

NASDAQ OMX Iceland hf. reprimands Exista hf. publicly

NASDAQ OMX Iceland hf. (“the Exchange”) has decided to reprimand Exista hf. (“Exista”, “the company”, “the issuer”) publicly in relation to incidents where the issuer is found to have infringed provisions of the Rules for Issuers of Financial Instruments on NASDAQ OMX Iceland. Exista is considered to have been in breach of Articles 4.2.1, 4.1.2, 4.1.3 and 4.1.4 of the Rules.

Circumstances of the case:

On 16 September 2009, the Icelandic newspaper *DV* published an article stating that Exista’s sale of its 39.629% stake in Bakkavör Group hf. (Bakkavör) was transacted by means of a “seller’s loan”. On that evening’s Stöð 2 television news, it was further reported that Exista was to hold a creditors’ meeting on 17 September 2009.

The Exchange subsequently requested information as to whether the reported news on the seller’s loan to Bakkavör’s purchasers was correct and whether this information was not price-sensitive for Exista’s bonds. The Exchange also asked whether information on the creditors’ meeting would not be made public. The company’s replies were received on 17 September.

On 18 September, the Exchange requested further information from the company about the terms of the seller’s loan, e.g. collateral, guarantees and repayment terms. The Exchange also requested details of the size of the loan with reference to the company’s balance sheet on 11 September 2009. In addition, the Exchange asked what information had been communicated at the creditors’ meeting referred to in the Exchange’s enquiry. The company’s replies were received on 25 September.

On 24 September, the Icelandic newspaper *Morgunblaðið* published an article stating that a meeting with Exista’s creditors had been held in London on 17 September. The article quotes Ágúst Guðmundsson, a member of Exista’s Board of Directors, and states that the meeting discussed the operations of the company’s subsidiaries during the first eight months of 2009. It further states that KPMG in London informed the creditors what the repayment ratio of loans would be based on certain premises if the company were to enter bankruptcy proceedings or if its board’s proposals were to be implemented. On 24 September, the Exchange requested information from the company as to whether Ágúst Guðmundsson was correctly quoted in the said newspaper article as regards details of the operations of subsidiaries and repayment ratios. If this were the case, the Exchange asked whether the company believed that this information on subsidiaries’ operations during the first eight months of the year and on the possible repayment ratios of loans, based on certain premises, could have a significant impact on the market price of the company’s bonds if made public. If the issuer found this to be the case, the Exchange demanded that the information be disclosed without delay. The company’s replies were received on 1 October.

On 13 October, the Exchange requested further explanations from the company with regard to the seller’s loan. Information was requested concerning the funding of Exista B.V., whether this firm was funded by any other means than through the parent company, Exista hf., and if so, to what extent the firm’s funding was in the form of credit obtained through the parent company on the one hand and loans from other creditors on the other hand. Information was also requested as to whether any restrictions applied to the transfer of funds from Exista B.V. to Exista hf. and, if so, whether this fact had been made public and where. The company’s replies were received on 14 October.

Conclusion

Although the report on loans' repayment ratios was not prepared on the company's initiative, the Exchange finds that the information was price-sensitive and that Exista should have disclosed details of the projected repayment ratios once the report was available, including management's explanations if needed. Particular note should be taken that the report was compiled out of data obtained from the company itself. An issuer whose bonds have been admitted to trading on a regulated market cannot evade its disclosure obligation by signing a confidentiality statement with a third party and place parties on lists of temporary insiders once the disclosure obligation has been triggered. In addition, the company was not authorised to postpone the disclosure of insider information on the basis of paragraph 3 of Article 122 of Act No. 108/2007 for such a long time, cf. the Opinion of the Icelandic Financial Supervisory Authority dated 12 March 2009. According to this Opinion, the obligation to disclose the aforesaid insider information has been triggered, cf. paragraph 1 of Article 122 of Act No. 108/2007 and Article 4.2.1 of the Exchange Rules.

The Exchange also finds that Exista was obliged to disclose information on the seller's loan, which concerns the company's liquidity. Exista clearly faces a repayment problem and the Exchange finds the fact that the company made a loan of ISK 8.4 billion secured by the shares sold, instead of the sum being paid into the company upon the sale, to be price-sensitive information.

In light of the circumstances of the case, and taking due account of the arguments submitted by the issuer, the Exchange finds the issuer's conduct in the case in question to have been in breach of Articles 4.1.2, 4.1.3, 4.1.4 and 4.2.1 of the Exchange Rules.

Decision to impose public reprimand:

The Exchange reprimands Exista publicly for the aforesaid breach of the Exchange Rules. The decision to issue the public reprimand is made on the basis of an 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 Rules. Point 4 of the Article states, among other things, that in cases where an issuer is in breach of the Rules, the Exchange may make a public announcement on the case in question.