Global Public M&A Guide - The Netherlands

Before a Public Takeover Bid

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# 3. Before a Public Takeover Bid

[Last updated: 1 January 2025, unless otherwise noted]

**3.1 Acquisition of shares of a company listed in the Netherlands**

Investors can acquire shares in a company which is listed on a regulated market in the Netherlands through a variety of methods. Such methods include: stock market purchases, OTC transactions and one-on-one block purchases. Depending on the size of the shareholding in the company, an investor must publicly disclose its shareholding. The AFM should be notified when a substantial holding or short position consequently reaches, exceeds or falls below a threshold. This can be caused by the acquisition or disposal of shares by the shareholder or because the issued capital of the issuing institution is increased or decreased. The thresholds are: 3%, 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50%, 60%, 75% and 95%.

**3.2 Confidentiality, due diligence and insider dealings**

The pre-offer negotiations between the target company and the offeror are usually kept confidential, so as not to frustrate the offer at a precarious stage. In a friendly offer situation, the offeror will typically conduct a high level due diligence. Simultaneously, the offeror and the target company will start negotiating the terms of the offer. These terms will be incorporated in the merger protocol. Due diligence and offer negotiations will be preceded by the signing of NDAs.

As described in 2.4, the principle of market transparency requires the disclosure of any Inside Information in order to prevent interference with the target company's share price and to reduce the opportunity to conduct insider dealings. Inside Information must be disclosed to the public by the target company as soon as possible. The disclosure of Inside Information may be delayed by a target company at its own discretion, on its own responsibility, if all of the following conditions are met:

immediate disclosure is likely to prejudice the legitimate interests of the target company;

the delay of disclosure is not likely to mislead the public; and

the target company must be able to ensure the confidentiality of the information.

If one of these three conditions is not met, the Inside Information has to be made public.

If an issuer has delayed the disclosure of Inside Information, it must inform the AFM immediately after the Inside Information has been disclosed to the public that the disclosure of information was delayed and, if requested by the AFM, shall provide a written explanation detailing how the conditions as set out above were met.

Furthermore, any company with securities listed within the EEA must maintain an insider list. This sets out all persons who have access to Inside Information and who are working for the company pursuant to a contract or otherwise performing tasks through which they have access to Inside Information.

In order to prevent insider dealing, a standstill agreement with the target company is usually entered into. Such standstill obligations can also be combined with an NDA.

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