claim, to reach a settlement on terms which for the parent company manifestly deviate from generally accepted practices in squeeze-out cases or to otherwise waive its rights.

The adjustment requirements primarily address shares with identical terms and conditions. However, the question of adjustment also arises in other cases as a result of the application of the second to fourth paragraphs of Rule II.11 regarding the value of the consideration in cases where the offeree company has different classes of shares.

When comparing the consideration under the offer and the consideration in the subsequent transaction, dividends payable are to be taken into account. Interest payments may, but need not, be taken into account. If interest is to be taken into account, it is to be calculated from no earlier than the date on which the offeror commenced payment of the consideration (cf. Rule II.23). The offeror's commission or equivalent costs are not to be taken into account.

If an offer provides for alternative forms of consideration, the offeror may, as a basis for the comparison, select the alternative that appears to be the most favourable for those who have accepted the offer at the time the comparison is made.

The *third paragraph* states that the provision also applies to transactions carried out by any party closely related to the offeror according to Rule I.3. In exceptional cases, the circumstances may be such that the provision, when applied in accordance with its purpose, does not require a transaction made by a related party to be equated with a transaction made by the offeror. This may be the case, for example, if the offeror has issued a written instruction to a closely related party not to conduct any subsequent transactions, (i.e. a stop notice), but the related party has mistakenly conducted a subsequent transaction nevertheless.

Where appropriate, the statements in the commentary on Rule II.13 apply equivalently to Rule II.15.

Certain provisions regarding partial offers

II.16 A takeover bid may relate to fewer than all of the shares in the offeree company (a partial offer) if:

a) as a result of the offer, the offeror, either alone or together with a party closely related to the offeror according to Rule I.3, could not become the owner of shares representing three tenths or more of the voting rights for all of the shares in the offeree company, or

b) at the time the offer is made public, the offeror, either alone or together with a party closely related to the offeror according to Rule I.3, owns shares representing three tenths or more of the voting rights for all of the shares in the offeree company and there is no requirement to make a mandatory offer.

When a partial offer is announced, the maximum number of shares which the offeror wishes to acquire pursuant to the offer is to be stated in the press release referred to in Rule II.3, as well as whether the offeror reserves the right to acquire additional shares pursuant to the offer.

If the maximum desired number of shares stated in the offer is exceeded and the offeror has not reserved the right to acquire additional shares, the offeror is to make a proportional reduction to the blocks of shares covered by acceptances submitted. When assessing whether a certain minimum number of shares have been acquired, shares covered by acceptances submitted pursuant to the offer are to be added to shares which the offeror has acquired outside the offer after the offer was announced.

Commentary
A takeover bid usually applies to all of the shares in the offeree company not already held by the offeror. However, offers are occasionally made for more limited acquisitions of shares. Offers which relate to fewer than all of the shares in the offeree company not already held by the offeror are referred to as partial offers. Unless otherwise prescribed, the rules of the Takeover Code also apply to partial offers. Certain provisions which apply only to partial offers are presented in this rule.

The rules relating to mandatory offers restrict the scope for partial offers. Consequently, the first paragraph states that a partial offer may not be made if the offeror, either alone or together with a closely related party as specified in Rule I.3, could become the owner of shares representing three-tenths or more of the voting rights for all of the shares in the company as a result of the offer. Thus, a partial offer which does not meet the threshold triggering a mandatory offer is permitted. The case may also be that the offeror, either alone or together with a closely related party, already hold shares representing three-tenths or more of the voting rights in the offeree company and is not subject to the requirement to submit a mandatory offer, e.g. if the shares in question were already held on 1 January 2010, when the statutory provisions regarding mandatory offers came into force. In such cases, a partial offer relating to some of the other shares in the company may be made. If the shareholding is based on an exemption from the requirement to make a mandatory offer granted by the Swedish Securities Council, the scope to make a partial offer for some of the other shares depends on the wording of the exemption.

In the case of partial offers, the offeror is to state the number of shares in the offeree company to which the offer relates in a press release of the kind referred to in Rule II.3. This is stated in the second paragraph. There is nothing to prevent the offeror from reserving the right to acquire additional shares pursuant to the offer if interest in selling shares proves sufficient to permit this, provided that the threshold triggering a mandatory offer is not met.

This provision does not preclude the offeror from stating a price range within which the offeror offers to acquire shares and each shareholder stating the minimum price at which they are prepared to sell, and the offeror then rejecting surplus acceptances on this basis as long as this is done in a predictable, fair and uniform manner.

The role of the board of the offeree company
II.17 The board of the offeree company is to act in the interest of the shareholders in matters relating to the offer.

Commentary
A takeover bid is addressed to the offeree company's shareholders, and it is for them to decide whether to accept or reject the offer. However, this does not mean

that the board of the offeree company is not involved in the takeover process. The board has a key role in the matter and is to endeavour to act in the interests of the shareholders through the entire process. The board may not act in its own interests or allow itself to be directed by the interests of only one or a certain group of shareholders. If there is more than one offeror, the board may not promote a particular offeror without valid reason. Rule II.21 contains provisions which prohibit the board from taking any action intended to impair the conditions for submitting or implementing the offer without the approval of the shareholders. The provisions in Rule II.21 do not prevent the board from considering or providing information about alternatives other than the offer that has been announced or from entering into discussions with other potential offerors if the board is of the opinion that this is in the interests of shareholders. This rule therefore means that the board is not only permitted, but also required to consider other alternatives and, where necessary for this purpose, take such action as the board considers to be in the interests of the shareholders. The board may thereby incur for the company any reasonable costs associated with such measures.

The general disclosure obligations of the offeree company as a listed company remain unchanged in a takeover situation. If new information is published by the offeree company in a takeover situation, it may be necessary to make a supplement to the offer document (see the second paragraph of Rule II.6). If information exists which may affect the assessment of the offer without the offeree being obliged to publish it immediately, the offeree company should endeavour to publish the information no later than two weeks prior to the expiry of the acceptance period (cf. the board's obligation under Rule II.19 to announce its reasoned opinion on the offer no later than two weeks prior to the expiry of the acceptance period).

As part of the process of a takeover bid, the board is often required to make a decision on whether one or more potential offerors are entitled to conduct a due diligence investigation and to determine, for example, the scope and the forms of such an investigation. Rule II.20 contains a provision on this. Correspondingly, given its obligation to act in the interests of the shareholders, it is the board's responsibility to consider, for example, an offeror's request for assistance in the drafting of applications for requisite regulatory approvals.

If, prior to completion of the offer, an offeror wishes to offer employees of the offeree company a bonus arrangement or similar, the prior approval of the board of the offeree company must be obtained. A determination of whether such approval is to be given is also to be made based on the obligation to act in the interests of shareholders.

Whether it is justified to award the board additional remuneration for the work that a takeover bid entails is a matter for the shareholders to decide.

Offer-related arrangements

II.17a The offeree company may not commit itself to any offer-related arrangement vis-à-vis the offeror.

The term "offer-related arrangement" refers to any and every arrangement related to the offer which entails an obligation on the offeree company vis-à-vis the offeror. However, this does not include confidentiality clauses or undertakings not to solicit the offeror's employees, customers, or suppliers.

Commentary
In some cases, the offeror requests that the offeree company undertakes certain commitments vis-à-vis the offeror. This may, for example, involve an agreement to restrict the right for the offeree company to conduct discussions with or seek other potential offerors for a certain period of time or to notify the offeror in the event that the offeree company receives proposals from competing offerors. A further example is an agreement whereby, on certain conditions, the offeree company is to compensate the offeror wholly or partly for costs incurred if the deal fails to materialise. According to the *first paragraph*, the offeree company may not commit itself to any such offer-related arrangement. This restriction is primarily intended to limit the scope for arrangements which detrimentally impact on the conditions for the submission or completion of competing offers.

The *second paragraph* states that an offer-related arrangement comprises each and every such arrangement involving an obligation for the offeree company vis-à-vis the offeror. Accordingly, the provision does not apply to arrangements under which the offeree company has no such obligations. Nor, according to the second paragraph, does the provision prevent the offeree company from agreeing to confidentiality clauses or providing undertakings not to solicit the offeror's employees, customers or suppliers. Undertakings regarding the amalgamated group following completion of an offer do not constitute offer-related arrangements.

Pursuant to Rule I.2, the Swedish Securities Council may grant exemptions from this provision or issue a statement on how it is to be applied. It is not sufficient reason for an exemption that the offeror has demanded a particular offer-related arrangement and that the offeree company has not opposed this. However, in individual cases the circumstances may be such that an exemption from the rule can be granted. This may, for example, be the case where reciprocal undertakings are involved in amalgamation agreements between parties of equal strength. An exemption might also be granted regarding an arrangement with a competing offeror if the board of the offeree company does not recommend the first offeror's offer, or with respect to an arrangement with the offeror whose offer is recommended by the board following a sales process initiated by the offeree company. Reasons for exemption may also conceivably exist in other cases where a particular arrangement improves rather than reduces the prospects of a competitive bidding situation. When considering an exemption, the full circumstances of the situation are to be considered, whereupon certain arrangements may be deemed acceptable while others are not accepted.

Conflicts of interest
II.18 A director of the offeree company may not participate in discussions on a matter related to the offer if, as a result of a shared interest with the offeror or for any other reason, the director may have an interest in the matter which conflicts with the interests of shareholders. This also applies to the chief executive officer of the offeree company.

Commentary
In some cases, a director or the chief executive officer of an offeree company may have a shared interest with the offeror or a third party, e.g. a potential competing offeror, which means that their objectivity in relation to the offer may be open to question. A clear case of such a shared interest is where the director is also an owner of the offeror company, but there may also be a shared interest where, for example,

the director or chief executive officer is employed by or has other assignments for the offeror company. If the shared interest indicates that the director may have an interest which is in conflict with the interests of the offeree company's shareholders, the director is to declare this to the board and refrain from participating in discussions on any matters conducted by the board which, broadly defined, are related to the offer. This may, for example, involve matters relating to contacts and negotiations with the offeror or other potential offerors, alternative courses of action, procurement of advisers, the board's statement in response to the offer and any defensive measures. The wording "may have" denotes that the provision is to apply even in a situation where directors typically have a conflict of interest.

It is not possible to provide an exhaustive list of circumstances that constitute such a conflict of interest as referred to in the provision. This must be determined in each individual case, taking into account, for example, the nature and scope of the director's connection to the offeror, promises regarding positions on the board or similar. Here, as elsewhere, the rules are to be applied on the basis of their purpose, namely to maintain public confidence in the market.

The fact that a director of the offeree company is also a shareholder in the offeree company does not normally entail a conflict of interest. However, if the director has entered into an agreement in connection with the offer to sell shares to the offeror or provided an undertaking to accept the offer, the director must be regarded as having a conflict of interest. The same applies, for example, if a legal entity that the director has a relevant connection to in the context of the offer has entered into an agreement on the transfer of its shares to the offeror, has undertaken to accept the offer or decided to enter into such agreement or provide such an undertaking. Such a conflict of interest is to be disclosed in the press release regarding the offer and in the offer document. If the sale is governed by specific terms and conditions, such as being conditional on the completion of the offer, a description of these terms and conditions is also to be provided.

The above also applies to any director who is a proxy for or otherwise represents a shareholder in the offeree company.

The obligation for the board of the offeree company to make a statement regarding the offer

II.19 The board of the offeree company is to announce its opinion regarding the offer and the reasons for this opinion no later than two weeks prior to the expiry of the acceptance period.

Based on the content of the press release or offer document issued by the offeror, the board is to present its opinion regarding the impact that implementation of the offer will have on the company, particularly in terms of employment, and its opinion regarding the offeror's strategic plans for the offeree company and the effects it is anticipated that such plans will have on employment and on the locations where the company conducts its operations. If, within a reasonable period of time, the board receives a separate statement of opinion from employee representatives expressing a different opinion on the impact of the offer on employment, this is to be attached to the board's statement.

The board's statement is also to state whether a director has not participated in discussions on the matter due to a conflict of interest or whether a director has expressed reservations regarding the board's decision. If a relevant board meeting is not quorate, the other directors are entitled, but not

obliged, to announce their opinion regarding the offer. In such a case, a valuation opinion pursuant to Rule IV.3 is to be obtained and published, irrespective of whether or not the other directors choose to express their views on the offer.

If the offeror amends the terms and conditions of a submitted offer, the offeree company's board is to announce its opinion regarding the revised offer and the reasons for this opinion as soon as possible and no later than one week prior to the expiry of the acceptance period.

Commentary

The opinion of the board the offeree company regarding the offer is very often of great interest to shareholders when they are to make a decision on the matter. The board normally has such knowledge of the situation that it is of value that its opinion regarding the offer is communicated to the shareholders. Consequently, in accordance with the *first paragraph*, the board is to announce its opinion regarding the offer and state its reasons for this opinion. This rule is to be interpreted as the board being obliged to state its opinion not only on the total amount that the offeror is offering to pay for the company but, above all, on the consideration and other terms and conditions that the offeror is offering for each share and, where applicable, each class of shares.

If the offer is of the nature of a merger in which the consideration consists of shares in the offeror company, it is usually appropriate for the board to expand upon its views on the industrial logic, synergies etc.

The amount of detail required in the reasons for the board's opinion on an offer must otherwise be determined based on the circumstances of the particular case. If the board's position is straightforward, detailed reasons are not usually required, while more detailed reasons are required in cases which are difficult to assess and where there may be arguments worthy of consideration both for and against the offer.

The board needs a certain amount of time to evaluate the offer and formulate its opinion. As a result, the board cannot always be required to announce its opinion immediately the offer is announced. However, it is beneficial if the opinion is announced in sufficient time for it to be included in the offer document. The opinion is to be announced no later than two weeks prior to the expiry of the acceptance period. This normally ensures that there is enough of the acceptance period remaining for shareholders who have chosen to wait for the opinion of the board to be regarded as having a reasonable amount of time to evaluate the statement.

The *second paragraph* states that, based on the press release or offer document issued by the offeror, the board is to present its opinion regarding the impact that the implementation of the offer will have on the company, particularly in terms of employment, and its opinion regarding the offeror's strategic plans for the offeree company and the effects it is anticipated that such plans will have on employment and on the locations where the company conducts its operations. If, within a reasonable period of time, the board receives a separate statement of opinion from employee representatives expressing a different opinion on the impact of the offer on employment, this is to be attached to the board's statement. This provision is based on the provisions of the Takeovers Directive.

If the board of the offeree company has announced its opinion regarding the offer in sufficient time for it to be included in the offer document, the full statement is to be reproduced in the offer document, in accordance with Part 4 of the Appendix. If

the statement is not available in time to be included in the offer document, the document is to state when the board's statement is expected to be made.

If a director has not participated in discussions on the matter due to a conflict of interest or for any other reason, the *third paragraph* requires that this be stated in the board's announcement. Similarly, if a director has expressed reservations regarding the board's decision, this must be stated together with the reasons for these reservations if they have been disclosed. If a sufficient number of board directors are prevented from participating in the formulation of the board's opinion for the relevant board meeting to be declared inquorate, the other directors are entitled, but not obliged, to announce their opinion regarding the offer. It is usually appropriate that this occurs. In such a situation, a valuation opinion in accordance with Rule IV.3 is to be obtained and published, even if it is not such a takeover situation as referred to in Section IV. The obligation to obtain a valuation opinion applies irrespective of whether or not the other directors choose to express their views on the offer. The board may also have reason to obtain a valuation opinion in other cases. If so, the valuation opinion is to be published.

Pursuant to Rule II.9, an offeror may amend the terms and conditions of a submitted offer. The board of the offeree company is also to announce its opinion regarding the revised offer. The *fourth paragraph* states that this must take place as soon as possible and no later than one week before the expiry of the acceptance period.

The participation of the offeree company in a due diligence investigation

II.20 If the offeror requests that it be permitted to conduct a due diligence investigation on the offeree company, the board of the offeree company is to decide whether the company can and will participate in such an investigation and, if so, on what conditions and to what extent. The board is to limit the investigation to factors necessary for submitting and implementing the offer.

If in the course of the investigation the offeree company provides the offeror with inside information, the offeree company is to ensure that this information is made public as soon as possible.

Commentary

In connection with a takeover bid, the offeror may sometimes ask the offeree company for permission to conduct a due diligence investigation in order to obtain more information about the company. According to the *first paragraph*, the board of the offeree company is responsible for determining the extent to which such a request can and will be complied with based on the circumstances of the individual case, taking into account first and foremost the scope permitted for such participation under the relevant legislation, in particular the Companies Act, and the Marketplace rules. The board is also to comply with the rules on insider trading. The board may consent to participation by the offeree company in a due diligence investigation only if the board considers that the potential offer will be of interest for consideration by shareholders and if the offeror has submitted a written request for permission to conduct the investigation in question as a condition to making the offer.

In arriving at its decision, the board must consider the risk of damage to the company, such as through the disclosure of trade secrets. In light of such risks, the board should ensure that the investigation is no more extensive than is necessary for the offer. The board should also ensure that a confidentiality agreement is

prepared which places limitations on the offeror's right to use and disseminate the information, and that the company documents the information provided, the persons who have received it and when this occurred. The board should also endeavour to ensure that the investigation is conducted as quickly as possible in order to avoid unnecessary disruptions to the offeree company's operations.

If in the course of the due diligence investigation the offeree company provides the offeror with inside information, the *second paragraph* states that the offeree company is to ensure that this imbalance in the provision of information is rectified as soon as possible by making the information public, at least as a summary of the relevant parts, normally in connection with the announcement of the offer. The information is also to be included in the offer document.

The obligation in accordance with the Takeover Code to publish the information provided does not apply before the offer has been made. If no takeover bid is made after the due diligence investigation, the disclosure obligation pursuant to the Takeover Code no longer applies.

If the offeror receives inside information concerning the offeree company within the framework of a due diligence investigation or otherwise, a prohibition on trading and other restrictions are triggered, as prescribed in the market abuse rules. See e.g. Articles 14 and 9.4 of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse (the Market Abuse Regulation). According to Article 7 of the Market Abuse Regulation, the term inside information refers to information of a precise nature that has not been made public, which directly or indirectly relates to one or more issuers or one or more financial instruments and which, if made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments, (i.e. with regard to the price effect criterion, information that a reasonable investor would be likely to use as part of the basis for its investment decision).

If more than one offeror plans to submit an offer for the shares in the offeree company, it is of the utmost importance that the offeree company applies the rules uniformly with regard to all offerors. Consequently, if information has been provided to one offeror and another offeror requests equivalent information, the offeree company is to comply with such a request if the circumstances are similar in all other respects. Clearly, the board is also to consider the risks to the company which may result from the provision of information to the other offeror. Circumstances with regard to different offerors may differ, e.g. depending on the level of competition.

The above comments apply to due diligence investigations before the offer is announced. Whether such an investigation may also be conducted after the offer has been announced is a different matter. This should occur only if required to determine whether or not the completion conditions stipulated in the offer have been satisfied.

Defensive measures

II.21 If due to information originating from the actor who intends to submit a public offer for shares in the company the board or the chief executive officer of a Swedish limited liability company whose shares are traded on a Marketplace has legitimate cause to assume that such an offer is imminent, or if such an offer has been submitted, the company may only take action to create

less favourable conditions for the submission or execution of the offer as a result of a resolution passed by the shareholders' meeting.

Notwithstanding the first paragraph, the company may seek alternative offers.

Commentary

This rule corresponds in essence to Chapter 5, section 1 of the Swedish Takeovers Act (2006:451) and is accordingly only applicable to offeree companies which are Swedish limited companies.

The *first paragraph* states that the board of an offeree company may not implement measures which are intended to impair the conditions for submission or implementation of the offer. The obligation to refrain from such defensive measures commences no earlier than the date on which the company's board or chief executive officer has legitimate cause to assume that an offer is imminent, based on information derived from the actor who intends to submit an offer to the shareholders of the company. The provision also applies if the information has not been disclosed directly to the board or the chief executive officer, but has gone through one or more instances, e.g. shareholders. In the case of the board, it is sufficient that one director has acquired such knowledge. If the offer is submitted without any prior information from the offeror or without any prior knowledge on the part of the board, the applicable date is the date on which the offer is published.

In order to limit the company's scope for action, the requirement that the information regarding the offer is to give "legitimate cause to assume that an offer is imminent" means that the information must be reasonably concrete and that the offeror can be assumed to have sufficient financial resources to implement the offer. The mere fact that the board believes that the offer will not be sufficiently attractive to shareholders is not grounds to allow the board to take own measures against the offer.

It is not possible to provide an exhaustive list of the kinds of measure the company may not take in cases where this provision is applicable. They may include, for example, a targeted issue of shares, a transfer or acquisition of assets or an offer to the shareholders of the offeror company or another company for the acquisition of their shares. A further such measure may involve inducing a subsidiary to take such action. However, whether these or other measures are covered by the provision depends on whether the measure in question is designed to impair the conditions for submission or implementation of the offer.

Measures designed to impair the conditions for submission or execution of the offer may only be taken following a decision by a shareholders' meeting. This means that a measure cannot be taken on the basis of a previously issued authorisation. It also means that a measure decided upon by the board subject to approval by the shareholders' meeting cannot be carried out until the shareholders' meeting has granted its approval.

The *second paragraph* states that the target company may seek alternative offers, notwithstanding the provisions of the first paragraph.

The offeror's obligation to announce the outcome of the offer

II.22 As soon as possible after the expiry of the acceptance period, the offeror is to issue an announcement stating:

• the number of shares in the offeree company for which acceptances of the offer have been received and the proportion of the offeree company's share capital and total voting rights represented by these shares,

• the number of shares in the offeree company acquired by the offeror outside the offer and the proportion of the offeree company's share capital and total voting rights represented by these shares,

• whether the stipulated completion conditions have been fulfilled and, where applicable, whether the offeror has decided to complete the offer even though all of the conditions have not been fulfilled,

• the number of shares in the offeree company held or otherwise controlled by the offeror, and the proportion of the offeree company's share capital and total voting rights represented by these shares,

• any holdings of financial instruments which give the offeror financial exposure equivalent to a shareholding in the offeree company, and

• the date on which payment of the consideration is expected to commence.

Where applicable, disclosure is also to be made of any decision to:

• extend the acceptance period,

• reduce the blocks of shares for which acceptances have been received, or

• initiate a compulsory acquisition (squeeze-out) procedure for the remaining shares.

Commentary

According to the *first paragraph*, after the expiry of the acceptance period for the offer, the offeror is to provide information about the outcome of the offer as soon as possible after the counting of acceptances has been completed. Given the importance of shareholders receiving information promptly about the outcome of the offer, the counting of acceptances is to take place as quickly as possible without jeopardising the integrity of the counting procedure.

The application of this provision is conditional on the acceptance period having expired. If the offeror extends the acceptance period for the offer prior to the end of the acceptance period, the offeror is not obliged to provide information about the outcome of the offer until the end of the extension period. The information must be provided by means of an announcement in the manner stated in Rule I.4.

Firstly, the offeror is to state the number of shares in the offeree company for which acceptances have been received and the proportion of the offeree company's share capital and total voting rights represented by these shares. This indicates how successful the offer has been. In addition, the offeror is to state the number of shares in the offeree company acquired by the offeror outside the offer and the proportion of the offeree company's share capital and total voting rights represented by these shares.

If the offeror has stipulated conditions for completion of the offer, such as the achievement of a specific level of acceptances, the offeror must state whether these conditions have been fulfilled or, where applicable, that the offer will be completed even though all of the conditions have not been fulfilled.

The offeror is also to state the number of shares in the offeree company held or otherwise controlled by the offeror at the end of the acceptance period and the proportion of the offeree company's share capital and total voting rights represented by these shares. If the offeror holds warrants or convertible securities issued by the offeree company, details of these are to be included in the reporting of the number of shares controlled by the offeror. The offeror is also to provide details of any

holdings of financial instruments which give the offeror financial exposure equivalent to a shareholding in the offeree company. Finally, the date on which payment of the consideration is expected to commence is to be stated.

The *second paragraph* requires the offeror to provide information regarding an extension of the acceptance period for the offer. An offeror may decide to extend the acceptance period at the end of the acceptance period. The offeror may, for example, fail to achieve the level of acceptances stated in the completion conditions, (normally more than 90 per cent), and may therefore wish to extend the acceptance period in order to achieve a higher level of acceptance. There is nothing to prevent the offeror from withdrawing such a condition during the extended acceptance period. Also, the offeror may achieve a level of acceptance of more than 90 per cent by the end of the acceptance period, but may extend the acceptance period for the offer nonetheless.

If the offeror has made a partial offer, and the interest in selling shares to the offeror is so substantial that a pro rata reduction is required, information to this effect is to be provided in the press release.

Finally, where applicable, it is to be stated that the offeror has decided to initiate a squeeze-out procedure for the minority shares.

The offeror's obligation to pay the consideration

II.23 The offeror is to pay the consideration under the offer as soon as possible.

Commentary

When the offeror has announced that the offer has been completed, (see Rule II.22), the offeror is to pay the consideration to the shareholders who have accepted the offer as soon as possible. It is natural that the payment of consideration may require more time if the consideration consists wholly or partly of shares in the offeror company or other securities than if the consideration consists exclusively of cash. If at the same time as announcing the completion of the offer the offeror extends the acceptance period, the consideration to shareholders who have accepted the offer during the original acceptance period is to be paid within the prescribed period.

If the offer is unconditional from the outset or after extension, payment is to be made as soon as possible after the offeror has reported the outcome for the acceptance period in question in accordance with point II.22.

The requirement regarding available funding stated in Rule II.1 means that any regulatory approvals or similar required for the offeror to pay the remuneration, and which the offeror cannot itself in practice ensure are obtained, are to have been obtained before the offer is announced.

The Swedish Securities Council may rule on the time frame for payment which is acceptable in a specific case.

Restrictions on the offeror's right to submit a new offer

II.24 If a submitted offer is not completed, the offeror or a party closely related to the offeror according to Rule I.3 may not make an offer to acquire shares in the offeree company or acquire sufficient shares in the offeree company to trigger a requirement to make a mandatory offer within the following 12 months. This also applies to any party closely related to the offeror according to Rule I.3 when the offer was submitted. The first and second sentences do not apply if the offeror submits a new offer which is recommended by the

board of the offeree company, or if the offeror, having withdrawn an offer due to stipulation in the third paragraph of Rule II.7, obtains the required regulatory approvals and returns with a renewed offer within four weeks of receiving them.

Commentary
In line with the principle stated in the Introduction that a takeover bid may not prevent the offeree company from conducting its operations for a period that is longer than reasonable, this rule stipulates certain limitations on the right for an offeror to make a new offer following an unsuccessful offer. The provision entails that an offeror who announces at the end of the acceptance period that the offer has not been completed may not make an offer to acquire shares in the offeree company or acquire sufficient shares in the offeree company to trigger a requirement to make a mandatory within the following 12 months. This applies correspondingly if the offeror withdraws its offer.

In order to prevent circumvention of this rule, it also applies to offers and acquisitions made by a party closely related to the offeror according to Rule I.3.

The first and second sentences of the provision do not apply if the offeror makes a new offer which is recommended by the board of the offeree company. If this is the case, the recommendation must be obtained in advance.

Rule II.7 states that, unless a dispensation or exemption has been granted, the offeror must withdraw the offer as soon as it is clear that required regulatory approvals will not be received by the end of the nine-month acceptance period stipulated in Rule II.7. If the offeror announces at the time of the withdrawal that it intends to continue to try to obtain regulatory approvals and then return with a new offer, the offeror may return with a renewed offer within four weeks of receipt of the approvals, without prejudice to the twelve-month stipulation stated in this Rule (II.24). As soon as the offeror has obtained the regulatory approvals, been denied the approvals or decided not to continue to seek the approvals, the offeror must announce this.

The Swedish Securities Council may grant exemptions from the rule. One reason for such an exemption may be, for example, that a third party has made an offer to acquire shares in the company.

The application of this provision is conditional on an offer having been made; it does not apply where a potential offeror has made a pre-announcement of a possible offer. Rule II.3 states that in this type of situation the Securities Council may set a deadline by which the offer is to be submitted and set the earliest date on which the offeror may subsequently make an offer to acquire the shares in the company if it does not make an offer within the stipulated period.

III Mandatory Offers

When a mandatory offer is required and who is primarily responsible for making it

III.1 A party which holds no shares or holds shares representing less than three tenths of the voting rights of all shares in a Swedish limited company whose shares are traded on a Marketplace and who through the acquisition of shares in the company, alone or together with any person related to Rule I.3 a) - d) or f), achieves a shareholding representing at least three tenths of the voting rights of all shares in the company is to:

1. immediately announce the size of their shareholding in the company and

2. submit a takeover bid for the remaining shares in the company, (a mandatory offer), within four weeks of the announcement.

In accordance with Rule III.4, the Swedish Securities Council may rule that the obligation is to be fulfilled by another party.

Commentary

This rule corresponds in essence to Chapter 3, section 1 of the Swedish Takeovers Act (2006:451) and is accordingly only applicable to shareholdings in Swedish limited companies.

The *first paragraph* states that a mandatory offer is triggered if any party who does not hold any shares or who holds shares representing less than three tenths of the voting rights of all the shares in a Swedish limited company whose shares are traded on a Marketplace achieves, alone or together with any related parties as specified in Rule I.3 (a) - (d) or (f), a holding representing at least three tenths of the voting rights of all the shares in that company through the acquisition of shares, irrespective of how the shares are acquired. The acquisition may take the form of a purchase, but also, for example, through subscription or conversion or an acquisition under family law. The number of shares acquired is of no importance. The decisive factor is whether the total holding after the acquisition amounts to the specified level.

In line with the purpose of the regulation on mandatory offers, the requirement that the voting stake in question has been achieved through an acquisition is to be interpreted in such a way that the acquisition must be definitive. If the acquisition has been made through a purchase that is linked to certain conditions, such as approval by of competition authority, these conditions must have been fulfilled and the acquirer be able to exercise voting rights for the shares in question in order for a mandatory offer requirement to be triggered. Similarly, the concept of acquisition in this context must be understood as meaning that an acquisition by subscription does not trigger a mandatory obligation until the issue in question has been registered.

When calculating the total number of votes in the company, shares held by the company itself are to be included. If the company holds its own shares, which due to the provisions of the Swedish Companies Act does not normally occur, these shares do not affect the number of shares any third party can acquire without being obliged to submit a mandatory offer.

When calculating whether a certain holding triggers a mandatory offer, only holdings of shares are to be taken into account, and not, for example, option rights or convertibles issued by the company. Nor should holdings of call options or sales options be taken into account. The exercise of an option or convertible may also

result in the voting rights of the holder achieving a level of three tenths or more of the voting rights and thereby trigger a requirement to submit a mandatory offer.

The mandatory offer requirement is an obligation to submit a takeover bid for the remaining shares in the company. If a party achieves or exceeds a level of three tenths of the votes in the company, it is important that the stock market is quickly made aware of this. This provision obliges the shareholder in question to announce that he or she has reached the threshold for a mandatory offer. A takeover bid must be submitted within four weeks of this announcement.

Rule III.4 stipulates that the Swedish Securities Council may rule in an individual case that the obligation to submit the mandatory offer is to be fulfilled by a party other than the party obliged to submit the offer under this provision. A reference to this has been included in the *second paragraph*.

The wording of the mandatory offer provision is such that any party who at the time the existing rules originally came into force, (January 1, 2010), already held shares representing at least three tenths of the voting rights of all the shares in a company referred to in the rule, alone or together with related parties, is not covered by the obligation to submit a mandatory offer. Additionally, the mandatory offer rules do not prevent such an owner from subsequently acquiring additional shares in the company without being obliged to submit a mandatory offer.

In accordance with Rule I.2, the Securities Council may grant an exemption from the obligation to submit a mandatory offer. This option is intended for parties who are on the point of making a mandatory acquisition. The issue of exemption must be assessed against the purpose of the liability rules on a case by case basis, i.e. to enable other shareholders to leave the company in a specific manner when a party has taken control of the company through their shareholding. In some cases, the circumstances may be such that, in fact, no change of controlling ownership can be said to have occurred, even though the company has a new owner with three tenths or more of the votes.

Grounds for exemption should normally exist when the holding arises through an acquisition in which the shareholder in question has not participated actively, e.g. as a result of an inheritance or gift. Another reason that should justify exemption from the mandatory offer requirement is that the holding has occurred as a result of a shareholder exercising a preferential right to subscribe for shares in a new issue. A further reason is that the holding has arisen as a result of an issue of shares which either constitute consideration for the purchase of a company or other asset or is a necessary step in the reconstruction of a company with significant financial difficulties. The Council needs to decide, through an overall assessment, whether an exemption is in the interests of the shareholder collective and whether this interest can be regarded as greater than the possibility for shareholders to leave the company as required by a mandatory offer process. Such an assessment may involve taking into account the extent to which the share issue is supported or assumes the support of the shareholders at a shareholders' meeting.

Another reason for granting an exemption may be that the company's articles of association contain provisions restricting the number of votes that each shareholder may cast to a shareholders' meeting. If such a provision implies that a shareholder cannot exercise voting rights for shares representing three tenths of the voting rights of all shares in the company, irrespective of the size of its shareholding, this may justify an exemption from the requirement to submit a mandatory offer.

An exemption from the requirement to submit a mandatory offer does not mean that the shareholder in question can subsequently increase its voting rights in the

company by further acquisition of shares without triggering a mandatory offer requirement. However, in certain circumstances, the exemption ruling may stipulate that the exemption also applies to subsequent acquisitions. For example, it may stipulate that the exemption applies to subsequent acquisitions of marginal influence. Such an exemption may be justified if it is granted to a large group of owners, e.g. a family whose individual members ought to be able to make minor adjustments to their equity portfolios without triggering a mandatory offer.

Grounds for exemption from the mandatory offer requirement may exist when the level of three tenths is achieved or passed due to the acquisition of shares that are subject to transfer restrictions. Another situation that may arise is that the shareholding amounts to or exceeds this limit, but shares held by other shareholders include shares that are subject to pre-emption rights or other transfer restrictions. Exemption from the mandatory offer requirement can be granted in full or with regard to the obligation to submit an offer for the shares covered by transfer restrictions.

III.2 The provisions in Rule III.1 regarding mandatory offer requirements also apply to:

1. Any party which holds no shares in or shares representing less than three tenths of the voting rights of all shares in a company as referred to in paragraph III.1 and which, through actions of the company or another shareholder, achieves a shareholding representing a level of at least three tenths of the voting rights for all shares, either alone or together with any related party as defined in Rule I.3 a) - d) or f), and subsequently increases its voting rights through the acquisition of one or more shares in the company other than through a formal offer to acquire remaining shares in the company, or

2. a close relationship as described in Rule I.3 a) or d) is established and the parties thereby acquire together a shareholding representing at least three tenths of the voting rights of all shares in a company as referred to in Rule III.1.

If a mandatory offer requirement is triggered pursuant to point 2 above, the following applies: In cases referred to in Rule I.3 a), the mandatory offer requirement is to be fulfilled by the parent company or a corresponding legal entity; in cases referred to in Rule I.3 d), the mandatory offer requirement is to be fulfilled by the party whose shareholding represents the largest share of the voting rights of all the shares in the company. If several closely related parties in the latter situation hold equal voting rights, each of them is responsible for the fulfilment of the mandatory offer requirement.

Rule III.4 contains provisions stating that the Swedish Securities Council may decide that the mandatory offer requirement is to be fulfilled by parties other than those specified in this rule.

Commentary

This rule corresponds in essence to Chapter 3, section 2 of the Swedish Takeovers Act (2006:451) and regulates certain cases where the mandatory offer requirement occurs. In the *first paragraph*, the obligation to mandatory offer requirement in Rule III.1 is extended to apply in the following two situations.

Situation 1. A mandatory offer is not triggered by measures taken by the company which result in a shareholder's voting share increasing to three tenths or

more of the votes, e.g. redemption of shares. In such a situation, the shareholder's voting share has increased without the shareholder acquiring any additional shares. However, a mandatory offer requirement is triggered if the shareholder in question subsequently acquires one or more shares in the company and as a consequence further increases its voting rights. The same applies to certain measures taken by other shareholders. This may involve converting one or more other shareholders' shares into shares with lower voting rights and thereby giving higher voting rights in the company to other shareholders. If such measures were to result in an owner reaching or crossing the threshold of three tenths of the voting rights, the mandatory bid requirement will be triggered only if the owner in question subsequently acquires one or more shares in the company and thereby further increases its voting power. When calculating whether the level of the mandatory offer threshold has been passed, also the shareholdings of closely related parties are also to be counted.

Situation 2. The mandatory offer requirement is also triggered if a close relationship as described in Rule I.3 a) or d) is established and the parties thereby reach a voting share of at least three tenths of the voting rights for all shares in the company. This refers to the creation of a group relationship or an agreement regarding a coordinated exercise of voting rights. If a party acquires shares in a company to the extent that a group relationship is created and the subsidiary in turn holds shares in a company, the mandatory offer requirement is triggered if the acquirer and the subsidiary together, the subsidiary alone or the subsidiary together with other subsidiaries to hold shares representing at least three tenths of the voting rights for all shares in the company. Correspondingly, the mandatory offer requirement is triggered if a party holding two tenths of the voting rights for all shares enters into an agreement on the coordinated exercise of voting rights with a party holding at least one tenth of the votes.

The *second paragraph* regulates the question of who is to fulfil the mandatory offer requirement in cases referred to in point 2, i.e. through the establishment of a close relationship. The provision differentiates in two different cases. If a group relationship has been established, the mandatory offer requirement is to be fulfilled by the parent company or a corresponding legal entity, such as a foreign parent enterprise. If such an agreement as that referred to in paragraph I.3 (d) has been entered into, the mandatory offer requirement is to be fulfilled by the party whose shareholding represents the largest share of the voting rights of all the shares in the company. If several closely related parties in the latter case hold equal voting rights, each of them is responsible for the fulfilment of the mandatory offer requirement.

The *third paragraph* contains a reminder of the stipulation in Rule III.4 that the Swedish Securities Council can decide that the mandatory bid requirement is to be fulfilled by parties other than those who are obliged to do so by this provision.

III.3 Rules III.1 and III.2 do not apply if any shareholding representing at least three tenths of the voting rights of all shares is achieved through a takeover bid for all of the shares in the company.

Commentary

This rule corresponds in essence to Chapter 3, section 3 of the Swedish Takeovers Act (2006:451). It states that a takeover bid comprising all shares in the offeree company and which upon completion results in the threshold of three tenths of the votes being reached or passed does not trigger a mandatory offer requirement. In

such a situation, all shareholders have already had the opportunity to transfer their shares to the controlling owner.

If an offeror first submits a voluntary offer and then during the acceptance period acquires such a large shareholding that the threshold for mandatory offers is reached, through purchase on the market or otherwise, the offeror must adjust the offer to comply with the rules regarding mandatory offers.

Rule III.5 stipulates that the mandatory offer requirement no longer applies if the controlling owner divests shares so that the holding no longer represents three tenths of the votes or calls for the compulsory redemption of the remaining shares in accordance with the provisions of the Swedish Companies Act within four weeks of reaching the threshold for a mandatory offer.

III.4 Where certain circumstances exist, the Swedish Securities Council may rule that the mandatory offer requirement is to be fulfilled by a closely related party to the offeror as described in Rule III.1 or III.2.

Commentary

This rule corresponds in essence to Chapter 3, section 4 of the Swedish Takeovers Act (2006:451). It regulates the Swedish Securities Council's authority to rule on who is to fulfil the mandatory offer requirement in certain situations.

The mandatory offer requirement can be triggered if a party acquires shares to such an extent that his or her shareholding together with that of a related party reaches the mandatory offer requirement threshold. In such a case, the acquirer of the shares may continue to hold only a small proportion of the shares in the company even after the acquisition. The Council may then rule that the mandatory offer requirement is to be fulfilled by a party which is closely related to the acquirer. This may occur, for example, if a subsidiary acquires a small shareholding in a company in which the parent company already holds a significant shareholding and the subsidiary's acquisition of means that the group's total holding exceeds the mandatory offer requirement threshold. In such a case, the Council may rule that the mandatory offer requirement is to be fulfilled by the parent company, even though Rule III.1 indicates that it is to be fulfilled by the subsidiary.

A similar situation exists where the total shareholding of two closely related parties exceeds the mandatory offer requirement threshold as a result of actions taken by the company or another shareholder. The first paragraph of point 1 of Rule III.2 stipulates that if one of the related parties then acquires further shares, this triggers the mandatory offer requirement for the party which completed the most recent acquisition. Rule III.4 states that the Council may rule that the mandatory offer requirement is instead to be fulfilled by the acquirer's closely related party.

Similarly, in situations described in the first paragraph of point 2 of Rule III.2, i.e. where the mandatory offer requirement threshold is passed as a result of the establishment of a close relationship, the Council may rule that a related party other than the one referred to in the second paragraph of Rule III.2 is fulfil the mandatory offer requirement. It may, for example, that two or more parties which together hold shares representing at least three tenths of the voting rights in the company enter into an agreement of the kind referred to in Rule I.3 d). One example of a reason that might justify a deviation from the principal rule is that the parties have agreed that one of them will fulfil the mandatory offer requirement and this agreement does not appear to jeopardise the fulfilment of the requirement. Another example is that the fundamental agreement between the parties regulates the issue of how voting

rights for the shares are to be utilized in a manner that does not reflect the parties' voting rights in the company.

If the parties hold equal voting rights, each of them is covered by the mandatory offer requirement. In such cases, the Council may rule that only one of the parties is fulfil the requirement.

Requirements for expiry of the mandatory bid requirement

III.5 If the mandatory offer requirement has been triggered and the party required to fulfil the requirement, or where applicable a closely related party as referred to in Rule I.3 a) - d) or f), divests shares within four weeks of the date on which the mandatory offer requirement was triggered so that the shareholding does not represent three tenths of the voting rights for all shares in the company, the mandatory offer requirement no longer applies. The same applies if the offeror, a third party or the company takes any other action within the same four-week period which causes the shareholding to represent less than three tenths of the voting rights for all shares in the company.

If the mandatory offer requirement has been triggered and the party required to fulfil the requirement calls for redemption of the remaining shares in accordance with Chapter 22 of the Swedish Companies Act (2005:551) within four weeks of the date on which the mandatory offer requirement was triggered, the mandatory offer requirement no longer applies. If such a request for redemption is revoked or rejected, however, the mandatory offer requirement applies.

If the mandatory offer requirement no longer applies due to the provisions of the first or second paragraph, the acquirer is to announce this immediately.

Commentary

This rule corresponds in essence to Chapter 3, section 6 of the Swedish Takeovers Act (2006:451).

If a shareholder who is required to submit a mandatory offer divests shares within four weeks of the date on which the mandatory offer requirement was triggered so that the holding no longer represents three tenths of the voting rights for all shares, the *first paragraph* states that the requirement no longer applies. The same applies, where applicable, if any party closely related to the shareholder as described in Rule I.3 a) - d) or (f) divests shares so that the holding no longer triggers the mandatory offer requirement. Situations in which the close relationship is dissolved, e.g. by a parent company selling its shares in the subsidiary so that a group relationship no longer exists, are also to be regarded as falling under this regulation.

The *second paragraph* states that the mandatory offer requirement does not apply if the shareholder in question calls for compulsory redemption of the remaining shares. In order to prevent circumvention of this rule, the mandatory offer requirement is retriggered if such a compulsory redemption request is revoked. For the protection of the shareholders, the same applies if the request is rejected.

The *third paragraph* contains an information rule for cases where the mandatory offer requirement has lapsed due to the reasons described in the first and second paragraphs.

Procedure, terms and conditions etc. in the case of offers resulting from the mandatory offer requirement

III.6 Unless otherwise stated, the rules relating to voluntary offers also apply to mandatory offers. However, the following provisions apply specifically to mandatory offers:

- **the offer is to apply to all of the shares in the offeree company,**
- **the offer is to contain a consideration alternative that gives all shareholders the right to receive payment in cash,**
- **the offeror is entitled to make the offer conditional only upon requisite regulatory approvals being obtained, and**
- **an extension of the acceptance period for the cash offer is conditional upon there being no delay in payment of consideration to those who have already accepted the offer.**

As stated in Rules II.13–15, the terms and conditions of a mandatory cash offer are to be adjusted based on the terms and conditions of other acquisitions of shares by the offeror or a party closely related to the offeror according to Rule I.3 prior to, during or after the offer. However, if the offeror acquires shares via convertible securities, warrants, call options or other securities, thereby achieving a holding of three tenths or more of the voting rights for all of the shares in the offeree company, the price under the cash offer may not be less than the volume-weighted average price paid for the share concerned during the 20 trading days preceding the date of announcement of the holding.

Commentary

In most respects, the rules governing voluntary offers also apply to mandatory offers. However, certain exceptions must be made in view of the aim of the mandatory offer rules. These exceptions are described in this rule.

The aim of the mandatory offer rules is to give shareholders of a company which has a new controlling owner an opportunity to dispose of their entire shareholding in the company in a specific manner. It is therefore reasonable that a party which is required to submit a mandatory offer must always give shareholders an opportunity to receive payment in cash for their shares. Consideration in this form gives shareholders maximum freedom. In addition, the offeror may offer alternative consideration in another form and at a different value.

In a mandatory offer, the offer must be made to all shareholders and for all of the shares. As in the case of Rule II.12 regarding voluntary offers, mandatory offers also apply to holders of securities whose pricing might be materially affected by the delisting of the shares to which the offer relates.

The acceptance period for mandatory offers is to be determined in the manner referred to in Rule II.7. As in the case of voluntary offers, the acceptance period may be extended. However, the extension may not delay payment of consideration to shareholders who have already accepted the cash offer and the total acceptance period may not exceed three months, or nine months if the offer is conditional on regulatory approvals being obtained.

In mandatory offers, the offeror may not stipulate completion conditions other than the granting of regulatory approvals. This means, for example, that the offeror may not make the offer conditional on the offeree company refraining from taking defensive measures or a more favourable competing offer not being submitted. The obligations of the offeror if the offer is withdrawn as a result of regulatory approvals not being granted is a matter for the Swedish Securities Council to decide.

Subject to the exceptions stated above, the *first paragraph* states that the rules governing voluntary offers also apply where relevant to mandatory offers. However, since the determination of the amount of the consideration may be of particular importance in the case of mandatory offers, this matter requires special comment.

The connection to the rules governing voluntary offers means, for example, that the terms and conditions of the cash offer may not be less favourable than the terms and conditions of a prior transaction carried out in the six months prior to the offer, (see Rule II.13). This normally means that the buyer must offer the highest price which the buyer, or, where applicable, a party closely related to the buyer according to Rule I.3, paid for the shares in question during a period of six months prior to the announcement of the offer. Rules II.14 and II.15 concerning side transactions and subsequent transactions also apply to mandatory offers. If an acquisition which triggers a mandatory offer requirement is subject to assessment by a competition authority and clearance for the acquisition is granted more than six months after the contract date, the value on the contract date of the consideration in the prior transaction is still to determine the price in the offer.

The percentage threshold for a mandatory offer may be attained or exceeded if warrants are exercised to subscribe for shares, for example, or if convertible securities are converted into shares. Consequently, the *second paragraph* states that, in such cases, the consideration under the offer may not be less than the volume-weighted average price paid for the share in question during the 20 trading days preceding the date of announcement that the percentage threshold for a mandatory offer has been reached or exceeded. However, if the buyer has acquired shares at a higher price during the six-month period prior to the announcement of the offer, that price is the determining factor, and the terms and conditions must then be adjusted based on the terms and conditions of the prior transaction.

The provision stating that the price paid during the preceding 20 days constitutes the minimum threshold for the amount of the consideration also applies to a mandatory offer requirement which arises without a prior transaction as referred to in Rule II.13 having been conducted during the specified six-month period.

If the company has more than one class of shares, the price level and the form of consideration in a mandatory offer are primarily determined in accordance with Rules II.10 and II.11.

In light of the far-reaching intrusion on the freedom of contract which a mandatory offer entails, the requirement to submit a mandatory offer is triggered only in cases where a shareholder, (where applicable, together with a closely related party), holds shares representing three tenths or more of the voting rights for all of the shares in the company. Accordingly, the mandatory offer requirement is not triggered, for example, when a shareholder holds shares representing less than three tenths of the voting rights, but also holds an option to acquire additional shares which would increase the holding to three tenths or more.

However, the wording of the Takeover Code in this regard does not imply that the use of various contractual arrangements to achieve what is in practice a change of ownership control without triggering the mandatory offer rules may not be in breach of generally accepted practices on the stock market. This is normally the case, for example, if a shareholder with a shareholding that represents less than three tenths of the voting rights obtains additional exposure - for example through acquisitions via capital redemption insurance policies or other contractual arrangements where shares are held by another party who does not vote for the

shares - and the shareholder thereby, with the exception of the shares that are passive in terms of votes, has a voting influence of three tenths or more of the voting rights.

IV Rules applicable if a director or senior executive of the offeree company submits or participates in a takeover bid or if a parent company submits or participates in a takeover bid for shares in a subsidiary

Participation in an offer by a director or senior executive

IV.1 The provisions of this Section (IV) apply if a director or deputy director of the offeree company or a subsidiary of the offeree company submits or participates in a takeover bid. The rules also apply if a senior executive of the offeree company or a person equated with a senior executive submits or participates in a takeover bid.

In this context, the term "senior executive" refers to:

a) the chief executive officer or deputy chief executive of the offeree company or a subsidiary of the offeree company, and

b) the holder of another senior position in the offeree company or a subsidiary of the offeree company.

The provisions in this Section also apply to:

a) the spouse or cohabitee of a person referred to in the first and second paragraphs,

b) a child of a person referred to in the first and second paragraphs who is in the custody of such person,

c) a person who has recently held a position referred to in the first and second paragraphs, and

d) a legal entity over which a person referred to in this paragraph has a decisive influence, either alone or together with another person referred to in this paragraph.

Commentary

If a takeover bid is made, directly or indirectly, by one or more directors or senior executives of the offeree company, a number of problems arise which do not normally occur in the case of takeover bids. One problem is that in such cases, the offeror can often be assumed to have a material informational advantage with regard to the offeree company compared with the shareholders and, as a result, the offeror is able to make a more credible assessment of the value of the shares in the company.

In order to mitigate the effects of this informational imbalance, provisions have been included in this Section which mean that a valuation opinion regarding the shares in the offeree company is to be obtained if a director or senior executive of the offeree company, or a person equated with a senior executive, makes or participates in a takeover bid.

The rule also applies to individuals who have recently held a senior position or have recently resigned as a director. The rule does not contain a definition of the term "recently". An interpretation must be made in each specific case against the background of the aim of the rules, namely to ensure a level informational playing field.

The provisions apply if a director or senior executive of the offeree company submits or participates in a takeover bid. The expression "submits" refers to any situation in which a director or senior executive, either alone or together with other parties, is the main offeror. The expression "participates" is primarily aimed at situations in which a director or senior executive, without being the principal actor,

holds a position with or in relation to the offeror which enables him or her to influence the terms and conditions of the offer. One such possibility to exert influence may be a result of a shareholding or some other financial involvement in the offeror company, but it may also be the case, for example, that the person in question is also a director of the offeror company or holds some other prominent position with the offeror company. The ability to exert influence may also derive from the fact the person in question is an adviser to the offeror in connection with the offer.

Not all shareholdings or other forms of financial involvement in the offeror company call for the application of these provisions. A shareholding which takes the form of a capital investment in a listed offeror company hardly implies that the senior executive concerned is to be regarded as "participating" in the offer. The decisive criterion is whether the senior executive concerned is able to influence the terms and conditions of the offer due to his or her holding or position.

Acceptance period

IV.2 The acceptance period for the offer is to be no less than four weeks. In all other aspects, the provisions of Rule II.7 apply with respect to the acceptance period.

Commentary

If a director or senior executive of the offeree company, or a person equated with a senior executive, submits or participates in a takeover bid, Rule IV.3 requires the board to obtain at least one valuation opinion as the basis for its own opinion statement and the shareholders' decision regarding the offer. In light of this rule, and given the complications which may arise for the work of the board if one or more directors or another senior executive of the company participates in the offer, this section prescribes that the acceptance period is to be a minimum of four weeks. In all other aspects, the provisions of Rule II.7 apply with respect to the acceptance period.

Valuation opinion

IV.3 The offeree company is to obtain a valuation opinion from an independent expert regarding the shares in the offeree company and to publish this opinion no later than two weeks prior to the expiry of the acceptance period. If the consideration offered is in a form other than cash, the valuation opinion is to also include a valuation of the consideration offered.

If a third party also submits a takeover bid for the shares in the offeree company, and no director or senior executive of the offeree company participates in that offer, there is no requirement to obtain a valuation opinion in accordance with the first paragraph.

Commentary

If a director or senior executive of the offeree company, or a person equated with a senior executive, submits or participates in a takeover bid, there is considerable risk of an informational imbalance in relation to the shareholders. Consequently, the *first paragraph* stipulates that a valuation opinion regarding the shares in the offeree company is to be obtained. The responsibility for ensuring that the valuation opinion is obtained lies primarily with board of the offeree company.

There is no stipulation requiring that more than one valuation opinion be obtained, although it may be appropriate in certain situations to obtain more than one. Irrespective of whether one or more opinions are obtained, it is important that the expertise engaged for this purpose has an independent position in relation to the offeror. The fee for the valuation opinion may not be dependent on the size of the consideration, the extent to which acceptances of the offer are received or whether the offer is completed. The requirement for independence does not prevent the valuation opinion being prepared by a person who is also an adviser to the offeree company on matters concerning the offer, but the fee for such a service may not be dependent on any of the above factors.

Both the directors and the senior executives of the offeree company, including those who are participating in the takeover bid on the offeror's side, are responsible for ensuring that those who conduct the valuation have access to all relevant information about the company.

The valuation opinion statement is to be published no later than two weeks prior to the expiry of the acceptance period. However, it is of benefit if the statement is published in sufficient time for it to be included in the offer document.

The *second paragraph* contains an exemption from the requirement to obtain a valuation opinion. Where there are competing offers, it has not been deemed reasonable to require that either offeror obtain a valuation opinion.

A fairness opinion, i.e. an opinion regarding the financial reasonableness of an offer for shareholders of the offeree company, is also to be regarded as a valuation opinion.

Offer by a parent company for shares in a subsidiary

IV.4 If a parent company submits or participates in a takeover bid for shares in a subsidiary, Rules IV.2 and IV.3 apply.

Commentary

If a parent company submits or participates in a takeover bid for shares in a subsidiary, a senior executive of the subsidiary usually holds such a position in the parent company that he or she can be regarded to be "participating" in the offer. However, this is not necessarily the case. Nonetheless, a parent company has an informational advantage compared with other shareholders. This informational imbalance justifies that the requirements under Rules IV.2 and IV.3 regarding an extended acceptance period and a valuation opinion be applicable to cases where a parent company submits or participates in a takeover bid for the shares in a subsidiary.

Supplementary information in press releases

IV.5 Where applicable, in the press release required by Rule II.3 when a decision has been made to submit an offer, the offeror is to state that the offer is subject to the rules contained in this Section. It is also to include information on which directors or senior executives of the offeree company are submitting or participating in the offer and the manner in which this is taking place. Where a parent company submits or participates in an offer for shares in a subsidiary, the group relationship is to be described in the press release. In such cases, it is also to be stated that the offeree company is obliged to obtain and publish a valuation opinion.

Commentary

When an offeror has made a decision to submit a takeover bid, Rule II.3 requires the offeror to announce the offer in the form of a press release as soon as possible.

If the offer is subject to the rules contained in Section IV, the offeror is to disclose this in the press release. The press release is to list which executives are involved and the manner of their participation in the offer. It is also to state that the offeree is obliged to obtain and publish a valuation opinion in accordance with Rule IV.3. This applies correspondingly if a parent company submits or participates in an offer for shares in a subsidiary.

V Rules concerning the structure of an offer document etc.

Responsibility for the offer document

V.1 The offer document is to be prepared by the offeror. If the offeror is a Swedish limited company, this task is normally the responsibility of the board of the offeror company.

Where possible, the offer document is to be prepared in consultation with the board of the offeree company. If the offeree company has not participated in this process, this is to be stated in the offer document, as well as the manner in which information about the offeree company has been obtained.

Commentary

Pursuant to Rule II.6, the offeror is to prepare an offer document. If the offeror is a Swedish limited company, the board is normally responsible for this process and for ensuring that the contents of the offer document comply with legislation, other ordinances and other rules. However, it is conceivable that there are exceptional cases in which the offer relates to such a marginal acquisition that responsibility for the offer document can rest with the chief executive officer.

The offer document is to include information about the offeree company and therefore, where possible, is to be prepared in consultation with the board of the offeree company. If such participation from the offeree company cannot be obtained, this is to be stated in the offer document. In such cases, the manner in which information about the offeree company has been obtained is also to be disclosed. The offeror may, for example have been referred to documents in the public domain published by the offeree company.

If the offeror adds its own comments on the description of the offeree company in order to comply with the requirements stipulated for offer documents, this is to be stated.

Lack of participation in this process on the part of the offeree company must not be a cause for postponement or withdrawal of the offer.

Auditor's examination

V.2 One or more reports from an independent auditor on the financial information in the offer document is to be included to the extent and in the manner required by applicable prospectus rules.

Commentary

The Takeover Code does not impose more far-reaching auditing requirements than applicable prospectus rules.

The Appendix states that, if applicable, reports from independent auditors regarding financial information in the offer document are to be included in the offer document.

Contents of the offer document

V.3 The offer document is to contain the information required to enable the shareholders of the offeree company to reach a well-informed decision regarding the offer.

In addition to the requirements stated in the first paragraph, the offer document is to contain the information stated in the Appendix.

The offer document is to be written in Swedish unless the Swedish Securities Council has ruled in an individual case that the offer document may be written in another language.

Commentary
The offer document is to contain the information the shareholders need in order to reach a well-informed decision regarding the offer. In addition, the offer document is to include the information stated in the Appendix.

The contains rules regarding prospectus documents where the consideration consists of transferable securities. The provisions governing offer documents in these takeover rules are instead to apply to the prospectus in such cases. If the language provisions in the EU Prospectus Regulation allow the prospectus to be written in a language other than Swedish in such a case, no Securities Council exemption regarding the language of the prospectus is required.

Other information that an offeror or an offeree company is obliged provide in connection with a public takeover offer must also as a rule be provided in Swedish. If the offeror has received a dispensation from the Swedish Securities Council to write the offer document in another language, however, it is sufficient that the other information that the offeror or the offeree company is obliged to provide according to the takeover rules is also provided in that language.

Information brochures
V.4 The following provisions apply if the offeror produces an information brochure to supplement the offer document.

- **The information brochure may not give the impression that it replaces the offer document.**
- **The front cover of the information brochure is to state clearly that an offer document is available and the how it may be obtained.**
- **The information brochure is to contain basic information presented in the offer document regarding the offeror, the offeree company and the offer.**
- **The information brochure is to be objective and balanced.**
- **The information brochure may not contain information that is not included in the offer document.**

Commentary
An offer document is always to include the basic information about a takeover bid. The offeror may also prepare a less comprehensive information brochure as a supplement to the offer document in order to facilitate dissemination of the information and make the contents of the offer more easily accessible.

The information brochure does not replace the offer document, and it may not give the impression that this is the case. Therefore, for example, the brochure may not be described as a “mini offer document” or similar. The front cover of the information brochure is also to clearly state how the offer document can be obtained. Obtaining the offer document is to be simple and free of charge. It is sufficient for the offeror to state that the offer document is available on the company’s website or to offer to deliver the offer document in digital form.

The brochure is to contain basic information presented in the offer document regarding the offeror, the offeree company and the offer, and it is to be written in a factual and balanced manner. This means, for example, that if the consideration

offered consists of shares or other securities, and the securities are associated with particular risks, these risks are to be presented in the brochure.

The brochure may not contain information that is not included in the offer document. However, this does not prevent the inclusion of illustrations or similar to facilitate understanding of technical aspects of the offer.

VI Mergers and merger-like processes

Applicability of the rules to mergers and merger-like processes

VI.1 The provisions of Section (VI) apply where a company as referred to in Rule I.1, (the offeree/transferor company), is to be taken over by or absorbed into the transferee company or another company in the same group of companies as the transferee company through a merger or merger-like process. In this context, a corporate group of a comparable type is equated with a group of companies. In such cases as those referred to here, the rules are to be applied in a manner equivalent to what would have applied had the transferee company been an offeror submitting a takeover bid for the shares in the offeree company. Rule VI.2 excludes certain provisions from such application.

The provisions in this section do not apply to mergers and merger-like procedures that are conducted for the purpose of changing domicile without the intention of changing the ownership of the company or the listing of the shares.

Commentary

From a minority shareholder protection perspective, similar interests worthy of protection are relevant irrespective of whether the takeover of an offeree/transferor company is carried out in the form of a takeover process or, for example, through a merger process. Therefore, Section VI prescribes that, subject to a certain few exceptions which are specified in Rule VI.2, the Takeover Code is to apply equivalently to mergers and merger-like processes.

The provisions of Section VI apply to the same group of transferor companies as the Takeover Code in general, including foreign companies whose shares are admitted to trading in the Marketplace.

The *first paragraph* states that Section VI applies where the transferor company is to be taken over by or absorbed into the transferee company or another company in the same group as the transferee company through a merger or merger-like process. A *merger* is defined here as a procedure as referred to in Chapter 23 of the Swedish Companies Act or an equivalent procedure as referred to in the legislation of another country. A *merger-like process* is defined as a procedure which is functionally similar to a merger or otherwise gives rise to similar interests worthy of protection as in the case of a takeover bid or a merger. Examples include schemes of arrangement and amalgamations.

In such cases as those referred to here, the Takeover Code applies equivalently. These provisions are to be interpreted in light of the aim that the rules are also to apply to mergers and merger-like processes, namely that similar interests worthy of protection with regard to holders of securities are relevant irrespective of whether the takeover of the transferor company takes place through to a takeover bid or a merger process. Clearly, certain provisions of the Takeover Code are not at all relevant in the case of a merger process. Such provisions are excluded under Rule VI.2. Other provisions often require adaptation to ensure that they apply appropriately to a merger process and that they are given a sensible meaning which satisfies the relevant interests worthy of protection in such a situation. Pursuant to Rule I.2, the Swedish Securities Council can also grant exemptions from the rules or issue rulings on the manner in which the rules are to be applied.

If a merger or a merger-like procedure is not conducted in order to take over an offeree company but only to achieve a change of domicile, where the group of owners is intended to be unchanged after completion and the listing of the shares in reality does not change, the shareholder protection interests pertinent to the provisions of this Section do not apply. The *second paragraph* states therefore that the Section does not need to be applied in such cases.

Asset transactions fall outside the scope of application of the rules. See the commentary under Rule I.1.

Provisions which are not applicable

VI.2 The following provisions are not to apply in such situations as referred to in Rule VI.1:

- **Rule I.1, first paragraph (Scope of the rules)**
- **Rule II.7 (Acceptance period)**
- **Rule II.8 (The shareholders' obligation to honour acceptance of the offer)**
- **Rule II.16 (Certain provisions regarding partial offers)**
- **Rule II.21 (Defensive measures)**
- **Rule II.22 (The offeror's obligation to announce the outcome of the offer)**
- **Section III (Mandatory offers)**
- **Rule IV.2 (Acceptance period)**

Commentary

Certain provisions of the Takeover Code are not at all relevant in the case of a merger process. These provisions are listed in Rule VI.2. This therefore means, conversely, that the following provisions are equivalently applicable in the case of a merger process:

- Introduction
- Rule I.1, second and third paragraphs (Scope of the rules)
- Rule I.2 (Authority of the Swedish Securities Council to interpret and grant exemptions from the rules)
- Rule I.3 (Measures taken by parties closely related to the offeror)
- Rule I.4 (Announcements)
- Rule II.1 (Prerequisites for making an offer)
- Rule II.2 (The binding force of statements)
- Rule II.3 (The offeror's obligation to make an offer public)
- Rule II.4 (Scope for the offeror to stipulate conditions for completion of the offer)
- Rule II.5 (The offeror's obligation to honour its offer)
- Rule II.6 (The offeror's obligation to prepare and publish an offer document)
- Rule II.9 (Revision of an offer that has been submitted)
- Rule II.10 (The offeror's obligation to treat equally all holders of shares with identical terms and conditions)
- Rule II.11 (Treatment of holders of shares with non-identical terms and conditions)
- Rule II.12 (Treatment of holders of equity-related transferable securities other than shares)
- Rule II.13 (Acquisitions prior to the offer period)
- Rule II.14 (Acquisitions during the offer period)
- Rule II.15 (Acquisitions after the offer period)

- Rule II.17 (Role of the board of the offeree company)
- Rule II.17a (Offer-related arrangements)
- Rule II.18 (Conflicts of interest)
- Rule II.19 (The obligation of the board of the offeree company to make a statement regarding the offer)
- Rule II.20 (The participation of the offeree company in a due diligence investigation)
- Rule II.23 (The offeror's obligation to pay the consideration)
- Rule II.24 (Restrictions on the offeror's right to make a new offer)
- Rule IV.1 (Participation in an offer by a director or senior executive)
- Rule IV.3 (Valuation opinion)
- Rule IV.4 (Offer by a parent company for shares in a subsidiary)
- Rule IV.5 (Supplementary information in press releases)
- Section V (Rules concerning the structure of an offer document etc.)
- The Appendix

With regard to these other provisions, an adjustment is often required to ensure that the provisions apply appropriately to a merger process and that they are given a sensible meaning which satisfies the relevant interests worthy of protection in such a situation.

For example, when applying Rule II.3, it is not relevant to provide details of the extent to which commitments have been received from shareholders of the offeree company to accept the merger, whereas details of commitments received to vote in favour of the merger at a shareholders' meeting of the offeree company are of interest.

Certain adjustments may also need to be made to the provisions governing conditions for completion in Rules II.4 and II.5, for example. However, the basic ideas underlying the provisions also apply in the case of a merger, i.e. that conditions must be formulated in such a manner as to allow for objective determination of whether or not they have been fulfilled, that conditions may not be formulated in such a manner that the party that imposed the condition has a decisive influence over its satisfaction and that non-fulfilment of a condition may not constitute grounds for non-completion of a transaction unless the non-fulfilment is of material importance. It is common in takeover bids for the offeror to make the offer conditional on the offeror achieving a certain level of acceptance of the offer. Such conditions are not relevant in a merger process.

In the application of Rules II.18 and II.19, a board member who is also a shareholder in the offeree company and has undertaken to vote for the merger at the shareholders' meeting is not for that reason to be regarded as being prohibited from participating in the preparation of the offeree company board's statement in accordance with Rule II.19. However, it must be clear from the statement that the individual in question has undertaken to vote in favour of the merger in his or her capacity as a shareholder.

The provisions governing offer documents in Rule II.6, Section V and the Appendix are not excluded in Rule VI.2. In the case of a merger, it may be a question of drawing up a document that contains the information required by Articles 1.4g and 1.5 first paragraph f of the EU Prospectus Regulation, (cf. Chapter 2, Section 6 of the EU Prospectus Regulation (Supplemental Provisions) Act (2019:414)), or a comparable document under applicable foreign law. Shareholders are always to be provided with such information as is relevant in a merger situation.

If Swedish statutory requirements do not apply to the document which has been produced, it is not necessary to submit it to the Swedish Financial Supervisory Authority for approval. The document is to be made available to the shareholders for a period of no less than two weeks prior to the shareholders' meeting at which the decision on approval of the merger is to be made.

Decision-making procedure

VI.3 A resolution at a shareholders' meeting of the offeree company to approve a merger or a merger-like process is valid only where supported by shareholders holding not less than two-thirds of both the votes cast and of the shares represented at the meeting.

Where the offeree company has more than one class of shares, the provisions of the first paragraph also apply to each class of shares which is represented at the meeting.

In conjunction with a resolution by the transferor company regarding approval of a merger or a merger-like process, shares which are held by the transferee company or by another company in the same group of companies as the transferee company are not to be taken into account. In this context, another corporate group of a comparable type is equated with a group of companies.

Commentary

This provision derives from the statutory provisions applicable to such merger procedures as those governed by the Swedish Companies Act (cf. Chapter 23, section 17, first, second and fourth paragraphs of the Swedish Companies Act). In those respects referred to in the provision, a corresponding procedure also applies in other cases. The provision entails that a resolution at a shareholders' meeting of the transferor company to approve a merger or merger-like process is to be passed by a qualified majority and that, in that procedure, the transferee company's shares in the transferor company are not to be taken into account.

If the transferor company is foreign, this provision applies in addition to any company law rules applicable in that country. In accordance with Rule I.2, the Swedish Securities Council can also grant exemptions from this provision or issue rulings on how it is to be applied.

In some cases, it may be appropriate to apply a stricter majority requirement than that stipulated by the provision, e.g. if the merger consideration consists of unlisted shares and the decision by the shareholders' meeting is in practice a decision to delist the company. It is the responsibility of the Swedish Securities Council to issue rulings in such cases.

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ENTRY INTO FORCE AND TRANSITIONAL PROVISIONS

These rules come into force on January 1, 2024. The rules as worded herein are to apply to offers, mergers and merger-like processes announced on that date or subsequently.

APPENDIX

Contents of the offer document

The offer document is to contain the information described in this Appendix. If the offeror is required by the EU Prospectus Regulation to produce a prospectus, the provisions stated here apply instead to the prospectus. The prospectus is to contain both the information required by the prospectus rules and the information required by this Appendix.

The Appendix states what information is to be included in the offer document. The main sections may be presented in a different order than that presented below.

The offer document should be structured as a single document, although in certain situations it may be appropriate to include one or more separate annual reports as part of the offer document. If the offer document comprises more than one document, this is to be clearly stated, as well as which documents form part of the offer document.

1 The offer

The introduction to the offer document is to contain a description as specified below. The description is to give the shareholders an overview of the offer.

a) The offeror

Details of the identity of the offeror are to be provided.

If the offer is subject to Section IV of the rules, the information referred to in Rule IV.5 is to be provided.

b) When the offer was submitted

Details of when the offer was submitted are to be provided.

c) Shares and other securities to which the offer relates

Details of the shares and, where applicable, other securities to which the offer applies are to be provided.

If the offer also applies to convertible securities, warrants or other securities which are related to the offeree company's shares, details of the key terms and conditions applicable to these securities or warrants are to be provided.

If in accordance with the second or third paragraph of Rule II.12 or an exemption granted by the Swedish Securities Council the offeror has not included a certain class of security in the offer, this is to be stated and, where applicable, details of how these securities are intended to be addressed is also to be provided.

In the case of partial offers, the number of shares, and where applicable the number of each class, that the offeror wishes to purchase is to be stated and, where applicable, that the offeror reserves the right to purchase more shares pursuant to the offer.

d) The consideration

Details of the consideration offered for the securities covered by the offer are to be provided.

If the offer applies to shares which are subject to different financial terms and conditions and the consideration differs for each class of shares, the offer document is to contain information which enables shareholders to assess the reasonableness of the offer (cf. the second paragraph of Rule II.11).

If the offer also applies to convertible securities, warrants or other securities which are related to the offeree company's shares, details of the consideration for these securities are to be provided, as well as the manner in which the consideration has been calculated in order to be considered reasonable (cf. Rule II.12).

If, pursuant to the commentary on Rule II.10, the offeror offers different forms of consideration to different shareholders, this is to be stated and the reasons given.

The total value of the offer is to be stated.

e) Premiums under the offer

Details of any premium which the consideration offered entails compared with the listed share price are to be provided. The premium is to be stated relative to the share price immediately prior to the announcement of the offer and relative to the average share price during an appropriate period of time immediately prior to announcement. It is to be stated how the premium has been calculated. The average share price is to be calculated as the volume-weighted average price paid unless there is special cause for not doing so.

If the offered consideration is less than the quoted share price, the corresponding information is to be provided.

f) Conflicts of interest

If a situation as referred to in Rule II.18 arises, the nature of the conflict of interest for each individual concerned is to be disclosed.

g) Mandatory bids

If the offer has been submitted as a result of the provisions governing mandatory bids, this is to be stated. A description of the share acquisitions or other measures which triggered the mandatory bid requirement is to be provided.

h) The offeror's shareholding, agreements with the offeree company etc.

Details of the number of shares in the offeree company held or otherwise controlled by the offeror, for example through an option or futures contract, and the proportion of the total number of shares and voting rights in the offeree company that these shares represent are to be provided. Details of any binding or conditional commitments, declarations of intent or positive statements by shareholders of the offeree company regarding acceptance of the offer are also to be provided. If these contracts, commitments, declarations of intent or positive opinions contain terms and conditions, these are to be stated so that it is clear, for example, in which circumstances the offeror's rights under an option agreement do not apply and in which circumstances a shareholder is not bound by an acceptance commitment. If the offeror holds warrants or convertible securities issued by the offeree company, details of these are to be provided within the scope of the reporting of the number of shares controlled by the offeror. The offeror is also to provide details of any holdings of financial instruments which give the offeror financial exposure equivalent to a shareholding in the offeree company, such as cash-settled equity swaps.

In connection with the disclosures above, specific disclosure is to be made of the number of shares acquired or otherwise controlled by the offeror, for example through an option or futures contract, during the six-month period immediately preceding the announcement of the offer up to and including the date on which the offer document was issued. This also applies to acquisitions made by parties closely related to the offeror if the acquisition constitutes a prior transaction as stipulated in Rule II.13 or a side transaction as stipulated in Rule II.14. The highest price, either in cash or in another form of consideration, which has been agreed for the shares, where applicable together with consideration paid for any option or futures contracts, is also to be stated. Details of each class of security acquired are to be provided. If particular terms and conditions have been attached to the acquisition or the equivalent, these terms and conditions are to be described. If the offeror has made indirect acquisitions during the six-month period, the details required by the second paragraph of the commentary on Rule II.13 are to be provided.

Where the offeree company has committed itself to any offer-related arrangement with the offeror, (see Rule II.17a), this is to be stated so that the essential content of the arrangement is evident. In addition, pursuant to section 10 below, agreements between the offeror and the offeree company as a consequence of the offer are to be included in their entirety in the offer document.

i) Bonus arrangements and similar

If the offeror has offered employees of the offeree company a bonus arrangement or similar, details of the arrangement are to be provided.

j) Statements by the Swedish Securities Council

If the Swedish Securities Council has issued a statement regarding the offer, e.g. an interpretation which means that a certain condition for the offer is permitted or an exemption from the requirement to extend the offer to shareholders in other countries, the offeror is to include details of the ruling in the offer document. If the offeror has chosen another solution than that ruled upon by the Council, no reference to the statement is required unless the Council has specifically instructed the offeror to provide such information.

k) Financing

A short description of how the offer is to be financed is to be provided. Consequently, disclosure must be made in the introduction of the extent to which the offer is being financed by the offeror's own resources or by borrowed funds. See also section 7 of this Appendix.

l) Due diligence

It is to be stated whether the offeror has conducted a due diligence investigation on the offeree company, and an overview of the scope of the investigation is to be provided.

m) The rules applicable to the offer

The offeror is also to state that the offer is subject to these takeover rules and the Swedish Securities Council's statements regarding the interpretation and application of these rules. The offeror is also to state which national legislation will be applicable to the agreements entered into between the offeror and the shareholders of the offeree company as a result of the offer.

2 Terms and conditions and instructions relating to the offer

The consideration offered is to be stated.

If the offeror stipulates conditions for completion of the offer, these conditions are to be stated.

In addition, the acceptance period and the manner in which the shareholders of the offeree company are to proceed in order to accept the offer are to be stated. Where applicable, information about the right to withdraw acceptance and the manner in which a shareholder is to proceed in order to exercise this right is also to be provided.

Details of when and how the consideration for acquired shares will be paid are to be provided. If the offeror has reserved the right to postpone payment of the consideration, this is to be stated.

In the case of partial offers, the number of shares, and where applicable the number of each class, that the offeror wishes to acquire is to be stated, as well as the fact that the offeror reserves the right to acquire more shares pursuant to the offer where applicable. In addition, the principles on which acceptances received will be reduced is to be stated and, if a fixed price is not stipulated in the offer, the manner in which the price is to be determined.

Consideration other than cash is to be described in such a way that it can be valued. If the consideration consists wholly or partly of shares in the offeror company, the financial year from which the offered shares carry a right to receive dividends is to be stated. Where applicable the marketplace or marketplaces on which the shares are admitted to trading or are intended to be admitted to trading and the estimated date for commencement of trading in the shares are to be stated. If the offeror company has more than one class of shares, the classes of shares that are admitted to trading or intended to be admitted to trading are to be stated.

If the consideration consists wholly or partly of convertible securities, other debt instruments, warrants or similar, their full terms and conditions are to be stated.

If the offeror stipulates conditions for completion of the offer (completion conditions), these are to be stated. The fifth paragraph of Rule II.4 prescribes that completion conditions are to be accompanied by a statement by the offeror that the offer may only be withdrawn based on a completion condition if non-fulfilment is of material importance to the acquisition of the offeree company by the offeror. However, this does not apply to conditions regarding achievement by the offeror of a certain level of acceptance of the offer. Rules II.4 and II.8 allow the offeror to reserve the right to control, i.e. waive in whole or in part, one or more of the stipulated completion conditions. If a reservation of this nature has been made, this is to be stated.

Information about the acceptance period and the manner in which the shareholders are to proceed in order to accept the offer is to be provided. Where applicable, it must also be stated that the offeror has reserved the right to extend the acceptance period.

Where applicable, the right of a shareholder to withdraw acceptance is to be stated. The requisite practical instructions regarding such a withdrawal are to be provided, as well as details of the person to whom a request for withdrawal is to be submitted, the manner in which this is to be conducted and the deadline (date and

time) for receipt of a request for withdrawal. Details must also be provided of the steps to be taken by any shareholder who wishes to withdraw acceptance regarding nominee-registered shares.

3 Background and reasons etc.

The thinking and reasons underlying the offer are to be described. Disclosure is also to be made of the anticipated financial and other consequences of the offer for the offeror and the offeree company.

Details of the offeror's intentions regarding the future activities of the offeree company and, to the extent that it is affected, the offeror company are to be provided. Information regarding the offeror's intentions regarding the companies' employees and management is also to be provided, including all significant changes in employment conditions. Finally, a description of the offeror's strategic plans for the companies and the effects these may have on employment and the locations in which the company operates is to be provided.

If the consideration offered consists of shares in the offeror, the board of the offeror company is to provide an assurance that it has taken all reasonable precautionary measures to ensure that, as far as the board is aware, the information in the offer document relating to the company and the new group of companies reflects the actual situation and that nothing has been omitted which might affect the content of the offer document. Regarding the brief presentation of the offeree company, (section 6 of this Appendix), the offeree company's board is to provide an assurance that the description of the company was written or examined by the board of the offeree company and that, in the opinion of the board, the brief presentation of the offeree company provides a fair and accurate, albeit incomplete, picture of the company.

If the consideration offered consists of cash, an assurance is to be provided by the board of the offeror to the effect that, as far as the board is aware, the information contained in the offer document regarding the offeror reflects the actual situation. In addition, in accordance with the above the board of the offeree company is to provide an assurance regarding the brief presentation of the offeree company if it has participated in this process.

If the offeree company's board has not participated in the preparation of the offer document, it is to be stated who has prepared the description of the offeree company and the material on which the description has been based.

The background to the offer and the consequences of the offer for the offeror and the offeree company, both from a financial perspective and in other respects, are to be described.

The information requirement in the second paragraph corresponds to Chapter 2a, section 2, sections 10–12 of the Swedish Financial Instruments Trading Act.

The board of the offeror company is to provide an assurance regarding the information in the offer document. The prescribed wording of the assurance differs depending on whether the consideration consists of shares in the offeror or cash. If the consideration consists of debt instruments, shares in a company other than the offeror company or similar, the wording of the assurance may need to be adapted accordingly. The board of the offeree company is also to provide such an assurance

if it has participated in the preparation of the offer document, i.e. if it wrote or reviewed the description of the offeree company.

4 Statement of opinion by the board of the offeree company; valuation opinion

If the board of the offeree company has announced its opinion regarding the offer, as required by Rule II.19, in sufficient time for the opinion to be included in the offer document, the statement is to be published in its entirety in the offer document. This also applies to any statement of opinion from employee representatives submitted to the offeree company that expresses a different opinion on the impact of the offer on employment. If the statement is not available in sufficient time to be included in the offer document, the date on which it is anticipated that the statement will be available is to be stated.

If the offeree company has obtained a valuation opinion which is available in sufficient time to be included in the offer document, the valuation opinion statement is to be published in its entirety in the offer document.

5 The new group of companies

Where consideration is offered in the form of shares in the offeror company, a description of the new group of companies which the offer aims to create is to be provided.

To the extent and in the manner required by applicable prospectus rules, pro forma income statements and pro forma balance sheets are to be included in the offer document, as well as an independent auditor report on these. As far as possible, planned changes in operations and the new group's market position, as well as planned coordination measures and their financial impact are also to be presented. If possible, plans regarding composition of the board, the executive management and auditors are to be described.

In the case of cash offers, a description of the new group of companies is not required.

Where consideration is offered in the form of shares in the offeror company, a description of the new group is to be provided. If the offeree company is much smaller than the offeror, the description can be brief.

The Takeover Code does not contain more far-reaching requirements regarding pro-forma accounting than those contained in applicable prospectus rules.

The costs and benefits of a takeover are to be described. If possible, these are to be quantified, possibly in the form of a range of values. It is also to be stated when such benefits and costs are expected to arise.

Where the offeror offers consideration in the form of shares in the offeror company, as well as the description of the risk factors required by applicable prospectus rules, the offeror is to describe any risks that may result from the establishment and the continued operations of the new group.

The share capital structure and the major shareholders of the offeror company in the event of full acceptance of the offer are to be presented. Information on each holding's share of capital and voting rights is to be provided, based on the most recently known ownership data for the offeror company and the offeree company.

6 Brief presentation of the offeree company

Irrespective of the form of consideration offered, the offer document is to contain a brief presentation of the offeree company's financial position, operations, board of directors, senior management and ownership structure. The most recent published interim report or statement of results is to be included in the offer document.

The shareholders of the offeree company are to receive a brief presentation of the company whose shares they have been invited to sell. The presentation is to include:

- A summary of financial developments, i.e. summarised consolidated income statements and balance sheets, and relevant key ratios and data on a per-share basis. The summary is to cover at least the previous three financial years for which an auditor's report has been submitted and where applicable, any interim period for which an interim report has subsequently been published together with the same information for the corresponding period of the previous year. This information can normally be taken directly from the offeree company's published reports.
- A summarised description of the company's operations, broken down into the main business areas.
- Shareholding and ownership structure, showing:
  - The number of shares, broken down by class of share; shares that may vest upon conversion of convertible securities or the exercise of warrants; and shares held in treasury. Where applicable, share data is to reflect circumstances before and after dilution as a result of the conversion of convertible securities or the exercise of warrants.
  - The most recently known major shareholders and their percentage holdings in terms of equity and votes. The number of shareholders.
  - Published dividend policy.
  - Material clauses in the articles of association regarding shares in the company.
  - In the case of convertible securities and warrants, the conversion or subscription price and the date when conversion or exercise may take place are to be stated.
  - Authorisation for the board to issue, buy and sell shares, convertible securities or warrants.
  - Material agreements between major shareholders or between major shareholders and the offeror or the offeree company of which the board is aware.
  - The marketplace on which shares and, where applicable, convertible securities and warrants are admitted to trading.
  - Information provided by the company in its most recent annual report in accordance with Chapter 6, section 2a of the Annual Reports Act (1995:1554).
- Inside information which the offeree company has provided to the offeror as part of a due diligence investigation, at least as a summary of the relevant content, (see the second paragraph of Rule II.20).
- The company's directors, senior executives and auditors. In the case of directors and senior executives, details of their duties in the offeree company and other significant appointments are to be stated, as well as their holding of shares

and other securities in the offeree company and the holdings of closely related natural or legal persons.

7 Presentation of the offeror

If the offeror offers consideration in the form of shares in the offeror company, the offeror company is to be described in a manner that enables shareholders of the offeree company to make a well-informed decision regarding the offer.

The identity of the offeror is to be stated. If the offeror is a stock market company or otherwise subject to rules which require the same level of disclosure of the offeror, it is normally sufficient to state the full registered name of the offeror company and to refer to the offeror company's website. Otherwise, the offeror is to be presented in a manner that is relevant to shareholders in the offeree company and to the stock market. The presentation is to state the company's domicile, the head office address, a summary of the ownership structure and the nature and size of its operations.

Information on how the offer is financed is to be provided. This means that it is to be stated to what extent the offer is financed with own and borrowed funds respectively. If relevant financial information about the offeror is not already publicly available, financial key ratios relevant for assessment of the offeror's ability to pay should be included. If the offeror is dependent on additional or other financing from shareholders or others in order to complete the offer, relevant information regarding this is to be provided. If the conditions governing the payment of a required acquisition credit comply with the requirements of these rules and do not deviate from what may otherwise be expected for such an arrangement, it is sufficient to provide a short statement of the existence of an acquisition credit on usual terms.

A description of resolutions which must be passed at a shareholders' meeting of the offeror company regarding the offer is to be provided. The offeror is to disclose the extent to which the offeror has received information that the company's shareholders intend to vote in favour of such resolutions at the shareholders' meeting. Correspondingly, the offeror is to disclose details of subscription or underwriting commitments received with regard to any cash issue which is necessary in order to implement the offer.

If the offeror is required by the EU Prospectus Regulation to produce a prospectus, the provisions stated here apply instead to the prospectus. The offeror company is to be described both in accordance with the prospectus rules and in accordance with this section of the Appendix.

8 Tax issues

An outline of the Swedish tax rules that apply to any shareholders who accept the offer is to be provided.

A brief description of the tax rules applicable to the holding and divestment of the securities that constitute consideration under the offer is also to be provided.

Information regarding any requests for a ruling submitted or due to be submitted to the Swedish Tax Agency is to be provided, as well as the manner in which such a ruling will be announced and, where possible, the expected dates of such a ruling.

Mention is to be made of any proposed changes to tax rules which have been tabled and are relevant in the context of the offer.

9 Auditor reports

Independent auditor reports regarding financial information in the offer document are to be included in the offer document where applicable.

The Takeover Code does not contain more far-reaching requirements regarding auditor review or inclusion of auditor reports than those contained in applicable prospectus rules.

10 Other information

Agreements between the offeror and the offeree company regarding the offer are to be included in the offer document.

Where relevant, the report issued by the board of the offeror in accordance with Chapter 13, section 7 of the Swedish Companies Act (2005:551) is also to be presented, as well as the auditor's statement on this report.

Rule II.17a takes as its starting point that certain agreements whereby the offeree company gives undertakings to the offeror as a consequence of the offer are not to exist. Insofar as agreements are nevertheless entered into between the offeror and the offeree company as a consequence of the offer, such agreements are to be included in their entirety in the offer document. However, the rule does not apply to agreements covered by the exemption in Rule II.17a, second paragraph, or agreements which are no longer in force and are manifestly irrelevant to the assessment of the offer. This rule only applies to agreements entered into between the offeror and the offeree company.