

NASDAQ OMX Iceland hf. levies a fine on Reykjaneshöfn

NASDAQ OMX Iceland hf. (the Exchange) has decided reprimand Reykjaneshöfn (the Issuer) publicly and to fine the company ISK 1,500,000 due to events through which the Issuer is deemed to have violated provisions of the Exchange's Rules for Issuers of Financial Instruments. The Issuer, Reykjaneshöfn, is deemed to have violated provisions 4.1.3, 4.1.4, 4.2.1 and 4.2.2 of the Rules through the behavior described below.

Circumstances of the case

A news item appeared in the daily *Morgunblaðið* on 8 September 2010 on default by Reykjaneshöfn. It stated that Reykjaneshöfn had not been able to make payment of around ISK 130 million which was due on 1 May this year.

On 9 September the Exchange requested information from the Issuer as to whether reports of the Issuer's default in the media had been correct and whether this concerned a bond series which had been admitted to trading on the Exchange. The Exchange also requested explanations as to why information on the Issuer's payment difficulties were not made public as provided for in provisions 4.1.3, 4.1.4, 4.2.1 and 4.2.2 of the Exchange's Rules for Issuers of Financial Instruments.

Explanations were received by Exchange on 15 September. At the same time, the Issuer published an announcement on the payment difficulties of Reykjaneshöfn. The Issuer's explanations pointed out, for instance, that owners of the bonds had regularly been informed of the situation.

Provisions of the Exchange's Rules

According to section 4.2.1 in the Exchange's Rules for Issuers of Financial Instruments an issuer must make every effort to make public without delay previously unpublished information on decisions or events which it knew, or should have known, would have a significant impact on the price of its bonds. Section 4.2.2 states that notification must be given of all decisions or events concerning the rights of bondholders. The notes on this provision state that this includes events such as delay in making payments of installments on the principal and/or interest. Section 4.1.3 of the Rules states that an issuer must ensure equal treatment of investors concerning access to information covered by the Rules, and treat and preserve information so as to ensure that unauthorized persons do not have access to such information before it is made public. All information covered by the Rules must be made public immediately or as quickly as possible, cf. section 4.1.4.

Conclusion

Information on the Issuer's financial situation and payment difficulties is information which the Issuer should have known could have a significant impact on the market value of its securities, cf. section 4.2.1 of the Exchange's Rules. When it is evident that an issuer of securities cannot fulfill its obligations in accordance with the terms of securities which are traded on the Exchange, such as making payment of installments on the principal and/or

Surveillance Iceland

interest, then it is urgent that investors are informed thereof, cf. section 4.2.2 of the Exchange's Rules.

It is not only important to ensure the interests of the owners of issued securities but rather it must be considered that once securities have been admitted to trading on an exchange it is easy to trade them. It is therefore necessary for possible investors to be informed of the issuer's financial situation and solvency. It does not absolve an issuer from its disclosure obligations to inform only the holders of issued securities of financial difficulties and default on payment. Such selective information disclosure to a limited group of investors violates the right of market participants to equal access to information which may have a significant impact on the market value of an issuer's securities, cf. section 4.1.3.

An issuer of securities is responsible for making information which could be expected to have a significant impact on the market value of its securities public in accordance with the Exchange's Rules and that such information is not reported in the media before being made public in a satisfactory manner in accordance with the above-mentioned provisions. According to the above-mentioned provisions, an issuer is obliged to make such information public immediately or as soon as practicable. If the publication of information is delayed, there is a risk that it will be distributed by unsatisfactory means and could prejudice investors' equal access to information, cf. section 4.1.3.

Reykjaneshöfn concluded an agreement with the Exchange on admitting the company's securities to trading. In so doing, the Issuer is obliged by the Exchange's Rules on information disclosure. The Exchange is of the opinion that Reykjaneshöfn should have published a notice of its payment difficulties as soon as it was evident that there would be a possible delay in making payments on the Issuer's securities which were traded on the Exchange. The Issuer's information disclosure was not satisfied by having consultations with the owners of the securities. Information of such importance needs to be made available in a public notice. It is also reprehensible to have price-sensitive information appear in mass media prior to being made public in a verifiable and proper manner. Having regard to the circumstances of the case and taking the above-mentioned grounds of the Issuer into consideration, the Exchange deems that the Issuer has, through its behavior in the instances in question, violated sections 4.1.3, 4.1.4, 4.2.1 and 4.2.2 of the Exchange's Rules for Issuers of financial instruments.

Decision to issue a public reprimand and levy a fine

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