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NEW RULING ON MARKET MANIPULATION

The Case in Brief

8 June 2016, the Danish Western High Court found a financial undertaking guilty in market manipulation in pursuance of the former rules in the Danish Securities Act, Section 39(1)[1].

Market manipulation consists in actions that are likely to affect the price of securities in a direction deviating from the actual value of the securities in the market. This may be through transactions, placing orders or similar behavior which gives, or is likely to give, false or misleading signals about the supply, demand or price of securities. There are strict limits as to when such behavior may take place in pursuance of the so-called accepted market practices.

9 November 2010, the Danish Financial Supervisory Authority filed a police report against the financial undertaking for the purchase and sale of own shares in the period between September 2009 and February 2010. During this period, the financial undertaking bought approximately 47,000 shares and sold approximately 4,000 shares in the market. In December 2009, the inequality was especially significant as the financial undertaking was accountable for almost 80% of the total purchase while not selling any shares in the market.

The High Court concluded that through the financial undertaking's purchase and sale of its own shares by placing orders on the stock exchange, the financial undertaking had acted as a so called market maker. This activity had kept the financial undertaking's shares at an artificially high level by ensuring liquidity in the share.

Additionally, the High Court concluded that the financial undertaking had not adequately adjusted its orders for the trades concluded on the stock exchange between independent parties with conflicting interest.

For these reasons, the financial undertaking was fined DKK 2.5 million for violating the Danish Securities Act's prohibition against market manipulation.

Our Assessment

The ruling emphasizes the responsibility of the issuers in connection with market making activities and the importance of monitoring the activity of issuers' securities. In future, issuers should be more aware when trading with their own shares as it can give the market a false or misleading impression of the issuers' shares.

1) After 3 July 2016, these rules appear from the European Parliament's and the Council's Regulation (EU) no. 596/2014 on market manipulation (MAR)

For this reason, especially smaller issuers that conduct market making should revise internal procedures about this activity to ensure compliance with the prohibition of market manipulation at any time.

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