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[www.takeover.ch](http://www.takeover.ch)**RECOMMENDATION****of 26 March 1999****Public Exchange Offer of New ABB Ltd., Zurich, for all Registered Shares in ABB AG and all Bearer Shares in ABB AG**

ABB AG is a company with registered offices in Baden. Its issued share capital amounts to CHF 462'681'000.--, divided into 5'470'750 registered shares of CHF 10.-- nominal value each and 8'159'470 bearer shares of CHF 50.-- nominal value each. These shares are listed on the Swiss Exchange.

On 4 February 1999 the Board of Directors of ABB AG and ABB AB have announced their decision to create a unified, single-class ABB share. The new single-class share will replace the current four classes of shares of ABB AG and ABB AB all of which have different voting rights with a "one share, one vote"-structure.

On 23 February 1999 New ABB Ltd. informed the Takeover Board that it would launch exchange offers for all issued and outstanding shares of ABB AG and ABB AB, respectively. At their respective Annual General Meeting on 18 March 1999, the shareholders of ABB AB and ABB AG have ratified the creation of this single-class share structure. Following implementation of the single-class share structure, the new entity New ABB Ltd. will be the parent company for all activities of the ABB-Group, and will thus replace the current holding companies ABB AG and ABB AB. Finally, the shareholders of ABB AG will be requested to approve a special dividend in the amount of approx. CHF 278 million. This dividend will be paid, conditional on the consummation of the exchange offers, out of excess cash held by ABB AG to shareholders of ABB AG in order to equalize the differing asset values of ABB AG and ABB AB so that a 50:50 value allocation is achieved.

A delegation composed of Mr. Jean-Paul Chapuis (Chairman), Mr. Jean Bonna and Mrs. Maja Bauer-Balmelli has been appointed to examine the offer.

## **Considerations:**

### **1. Scope of the Takeover Regulation**

According to Art. 22.1 and 2 lit. e SESTA the statutory provisions on public takeovers apply to any offer made publicly to purchase or exchange equity securities of Swiss companies whose equity securities are, in whole or in part, listed on an exchange in Switzerland. The scope of the takeover rules is not limited to transactions that may lead to a change of control. These rules also apply if the offer implies no corporate takeover within the usual meaning of the term, but in fact is a corporate restructuring transaction.

### **2. Acting in Concert and Organized Group**

Those who coordinate their conduct with the offeror by contract or by any other organized measures in view of the offer shall be held to be acting in concert or as an organized group (Art. 15 SESTO-FBC and Art. 11 OTB). Such persons cooperating with the offeror are to be described in the prospectus, and must comply with the rules of transparency, with the rules concerning equal treatment, with the rules of fairness and with the rules concerning the duty to report transactions (Art. 12 OTB).

The Board of Directors confirmed in its report that it is not aware of any particular intentions of the main shareholders of ABB AG (Unotec Holding AG and Stillhalter Vision AG) relevant in relation the exchange offer. Furthermore, Mr. Martin Ebner as controlling shareholder of Stillhalter Vision AG and nominated for election to the board of ABB AG, at the time of the launch of the exchange offer, is not yet elected as board member of the offeror.

Therefore, the Takeover Board does not qualify any of these persons as persons acting in concert with the offeror.

### **3. Conditions**

According to Art. 13 OTB an offer, in general, may be made subject exclusively to conditions precedent, i.e. the conditions must be fulfilled before the close of the offer period. An offer may be made subject to resolutive conditions (i.e. to conditions that may be fulfilled once the first acceptance period has expired) only with the approval of the Takeover Board. The Board only approves resolutive conditions if the advantages of such conditions for the offeror outweigh its disadvantages for the recipients of the offer and for the offeree.

This requirement is met in the present matter.

Condition (a) cannot be influenced by the offeror and, therefore, is permissible.

With regard to condition (b) it should be noted that according to Swedish corporate law tendering shareholders are allowed to revoke their acceptances at any time prior to the lapse of all acceptance periods, so that a split into an exchange offer period and an additional acceptance period would become meaningless. Moreover, in Sweden the new shares should be delivered as soon as possible following the end of the exchange period since there is currently no second line trading in Sweden according to local practice. Consequently, the end of the exchange offer period in the Swedish exchange offer has to be identical to the end of the Swiss exchange offer. The offeror, therefore, has an interest to draft the condition (b) of the offer a resolutive condition. This does not have any material adverse consequence for the recipients of the offer whose decisions during the additional acceptance period should not be influenced by the fulfillment or the non-fulfillment of the condition set forth in the exchange offer. Considering that the offer is friendly and is made for restructuring purposes solely, the resolutive condition does not infringe the interests of the offeree either.

Condition (c) concerns regulatory matters that are likely not to be solved within the maximum offer period of 40 trading days of Art. 14.4 OTB. The offeror, therefore, has an interest to draft this condition as resolutive in its exchange offer. This should not have any material adverse consequence for the recipients of the offer, whose decisions during the additional acceptance period should not be influenced by the fulfillment of this condition.

Finally, in order not to create a situation where the exchange offer to the shareholders of ABB AB will be discontinued and the offer in Switzerland must be confirmed, the exchange offer to ABB AG shareholders includes condition (d) that is identical to the condition in the exchange offer to ABB AB shareholders. Thus, the Takeover Board also approves condition (d) to be drafted as resolutive condition.

#### **4. Extension of the Execution Time Limit**

For technical reasons the contribution in kind of the tendered shares must be executed over a weekend. Since the responsible bank needs approx. 8 to 10 business days to receive most of the tendered shares through the SEGA system in Switzerland as well as to initiate the payment for the special dividend on behalf of ABB AG before the contribution in kind takes place, it cannot be guaranteed that the execution can take place within the 10 days limit of the Ordinance (Art. 14.6 OTB). The Takeover Board normally does not authorize such an extension in advance. It would rather wait until the close of the (possibly extended) offer period and then require the offeror to state that all conditions would be fulfilled in a reasonable period of time.

However, such a procedure is complicated and not appropriate in this present matter where the General Meeting of Shareholders approves the whole transaction. Therefore, the Takeover Board grants this extension.

## **5. Exemption from the Obligation to state the Number of Equity Securities of the Offeree bought and sold by the Offeror and the Persons Acting in Concert with him during the 12 months preceding the Offer**

Art. 19.1 lit. g OTB states that the offer prospectus must include the number of equity securities of the offeree bought and sold in the 12 months preceding the offer. Trades of persons acting in concert with the offeror must be aggregated with the offeror's transactions (Art. 12.3 OTB). These rules are designated to inform the recipients of the offer about the offeror's influence of the price of the offeree's shares. This allows the investor to make a distinction between the price pressure resulting from the offeror's buying activity and other factors which are likely to influence the share price.

Such information is not immaterial to the present matter. The value of the shares in New ABB Ltd. is not identical to the price of the shares in ABB AG. The market activity of the offeror prior to the

offer influenced the price of the two categories of shares not in the same way. Information on such activity is, therefore, relevant to the recipients of the exchange offer. However, the present matter does not constitute a change of control transaction but a corporate restructuring. From an economic point of view, there will be no material change for the shareholders of their investment. Furthermore, also from a technical standpoint, it is questionable whether the information of sales and purchases by the offeror and all the persons acting in concert would at all be feasible in the present case or, at least, if its required workload would be in proportion to the information gained therefrom. Therefore, the Takeover Board grants this exemption.

## **6. Exemption from the Obligation to value the Unlisted Securities Offered in Exchange**

According to Art. 24.5 OTB the offer prospectus must contain a valuation by a review body of the securities offered in exchange if such securities are not listed on the principal stock exchange. The exchange ratio for the shareholders of ABB AG and ABB AB allows each constituency to receive an equal amount of New ABB Ltd. shares, i.e. about 150 mio. shares each. The 50:50 split between the shareholders of ABB AG and ABB AB is based among others on the existing shareholders' agreement between the two companies. In order to equalize the asset values in ABB AG and ABB AB, the net excess cash in ABB AG in the amount of approx. CHF 278 million will be paid out as a special dividend to ABB AG shareholders, provided the exchange offer will be accepted. Therefore, the exchange offers allowing to introduce one single share category for the ABB-Group do not change anything from an economic point of view. Rather, the market capitalization of New ABB Ltd. is expected to be equal to the combined capitalization of the existing parent companies, ABB AB and ABB AG. Morgan Stanley Dean Witter delivered a recommendation letter to this effect. This letter is integrated in the exchange offer document. Therefore, the Takeover Board qualifies the offeror as a listed company and consequently, no valuation is required.

## **7. Report of the Board of Directors**

The report of the board of directors should indicate the intentions of each shareholder owning more than 5% of the voting rights to the extent such intentions are known to the board (Art. 30.1 OTB).

The Report of the Board of Directors of ABB AG explicitly sets forth that the Board of Directors is not aware of any particular intentions of the main shareholders of ABB AG (Unotec Holding AG and Stillhalter Vision AG). Therefore, Art. 30.1 OTB is fulfilled.

Furthermore, the report shall clarify whether certain members of the board have entered into a contractual agreement with or other commitments to the offeror (Art. 31.2 OTB). The prospectus states that no such commitments are entered into. The report shall also indicate if conflicts of interest exist, and if yes, which measures the company has taken to avoid having these conflicts negatively impact on the recipients of the offer (Art. 31.3 OBT).

Mr. Martin Ebner as controlling shareholder of Stillhalter Vision AG which owns more than 10% of the voting rights of ABB AG, at the time of the launch of the offer, is only nominated for election to the Board of Directors of the offeror. Also, as per date of the Report of the Board of Directors of ABB AG (10 March 1999), he is not yet elected as board member of ABB AG. Thus, there can be no potential conflict of interest.

Therefore, the Report of the Board of Directors is complete and the legal requirements are met.

## **8. Exemption from the Notification of the Interim and the Final Result within the Respective Period**

According to Art. 43.1 and 2 OTB the offeror shall notify the interim result of the offer on the first trading day following expiration of the offer as accurately as possible to the stock exchange, to the Takeover Board and at least to one of the principal electronic media that disseminate stock exchange information. By no later than 4 trading days following expiration of the offer, the exact interim result shall be published by means of an announcement in the same newspapers in which the offer was published.

ABB AG alleges that the Swedish banking system will not be able to deliver any result within four trading days following the end of the exchange period, but will need 5 to 8 business days to deliver the required figures. And the results of the exchange offer to the shareholders of ABB AG shall be released at the same time as in Sweden with the purpose of treating the two markets equally.

The delegation considers these reasons given for the request of the exemption to be adequate. Furthermore, the delegation takes into consideration that it is guaranteed that the interim result is published in such a manner that the additional acceptance period in Switzerland will start only after the interim result has been notified by the offeror. Therefore, the Takeover Board grants this exemption.

## **9. Waiver of the Cooling-off Period**

The offeror presented the offer to the Takeover Board for its review prior to publication of the offer, together with the Report of the Board of Directors (cf. Art. 14.2 OTB). The Takeover Board, therefore, exempts the offeror from the duty to observe the cooling-off period.

## **10. Fee**

Under Art. 62 OTB each offeror must pay a fee for review of the offer by the Takeover Board (par.1). In the case of an exchange offer for securities listed on the main market, the total amount of the offer shall be established on the basis of the average opening price of these securities during the 10 trading days preceding the submission of the offer to the Takeover Board (par. 4).

In the present case, the value of the securities offered in exchange is deemed to be equal to the value of ABB AG shares. Based on Art. 62.2 OTB the maximum fee of CHF 200'000.-- would be payable. However, the Takeover Board takes into account that the present matter constitutes a pure corporate restructuring and involves no change of control issue. In addition, the workload required for the review did not result in material research and it involved less correspondence and telephone discussions than in a regular takeover situation. Therefore, the Takeover Board considers a fee in the amount of CHF 100'000.-- to be appropriate.

### **The Takeover Board adopts the following recommendation:**

The offer of New ABB Ltd. complies with the Stock Exchange Act.

The Takeover Board grants the following exemptions from the Takeover Ordinance (Art. 4): conditions subsequent (Art. 13.4), waiver of the cooling-off period (Art. 14.1), extension of the execution time-limit (Art. 14.6), exemption from the obligation to state the number of equity securities of the offeree bought and sold by the offeror and the persons acting in concert with it in the twelve months preceding the offer (Art. 19.1 lit. g and Art. 12 lit. e), exemption from the notification of the interim and the final result within the respective period (Art. 43.1 and 43.2).

The fee amounts to CHF 100'000.--.

The Chairman of the Delegation:

Jean-Paul Chapuis

This recommendation is communicated to:

- New ABB Ltd., through its representative