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**ÜBERNAHMEKOMMISSION
COMMISSIONE DELLE OPA**

**COMMISSION DES OPA
SWISS TAKEOVER BOARD**

Selnaustrasse 32
Postfach 1758
CH - 8021 Zürich

Tel. 41 (0) 1 229 229 0
Fax 41 (0) 1 229 229 1
www.takeover.ch

RECOMMENDATION

of 25 February 1999

Proposed buy-out of the 6.3% shareholding of UBS AG in Julius Bär Holding AG by the issuer – Exemption from the obligation to make an offer

A. Julius Bär Holding AG, Zurich, (Julius Bär) is a company with an outstanding capital of Fr. 61'659'290.--, divided into 1'220'419 registered shares with a nominal value of Fr. 10.-- each and 989'102 bearer shares with a nominal value of Fr. 50.-- each.

The registered shares represent 19.8% of the capital and 55.2% of the voting rights of the Company. They are held by members of the founding family and certain members of the management (the family group), on one hand, and by UBS AG (UBS), on the other hand. The family group holds 1'080'446 registered shares, representing 48.9% of the voting rights. UBS in turn holds 139'973 registered shares, representing 6.3% of the voting rights.

The bearer shares are listed on the Swiss Exchange.

B. In June 1998, Julius Bär started a buyback program of its bearer shares designated to reduce its outstanding capital of about 5%. On this occasion, it announced it would convert certain registered shares into bearer shares in order to maintain the balance of voting power between the two security categories. In accordance with this policy, Julius Bär will propose to its shareholders to convert 39'410 registered shares into 7'882 bearer shares at the next general meeting.

C. At the beginning of February 1999, UBS informed Julius Bär of its intention to sell its shareholding in the company. Julius Bär is considering the possibility to acquire UBS's shares and to propose their cancellation at its next shareholders general meeting. It requires the Takeover Board to rule whether the proposed transaction triggers an obligation to make an offer to the minority shareholders and, if this is the case, to grant an exemption from this obligation.

D. A delegation formed of Mr. Hans Caspar von der Crone (Chairman), Mr. Ulrich Oppikofer and Mr. Luc Thévenoz has been appointed for the review of this matter.

Considerations of the delegation:

1. According to Art. 52 SESTA "whosoever, upon the coming into force of this Act, owns directly, indirectly or acting in concert with third parties equity securities which give him more than 33¹/₃% but less than 50% of the voting rights of an offeree company, shall, if he acquires equity securities and thereby exceeds the threshold of 50% of the voting rights, be under an obligation to make an offer to acquire all the equity securities listed."

In addition, Art. 31 SESTO-FBC provides that "[a]nyone who after the entry into force of the Act reduces a previous shareholding of 50% or more of the voting rights of a company to a proportion below 50% shall be subject to the offer obligation pursuant to Article 32 of the Act if at a later date he again exceeds the threshold of 50%."

2. In order to determine whether one of these provisions is applicable in this matter, it shall first be considered whether the family group and UBS are acting in concert or as an organized group within the meaning of Art. 27 and 15 SESTO-FBC. If this is the case, the family-UBS group had already reached the threshold of 50% upon the coming into force of the SESTA and must only comply with Art. 31 SESTO-FBC. If this is denied, the family group did only own 48.9% of the voting rights upon entry into force of the Act and cannot exceed the threshold of 50% without incurring an obligation to make an offer pursuant to Art. 52 SESTA.

Art. 15.1 SESTO-FBC provides that, in order to be deemed to be "acting in concert or as an organized group" within the meaning of the regulation, shareholders must "coordinate their conduct [...] by contract or by any other organized methods". Art. 27 SESTO-FBC further states that, within the context of the mandatory offer rules, a shareholders agreement qualifies as an "organized group" only if it is adopted with a specific intent, i.e. "with a view to gaining control of the offeree company".

The relationship between the family group and UBS is primarily governed by an agreement of 30 November / 17 December 1982. The delegation must consider whether this agreement intends to regulate the exercise of control over Julius Bär.

This question must be answered affirmatively. The 1982 agreement expressly provides, among other things, that Julius Bär is managed and organized as an independent company. Only the sale of an important part of business is subject to the approval of UBS. In other words, UBS has contractually agreed to support the incumbent management. Given the size of UBS's and of the family group's shareholdings, such an agreement clearly affects the control of the issuer and falls, consequently, within the scope of Art. 27 and 15 SESTO-FBC.

The cooperation between the family group and UBS has been well known to the minority shareholders since UBS has acquired its shareholding in the company. The fact that UBS has been the only shareholder outside the family group to own unlisted registered shares has been a clear sign of the close relationship between the two entities.

3. The second issue to consider is whether the proposed buy-out of UBS would materially alter the nature of the controlling group. If such was the case, the controlling stake over Julius Bär would practically change hands with the departure of UBS. Consequently, an obligation to make an offer would be triggered, the shareholding of the "new" controlling group (i.e. the present controlling group without the UBS) having risen from 0 to 48.9% of the voting rights after the buy-out of UBS.

In the present case, UBS's 139'973 registered shares represent 11.5% of the 1'220'419 registered shares held by the controlling group. Furthermore, the Bär family is represented in the management of the Company while, according to the 1982 agreement, UBS should hold 25% or more of the reg-

istered shares to have a right to appoint a representative in the Board of Directors. Under those circumstances, the buy-out of UBS would have no decisive impact over the structure of the controlling group and should not, therefore, trigger an obligation to make an offer to the minority shareholders.

4. The buy-out of the 139'973 registered shares of the UBS would reduce the shareholding of the controlling group from 55.2% to 48.9% of the voting rights. This shareholding would be further reduced after the conversion of the registered shares into bearer shares and would increase over 50% again after cancellation of the 139'973 registered shares purchased from the UBS. Given the time required for the implementation of the reduction of the share capital, the family group would cross the 50% threshold downward and upward within a time-range of about six months. According to Art. 31 SESTO-FBC, this would trigger an obligation to make an offer to the minority shareholders.

5. In justified cases, a person subject to the obligation to make an offer may be exempted from this obligation (Art. 32.2 SESTA and 34 SESTO-FBC).

5.1. The SESTA specifically provides that an exemption may be granted where a triggering threshold is exceeded only temporarily (Art. 32.2 let. c SESTA). The same solution must prevail where the 50% threshold is crossed downward and upward within a short period of time. In both situations, the control over the company is affected only temporarily and the situation of the minority shareholders is not altered in any material way.

In the present case, the company would propose the cancellation of the shares purchased from UBS at the general meeting following the transaction. Thus, measures to bring the shareholding of the controlling group back over the 50% threshold would be taken immediately after the buy-out. The controlling stake would remain below the 50% threshold only the time necessary for the implementation of the capital reduction. Furthermore, as the voting rights of the shares bought back from the UBS would be suspended pursuant to Art. 659a.1 CO, the controlling group would at all times hold more than 50% of the *exercisable* voting rights. For these reasons, and provided that the proposed transaction actually takes place, the delegation will grant the requested exemption, pursuant to the general provision of Art. 32.2 SESTA.

5.2. Application of Art. 32.2 let. b SESTA would lead to the same conclusion. This provision provides that an exemption from the obligation to make an offer may be granted where the triggering threshold is exceeded as a result of a decrease in the total number of voting rights of the company. Therefore, an exemption is all the more justified where the triggering threshold is exceeded passively after having been crossed downward shortly before.

5.3. Art. 34.3 SESTO-FBC provides that the granting of exemptions may be subject to certain conditions. In particular, obligations for the future may be imposed on the exemption's recipient.

In the present case, the exemption will be granted under the condition that the shares bought back from UBS are cancelled within a reasonable time limit. Given the necessity to give proper notice to the creditors before the completion of the capital reduction (Art. 733 CO), this time limit may be set on 31 August 1999.

6. This recommendation shall be communicated to the Federal Banking Commission (Art. 35.2 SESTO-FBC), and published in the Swiss Commercial Gazette (Art. 34.4 SESTO-FBC).

7. Pursuant to Art. 23.5 SESTA, 35.6 SESTO-FBC and 62.6 TOO, the Takeover Board shall levy a fee of Fr. 15'000.-- for the examination of this matter.

Based on the foregoing, the Takeover Board adopts the following recommendation:

1. The "controlling group", composed of members of the founder's family of Julius Bär Holding AG, of members of the company's management and of UBS AG, is an organized group within the meaning of Art. 27 and 15 SESTO-FBC.
2. The purchase of UBS AG's registered shares in Julius Bär Holding AG by the issuer would not materially alter the nature of the controlling group.
3. Though the purchase and later cancellation of such shares would in principle trigger an obligation to make an offer to the minority shareholders under Art. 31 SESTO-FBC, the controlling group is exempted from this duty pursuant to Art. 32.2 SESTA if the registered shares bought back from UBS AG are cancelled no later than 31 August 1999.
4. The fee amounts to Fr. 15'000.--.

The Chairman:

Hans Caspar von der Crone

This recommendation is communicated to:

- The members of the family group and Julius Bär Holding AG, through their representative
- The Federal Banking Commission