DISCIPLINARY COMMITTEE AT THE OMX NORDIC EXCHANGE STOCKHOLM RULING 2008:08 **April 25, 2008**

OMX Nordic Exchange Stockholm AB

Sandvik AB

Matter of breach of listing agreement

The shares of Sandvik AB are listed on the OMX Nordic Exchange Stockholm AB ("the Exchange"). A listing agreement dated July 1, 2005 is in force between the company and the Exchange.

In the application enclosed herein as an appendix, the Exchange has requested that the Disciplinary Committee announce its ruling concerning disciplinary action against Sandvik.

Sandvik has contested the fact that there is cause for imposing disciplinary measures on the company.

Oral negotiations concerning the matter were held on April 23, 2008, in which the Exchange was represented by department manager Anders Ackebo and senior legal counsel Ulf Lindgren, while Sandvik was represented by president Lars Pettersson, chief legal counsel Bo Severin and attorney at law Sven Unger.

According to item 4 of the listing agreement, the Exchange's Disciplinary Committee may impose sanctions on a company that disregards laws, other regulations, the listing agreement or generally acceptable practices in the securities market. According to a comment concerning this rule, generally acceptable practices may be reflected in part by statements issued by the Securities Council.

The matter relates to a transaction whereby Sandvik in May 2006 sold all of the shares in its wholly owned subsidiary Edmeston AB to Edmeston Holding AB for slightly more than SEK 8 million. At that time, all of shares in Edmeston Holding were owned by a 24-year-old daughter of Edmeston's president. In conjunction with the transfer, the holding company was represented by the father, who comprised the board of directors of the holding company. In

March 2007, the daughter transferred all of the shares in the holding company to the father, who was still the president of Edmeston.

The Securities Council addressed the case in its statement AMN 2008:6. For the reasons cited, the Council found that the transaction was intended to circumvent the regulations on certain targeted share issues, etc. – the Lex Leo rules – as stipulated in Chapter 16 of the Swedish Companies Act (2005:551) and that Sandvik was thereby in breach of generally acceptable practices in the securities market. The Securities Council noted in part that the father, due to his position as president of Edmeston, would not have been able to purchase Edmeston from Sandvik either directly or through a holding company wholly owned by him without the transaction first being approved by a general meeting of Sandvik shareholders.

The Exchange has declared that it shares the assessment expressed in the Securities Council's ruling and has claimed that Sandvik disregarded generally acceptable practices in the securities market.

Sandvik has stated:

During the years 2000 to 2005, Edmeston had total accumulated sales of about SEK 340 million and generated an accumulated loss of about SEK 55 million. In May 2006, shareholders' equity was estimated at about SEK 12 million. Edmeston's operations were not strategically important to the Sandvik group, and some form of divestment was therefore necessary. It was estimated that closure of the operations would cost between SEK 20 and 25 million. On September 1, 2005, work was initiated to find a buyer. Contact was taken with four companies, three Swedish and one foreign. Only one of these companies was interested in submitting an offer, which amounted to SEK 1 million. The offer was subject to a number of conditions. In October 2005, an external consultant was employed to assist in finding alternative buyers, and in December 2005, negotiations were initiated with one prospective buyer. That party conducted due diligence and in April 2006 submitted an offer of SEK 3 to 4 million. In the negotiations that resulted in the purchase by Edmeston Holdings, the president's daughter in person was initially intended as the buyer, but subsequently in late April/early May 2006, Edmeston Holdings entered the negotiations as a company wholly owned by her. Edmeston Holdings' offer amounted to a significantly higher price than the previously submitted offers.

The discontinuation of Edmeston was motivated in full by business economics. Since a closure would have been expensive, a sale was considered a better alternative. The purchase price that Sandvik received was acceptable in relation to Edmeston's earnings and financial position and the best that could be obtained after probing the market. Accordingly, the sale

was a commercially motivated transaction and thus the best alternative for Sandvik's shareholders.

If the president himself had offered to buy the shares in Edmeston, Sandvik would have had to arrange an extraordinary general meeting, which would have entailed considerable inconvenience. Extraordinary general meetings for such purposes have been held on three occasions in recent years. Sandvik did not know who actually controlled Edmeston Holding. Nor was Sandvik aware that the daughter intended to transfer the shares to her father.

Edmeston's shareholders' equity corresponded to about 0.05 percent of Sandvik's consolidated shareholders' equity, and its sales corresponded to about 0.1 percent of Sandvik's consolidated sales. The sale was thus insignificant for Sandvik.

In summary, Sandvik makes the following assertions:

a. The sale of the shares in Edmeston was not in breach of the law.
b. The interests of Sandvik's shareholders were not disregarded.
c. Nor were any other interests worthy of protection disregarded.
d. The sale was a transaction motivated on business grounds. The purpose of the Lex Leo rules is not to prevent transactions motivated on business grounds.

The Disciplinary Committee for its part states the following:

According to Chapter 16, Section 5 of the Swedish Companies Act, in comparison with Section 2 of the same chapter, a public limited-liability company must obtain approval of an general meeting of shareholders to transfer shares in a subsidiary to parties such as the president of a group company or a legal entity over which that person has a controlling influence. Sandvik was thus not permitted to transfer the shares in Edmeston to its president or to a company in which he had a controlling influence. Controlling influence primarily refers to such influence that is based on direct or indirect holdings of more than half of the voting rights in the company. In the preambles to the law, however, it is noted that it is conceivable for a party to assume such a position on other grounds, such as through agreement. It has been left to judiciary practice to ultimately determine if a person in an individual case assumes such a position as is intended here in relation to a legal entity (government bill 2004/05:85, p 741).

Sandvik transferred the shares in Edmeston to a holding company in which the daughter of the president owned all of the shares and in which the father constituted the board of directors. If the father, for example based on an agreement with the daughter, is to be considered to have had the controlling interest in the holding company, the transfer would have been invalid. The

investigation of this matter does not provide grounds for a reliable assessment as to whether or not this relationship pertained. Based on the supporting materials provided to the Disciplinary Committee, however, it is difficult to see that the structure of the transaction would be relevant in any way other than as an attempt to circumvent the Lex Leo rules. Taking actions to prevent these rules from applying does not in all cases contravene generally acceptable practices. In the case in question, however, the circumvention took place in such a manner that there cannot be any doubt that Sandvik disregarded generally acceptable practices in the securities market. This is particularly true, since Sandvik has not even claimed that the company took any measures to investigate whether it was the father or the daughter who actually held the controlling interest in the holding company, despite the fact that Sandvik must have understood that the transaction could be perceived as a circumvention of the prevailing rules. Based on what transpired, Sandvik must be considered as having contravened the listing agreement. This infringement cannot be deemed minor or excusable.

Accordingly, disciplinary action must be taken against Sandvik. In determining the disciplinary action, the Committee takes into consideration the fact that the transaction involved relatively limited values and that there is nothing that indicates that it did not benefit the shareholders.

The Disciplinary Committee imposes a fine on Sandvik AB corresponding to one annual fee.

On behalf of the Disciplinary Committee

Johan Munck

The following persons participated in the Committee's decision: Supreme Court Justice Johan Munck, company director Hans Mertzig, MBA Hans Edenhammar, company director Carl-Johan Högbom and company director Jack Junel.