

NASDAQ OMX Iceland hf. issues a public reprimand to Kögun hf. and levies a fine

NASDAQ OMX Iceland hf. (the Exchange) has decided to reprimand Kögun hf. (Kögun, the company, the issuer) publicly and fine the company due to events through which the issuer is deemed to have violated provisions of the Rules for Issuers of Financial Instruments admitted to trading on NASDAQ OMX Iceland (the Exchange Rules). Kögun hf. is deemed to have violated Articles 4.1.2, 4.1.3, 4.1.4 and 4.2.1 of the Exchange Rules.

Background of the case

On 17 April this year, Teymi hf., Kögun's parent company, made public information disclosed at a presentation meeting with creditors that same day. A document accompanying the announcement contained information on Kögun, including a draft of the company's balance sheet as of year-end 2008. At the suggestion of employees of the Exchange, Kögun made the same information public on 25 May 2009.

On 29 April this year, the company published a notice to the effect that it would not make its annual financial statements for 2008 public. Reference was made to the second paragraph of Art. 56 of Act No. 108/2007, on Securities Transactions, in support of the decision. Prior to that the company had announced that it had begun discussions with its creditors.

The Exchange sent the company a request for explanations on 7 May and 22 May 2009. It requested information as to why information made public by the issuer's parent company had not been made public in an announcement by Kögun and whether the company's annual financial statements, a draft of its annual financial statements or in-house results contained inside information. It also asked when the company's management had become aware that its equity had become negative and why the changes in the company's financial situation had not been reported as soon as this information was available. The issuer's explanations were received on 14 May and 28 May 2009.

Conclusion

The issuer decided to avail itself of an exemption authorised in the second paragraph of Art. 56 of Act No. 108/2007, on Securities Transactions, which concerns exemption from publication of financial information. Even though the issuer has availed itself of the exemption provision in the Act, it is nonetheless subject to disclosure obligations in accordance with other provisions of the Act on Securities Transactions. An issuer must always comply with rules on publication of inside information, cf. Art. 122 of the Act on Securities Transactions and corresponding provisions of Articles 4.2.1 and 4.1.4 of the Exchange Rules. Financial information from the issuer must be regarded as among the most important information on the issuer of financial instruments which have been admitted to trading on a regulated securities market, and which issuers are obliged to make public. It makes no difference whether an issuer has availed itself of the above-mentioned exemption, its obligation to publish inside information is strong and is not cancelled where the exemption is availed of, even in cases where the issuer is facing payment difficulties. An issuer must also bear in mind that annual financial statements may contain inside information which should be made public in accordance with law, even if the issuer is not obliged to publish the annual financial statements themselves.

It is clear from the issuer's explanations that unpublished, price-sensitive information on the company's financial situation has been available for some time. In addition, certain financial

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information concerning the company was published in a document accompanying an announcement from Teymi on 17 April 2009, which Kögun did not make public until 25 May 2009. The issuer was obliged to make this information public as soon as it was available, cf. Article 4.1.2 of the Exchange rules on access of investors to the latest information on the issuer, Article 4.1.3 on equal access of investors to information, Article 4.1.4 on the timing of information disclosure and Article 4.2.1 on the publication of information on important decisions and events which could have a significant effect on the market price of the issuer's bonds.

Having regard to the background of the case and taking the explanations of the issuer into consideration, the Exchange is of the opinion that the issuer has, through its behaviour in the instance in question, violated Articles 4.1.2, 4.1.3, 4.1.4 and 4.2.1 of the Exchange Rules.

Decision to issue a public reprimand and levy a fine

The Exchange publicly reprimands Kögun hf. and levies a fine on the company of ISK 1,500,000 for the above violation of the the Exchange Rules. The decision on a public reprimand and levying of a fine is taken on the basis of the agreement between the company and the Exchange on the admission to trading of the issuer's securities on the Exchange, cf. Article 8.3 of the Exchange Rules. Point 4 of this Article states, for instance, that in cases of violations of the Exchange Rules, the Exchange may issue a public statement concerning the matter in question. Point 6 authorises the Exchange to impose sanctions against an issuer in the form of a fine