

NASDAQ OMX Iceland hf reprimands publicly and imposes monetary sanctions on Bakkavör Group hf

NASDAQ OMX Iceland hf (“the Exchange”) has decided to reprimand publicly and impose monetary sanctions on Bakkavör Group hf (“Bakkavör”, “the issuer”, “the company”) as the issuer is found to have infringed provisions of the Rules for Issuers of Financial Instruments Listed on NASDAQ OMX Iceland (“the Exchange Rules”). The issuer is considered to have been in breach of Articles 2.1, 2.3, 2.4, 4.2.1, 4.2.2 and 4.1.4 of the Rules by the following conduct:

Circumstances of the case

On 31 March 2009, Bakkavör Group hf presented the company’s 2008 results. On the following day, 1 April, a presentation for investors was held. Bakkavör’s 2008 earnings release stated, among other things: *“We are currently in discussions with key bondholders and other creditors of the Group’s holding company, Bakkavör Group Hf, and the Board is confident from the indications of support from our key bondholders that we will achieve extensions to bond maturities.”* The press release also stated that Bakkavör had *“secured fully committed facilities across all operating businesses, for the next three years”*. The company’s chief executive, Ágúst Guðmundsson, was cited as saying at Bakkavör’s presentation that payments from the operating businesses to the parent company were prohibited for the next three years.

An article issued in the Icelandic daily newspaper *Morgunblaðið* on 2 April 2009, entitled *“Bakkavör unable to meet bond payment”*, stated that bondholders of the company had in effect no option but to enter into an agreement on extending the bond’s maturity. The article further states *“There are no assets within the Bakkavör parent company that can be seized.”*

The Exchange requested explanations from Bakkavör in a letter dated 3 April 2009. Information was sought regarding bond series maturing in the near future that were the subject of negotiations on extending maturities, when the negotiations with bondholders started and when it had become clear that the company would not be able to meet its obligations under the bond series’ terms. The Exchange also requested information regarding what the effect would be on the company if no agreements were reached on extending the bond series’ maturities, and why an announcement on delayed payment had not been made public as soon as it was clear to the issuer that it would not meet its obligations under the bond series’ terms. Information was also requested as to whether any special conditions applied to loans to Bakkavör’s operating businesses, whether such terms had any impact on dividend payments and other capital movements from the operating businesses to the parent company and whether any ban was in place on payments from operating businesses to the parent company. In addition, the company was asked to provide information on any other restrictions on cash flows from business units to the parent company.

On 15 May 2009, the company made public an announcement stating that it was unable to meet a repayment on the bond series BAKK 03 1, which was due that same day. The announcement also stated that the company’s board of directors remained confident that negotiations would prove successful and that the bonds’ maturity would be extended.

Conclusion

As stated above and made public on 31 March 2009 in the company’s 2008 earnings release, Bakkavör managed to complete and secure the financing of all of its operating businesses for three

Surveillance Iceland

years as of that point in time. The company's chief executive, Ágúst Guðmundsson, is cited as having said at the results presentation on 1 April 2009, which was later confirmed by the company, that conditions in the loan agreements placed restrictions on payments from the operating businesses to the parent company for the next three years. These restrictions and their possible effects on the company have not been made public. In light of the fact that creditors of Bakkavör's operating businesses saw a reason to make these companies' funding conditional on no payments being transferred to the parent company during the loan term in excess of payments to cover the parent company's operations, the Exchange finds it clear that a change occurred in the financial relationship between Bakkavör and its operating businesses and, consequently, in the issuer's solvency. Given that Bakkavör's assets are held primarily in its subsidiaries, such restrictions can be expected to have a substantial impact on the company's capacity to pay its financial obligations, even up to the point of excluding such payments in the absence of other funding sources. Consequently, the Exchange finds that the terms of an appendix to loan agreements with Bakkavör's operating businesses were clearly liable to have a significant impact on the market value of the company's securities. It follows that the company had the duty to disclose without delay the information concerning the aforesaid matters, cf. Articles 2.1, 2.3, 4.2.1 and 4.1.4 of the Exchange Rules.

On 15 May 2009, Bakkavör announced that it was unable to meet a repayment on the bond series BAKK 03 1 due on that same day. Based on the company's correspondence with the Exchange, the Exchange finds that the company clearly knew that it would not be able to meet the repayment on the bond's due date on 15 May. Bakkavör was under obligation to issue a public announcement as soon as it was clear that the repayment on the issuer's bonds traded on the Exchange could not be made. Thereby, the issuer failed to meet its obligations to make information public as soon as possible in accordance with the Exchange Rules. The explanatory note accompanying Article 4.2.2 of the Rules clearly states that the provision covers, among other things, delayed payment of principal and/or interest on an issuer's securities.

In light of the circumstances of the case, and taking due account of the arguments submitted by the issuer, the Exchange finds that the issuer's conduct in the case in question was in breach of Articles 2.1, 2.3, 4.2.1, 4.1.4 and 4.2.2 of the Exchange Rules.

Decision to impose public reprimand

The Exchange reprimands publicly and imposes a monetary sanction on Bakkavör amounting to ISK 1,500,000 for the violations set forth above 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. Point 6 empowers the Exchange to impose a disciplinary sanction on the issuer in the form of a monetary penalty.