

RESULTS OF THE SURVEY ON TAKEOVER REGULATION IN THE JURISDICTIONS OF SOME IOSCO EMC MEMBERS

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**Enforcement Aspects of Takeover Regulation
IOSCO EMC Working Group 4 Seminar
Istanbul, 12th June 2008**

Basic information regarding the survey

- First survey carried out in 2004-2005
- Endorsed on 4th April 2005
- Second survey carried out in 2007-2008
- Number of responses
 - 34 to the first one
 - 37 to the second one
- Number of questions – 27
- The key objective – to provide a comparative analysis of the existing takeover regulations in the jurisdictions of some IOSCO EMC members

INVESTOR DISCLOSURE OBLIGATIONS

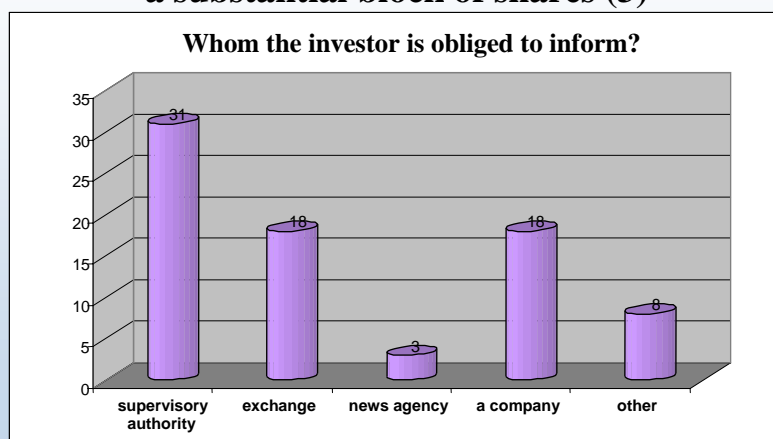
Requirement to disclose the acquisition of a substantial block of shares (1)

- Exists in most of surveyed jurisdictions
- Disclosure requirements relate to:
 - the number of votes at the general meeting of shareholders in 24 out of 37 surveyed jurisdictions
 - the number of shares in 18 jurisdictions
- Two systems of disclosure thresholds:
 - multiple fixed threshold;
 - one or a few fixed thresholds and, after achieving specified threshold, further disclosure obligations arising upon the acquisition or selling of shares representing specified number of votes at the GMS.

Requirement to disclose the acquisition of a substantial block of shares (2)

- Requirement to inform the company and the competent supervisory authority about the acquisition of a substantial block of shares – in almost all jurisdictions
- In some jurisdictions – additional requirements to notify:
 - stock exchange,
 - news agency,
 - minority shareholders.
- The disclosure deadline – from immediate disclosure to several days

Requirement to disclose the acquisition of a substantial block of shares (3)

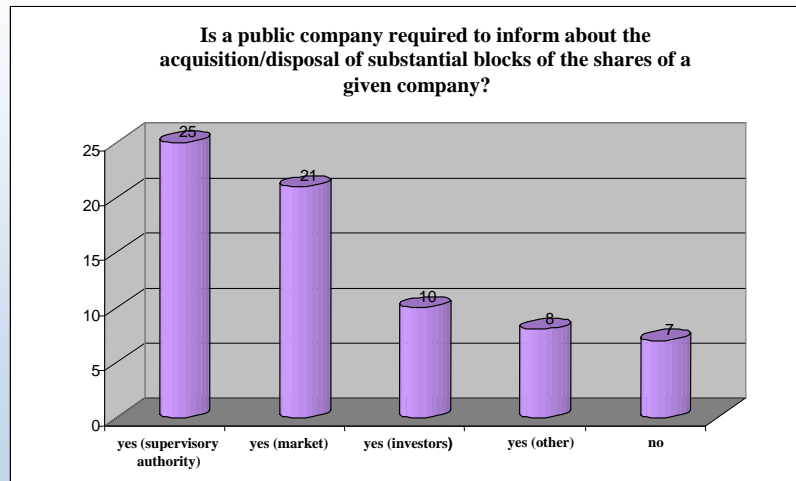


Sanctions imposed in case of failure to disclose shareholding in listed companies:

- inability to become a corporate officer
- suspension or prohibition to publicly offer securities
- imprisonment
- fine
- prohibition to vote or exercise all membership rights towards the company
- the acquirer and any person acting in concert shall stand debarred as acquirer for next 3 years
- obligation to sell shares bought without proper notification
- the clearing house will not transfer shares
- suspension or withdrawal of authorization

PUBLIC COMPANY DISCLOSURE OBLIGATIONS

Public company disclosure obligations (1)



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Public company disclosure obligations (2)

- In some jurisdictions the obligation relates only to the major shareholder.
- Different deadlines to disclose by the company information about the acquisition or disposal of its shares – immediately, 24 hours, several days.
- Sanctions for failure to disclose information on an investor's acquisition of a substantial block of the company's shares:
 - the same sanctions as those applied to the guilty investor
 - substantial fine
- In some jurisdictions there are no sanctions

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TENDER OFFERS

Obligation of the investor to announce a tender offer

- After an explicitly defined threshold of voting rights has been exceeded
- When the investor, who has already exceeded a substantial threshold or has gained control over the company, acquires a small block of shares
- When the investor acquires a large block of shares within a short period of time

Legislation of a particular country often combines more than one method.

Examples of exclusion of obligation to announce a tender offer after exceeding a certain vote threshold

- change of control as a result of reorganization
- the company repurchases its own shares
- privatization
- economic rescue scheme approved by the government or the investor is rescuing the company from possible liquidation
- written acceptance of all shareholders
- requirement to announce a tender offer unfair or contradictory to the market's interest

Tender offers for part or all of the remaining shares

- **Generally - a tender offer only for the purchase of ALL the remaining shares.**
- **The investor can announce a tender offer for a part of the remaining shares, when:**
 - the company with negative net worth or with paralyzed or interrupted activities;
 - prior approval of the supervisory authority;
 - the percentage of shares intended to purchase is indicated at the outset.
- **In such a situation – shares should usually be purchased from all subscribing shareholders in adequate proportion.**

The requirement of collateral

- Necessary to secure a tender offer in most of the jurisdictions
- Usually funds being a certain percentage of the transaction value
- Other forms of collateral:
 - submission of proof that sufficient funds are available to the investor
 - letter of bank guarantee
 - government securities accepted as a collateral
 - broker, securities dealer or financial institution with investment portfolio hired to intermediate the tender offer shall guarantee the financial settlement of the acquisition and payment of the price
 - obligatory information attesting that the investor has enough sources to cover its bid

Withdrawal of an announced tender offer

- failure to reach a number of shares specified at the outset
- the offer cannot be executed for reasons beyond the control of the investor
- serious and objective circumstances, previously provided in the prospectus
- another investor announces a tender offer relating to the same shares
- the commencement of the offer was subject to the prior fulfillment of a specific condition, which has not been fulfilled by the offeree.

Changing conditions of a tender offer

- Most often – new conditions cannot be less favourable than the previous ones
- Especially with regard to the price
- In certain jurisdictions – minimum period between the date of the amendment publication and the deadline to accept the offer

Establishment of the price

- The price has to be equal for all investors – the general rule
- There is a minimum bid price – in 25 jurisdictions
- The offered price cannot be lower than the maximum price paid by the offeror in a preceding period – in 25 jurisdictions
- No requirements concerning the price paid by the investor after the takeover – in 20 jurisdictions



Thank you for your attention!

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