

NASDAQ OMX Iceland hf reprimands publicly and imposes monetary sanctions on Straumur-Burðarás Investment Bank hf

NASDAQ OMX Iceland hf (“the Exchange”) has decided to reprimand publicly and impose monetary sanctions on Straumur-Burðarás Investment Bank hf (“Straumur”, “the bank”, “the issuer”) 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”). Straumur is considered to have been in breach of Articles 4.2.1 and 4.1.4 of the Rules, as well as Articles 2.1 and 2.3 as Straumur’s shares were traded on the Exchange during the time that the infringement took place.

Circumstances of the case

On 26 November 2008, Straumur published its interim financial statements. The earnings release published together with the interim financial statements included the following:

“The bank is working on the refinancing of its syndicated loan maturing at year-end. The process of securing refinancing is not complete but is well advanced. Together with the proceeds of minor asset sales, this should significantly extend the bank’s liquidity horizon.”

On 5 December 2008, Straumur made public a press release containing information on the company’s funding. The press release stated that financing worth 133 million euros had been completed, which would be used to repay a syndicated loan amounting to 200 million euros, maturing on 9 December 2008. The company’s chief executive at the time, William Fall, stated in the press release:

“This new financing is an important achievement for Straumur, especially given the current market conditions. Furthermore, it is a positive step for Iceland [the Icelandic financial market] in view of the challenges faced by the country in the recent times.”

On 12 March 2009, more details on the above financing were published in the media, which made reference to an announcement by Straumur on the matter. According to the online newspaper Visir.is, the announcement included the following:

“In December 2008, Straumur borrowed 133 million euros from foreign credit institutions in order to repay part of a loan maturing at that time. The difference between the amount of the loan then maturing and that of the new loan was paid through, among other things, a repo facility from the Central Bank of Iceland amounting to 50 million euros...”

That same day, another news report was published on Visir.is, citing Straumur’s Head of Corporate Communications, Georg Andersen, as saying:

“We needed to arrange new financing. This wasn’t an extension of an older loan. We paid up part of our older debts and renegotiated with the same creditors on other terms.”

In the wake of this publication of information on Straumur’s financing in the media, the Exchange sent the company twice a request for explanations, i.e. on 17 March and 21 April 2009. The first of these requests asked for, among other things, more details on the financing, including confirmation of statements made in the media, cf. the above quotes. Information was also requested concerning the facility obtained by Straumur from the Central Bank of Iceland (“the Central Bank”), cf. the above quote, including what collateral was provided as security for the loan, amounts and what type of

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facility it was. Finally, the company's reasoning was requested as to why the loan was not likely to be price-sensitive for the issuer's financial instruments. In the latter request, the Exchange demanded information from the issuer as regards what the company's position would have been had it not been able to fund the remaining balance of 133 million euro needed to repay the 200 million euro syndicated loan. The Exchange also requested reasoning from Straumur as to why the said financing had been "*a positive step for Iceland [the Icelandic financial market]*", cf. the quote from the then chief executive of the company. Finally, the Exchange requested reasoning from Straumur as to how the above loan made by the Central Bank to the company could be regarded as among the Central Bank's regular collateralised facilities, which belong to the day-to-day activities of financial undertakings.

Conclusion

As regards Straumur's transactions with the Central Bank, it should be noted that there is no direct exemption from the requirement of disclosing publicly information concerning financial undertakings' transactions with the Central Bank. The market practice has certainly been not to make public certain types of Central Bank facilities for financial undertakings, which can be referred to as 'regular collateralised facilities'. The justification for not requiring disclosure of such facilities is based primarily on two principles. First, conventional collateralised facilities from the Central Bank can fall under the day-to-day activities of financial undertakings, e.g. given that collateralised facilities are among the Central Bank's key monetary policy control mechanisms. Second, the securities collateralised for the facilities must satisfy strict criteria, cf. Article 11 of the Rules on Central Bank of Iceland Facilities for Financial Undertakings No. 808/2008. Even if securities submitted as collateral are deemed eligible as collateral for Central Bank facilities, cf. Article 11 of the aforesaid Rules, a disclosure requirement can nevertheless arise, e.g. with reference to the scope of the facility or market conditions.

Paragraph 1 of Article 7 of Act No. 36/2001 on the Central Bank of Iceland states, among other things, that the Central Bank may advance loans to credit institutions by way of purchasing securities or by other means against collateral deemed valid by the Bank. The same paragraph provides that the Central Bank will lay down further rules on such facilities, which is a reference to the Rules on Central Bank of Iceland Facilities for Financial Undertakings No. 808/2008. Paragraph 2 of the same Article provides that in special circumstances when the Central Bank deems it necessary in order to protect the safety of the domestic financial system, it may issue guarantees to credit institutions in liquidity difficulties or grant loans to them other than those covered in paragraph 1 on special terms and against other collateral than stipulated in paragraph 1 or on other conditions laid down by the Bank. From Article 11 of the Rules on Central Bank of Iceland Facilities for Financial Undertakings No. 808/2008, which lists the types of securities eligible as collateral for Central Bank facilities, it cannot be reasonably surmised that the securities submitted by Straumur as collateral in the this case fall under any of these types of eligible securities. Therefore, the facility in question was clearly not a regular collateralised facility, as other types of collateral were given than defined as eligible for such Central Bank facilities under the aforesaid Rules. With reference to market conditions and the company's position when the collateralised facility was granted, it must be concluded that a 50 million euro loan, coupled with the fact that the loan was made by the Central Bank of Iceland, was liable to have a significant impact on the market value of the company's securities. Consequently, Straumur must be regarded as having been under obligation to make public information on the aforesaid collateralised loan transaction with the Central Bank in accordance with Articles 4.2.1 and 2.1 of the Exchange Rules.

As previously mentioned, the 50 million euro loan from the Central Bank was used to pay off part of a 200 million euro syndicated loan maturing on 9 December 2008. A Straumur press release issued on 5 December 2008 stated that the company had secured financing of 133 million euros, which was to

be used to repay the syndicated loan, The press release cited the then chief executive of Straumur as saying that the financing was “*a positive step for Iceland [the Icelandic financial market] in view of challenges faced by the country in recent times*”. The press release did not state how the remaining balance of the syndicated loan, totalling 67 million euros, was to be paid, while the interim earnings release issued on 26 November 2008 said that the syndicated loan’s financing would be ensured through refinancing together with the proceeds of minor asset sales. Given the fact that the aforementioned financing, which was to be used to pay off the 200 million euro syndicated loan, was obtained from the same creditors – who faced a choice between providing a new loan to Straumur or calling in the older loan – it is not obvious on what basis the financing was “*a positive step for Iceland [the Icelandic financial market]*”. The sole fact that the financing was obtained from the same creditors must also be regarded as liable to have had a significant impact on the market value of the company’s securities. Therefore, the company was under obligation to make public further information on the loan in accordance with Articles 4.2.1 and 2.1 of the Exchange Rules.

Through its information disclosure, Straumur indicated that its possibilities in the credit market, the creditor confidence held in the company, the liquidity of its assets and market conditions were such that the company was able to meet repayments when its loans matured, by way of conventional market channels such as new borrowings and asset sales. Thus, the Exchange finds not only that the company was under duty to disclose information on the Central Bank facility and further details of the 133 million euro syndicated loan and its premises, but also that the company’s press release on the financing, issued on 5 December 2008, was liable to mislead investors and indicate that the company’s position was better than it actually was.

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 4.2.1 and 4.1.4 of the Exchange Rules, as well as Articles 2.1 and 2.3 as Straumur’s shares were traded on the Exchange during the time that the infringement took place.

Decision to issue public reprimand and impose monetary sanction

The Exchange reprimands publicly and imposes a monetary sanction on Straumur amounting to ISK 1,500,000 for the violations set forth above of the Exchange Rules. The decision to issue the public reprimand and impose the monetary sanction 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.