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ÜBERNAHMEKOMMISSION COMMISSIONE DELLE OPA

COMMISSION DES OPA SWISS TAKEOVER BOARD

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RECOMMENDATION

of 12 April 1999

Buyback program of Altin Ltd, Baar

A. Altin Ltd, Baar, (Altin) is a company with an outstanding capital of Fr. 275'865'250.--, divided into 5'517'305 bearer shares with a nominal value of Fr. 50.-- each. These shares are listed on the Swiss Exchange.

B. On 11 March 1999, Altin informed the Takeover Board that it intended to publish the following announcement:

"In Anbetracht der Unterbewertung der Aktien der Altin AG in Bezug zum Inventarwert sowie der Qualität des Portfolios beabsichtigt der Verwaltungsrat, maximal zehn Prozent der Aktien der Gesellschaft bis zu einem Marktwert von maximal CHF 30 Mio. an der Schweizer Börse zu kaufen."

Altin requests the Takeover Board to rule that the proposed announcement does not qualify as a "public takeover offer" within the meaning of Art. 2 let. e SESTA or, as a secondary motion, to exempt the company from the obligation to respect the SESTA's provisions on public takeover offers. Altin completed its application on 12 and 29 March 1999.

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

Considerations of the delegation:

1. Altin's first motion that its proposed announcement does not fall within the scope of the takeover regulation must be rejected. In its decision *Pharma Vision 2000 AG et al.* of 4 March 1998 (at 3b), the FBC ruled that a buyback program – i.e. the announcement of an issuer's intention to purchase its on shares on the stock market – is a "public takeover offer" within the meaning of Art. 2 let. e SESTA. This interpretation has been confirmed in the Communication No. 1 of the Takeover Board of 22 June 1998. Thus, the proposed announcement is clearly subject to the provisions of the SESTA governing public takeover offers.

2. Altin in its secondary motion claims that its buyback program should be exempted from the obligation to comply with the takeover regulation.

The conditions for the granting of such an exemption are enumerated in para. 3 of the Communication No 1.

2.1. Altin has confirmed to the Takeover Board that it does not have knowledge of any shareholder owning more than 5% of the company's shares. Thus, the implementation of the proposed buyback program will have no material impact over the liquidity of the market in Altin's shares (para. 3 in combination with para. 2.1 of the Communication No 1). Neither will it substantially reinforce the position of certain shareholders of the company or otherwise alter the structure of its share ownership (para. 3 and 2.2). Furthermore, the requirement of para. 3 and 2.3 is satisfied, since the proposed program is limited to a maximum of 10% of the share capital and votes.

2.2. The Communication No 1 further provides that a buyback program must not be launched more than nine months after the closing date of the last published consolidated report (para. 3 and 2.4). This requirement is not met, since Altin's last consolidated interim report has been closed on 30 June 1998. The information published by the company since then (4th Quarter Report 1998, Monthly Updates) is of a too general nature to compensate for the lack of recent consolidated results. Therefore, the delegation will make the granting of the requested exemption subject to the publication of consolidated results, the closing date of which lies no more than nine months prior to the announcement of the buyback. Audited results, however, will not be required.

2.3. According to the Communication No 1, the company must confirm that it does not possess non-public information, which could have a decisive influence on the decision of the shareholders (para. 3 and 2.5). Altin has indicated to the Takeover Board that it would interrupt its buyback program if, in the future, it was in possession of price sensitive information and postponed its disclosure in accordance with the rules of the Swiss Exchange. Such a statement is appropriate within the context of a buyback program, which – contrary to a buyback *offer* – is implemented over a long time period.

2.4. Para. 2.6 of the Communication No 1 provides that the company must disclose how the shares which are bought back are to be used.

Altin's proposed announcement contains no indication in this regard and must therefore be amended. The fact that Altin does not intend to cancel the shares purchased must be specified. Furthermore, in order to avoid any confusion on the market, Altin should expressly state that no special trading line will be created for the implementation of the buyback.

2.5 Altin did not foresee a time limit for the implementation of its buyback scheme. The Takeover Board cannot exempt an issuer from the obligation to respect the SESTA's provisions on public takeover offers for an unrestricted time period. It will, therefore, require Altin to state clearly the time limit within which the proposed program will be implemented. Considering the special purpose of the buyback, this time limit should not exceed 30 April 2000. An extension of the scheme beyond this date should be submitted to the Takeover Board for approval.

3. Altin alleges that the proposed transaction will permit to correct what it perceives to be an inappropriate pricing of its shares. It claims that Art. 659 CO allows companies to "stabilize" the market price of their equity securities ("*Kurspflege*").

3.1. The delegation doubts that Art. 659 CO really provides a safe harbor allowing issuers to purchase up to 10% of their share capital without incurring any liability under the securities laws. The purpose of Art. 659 CO is to protect the creditors of the company (BGE/ATF 117 II 290 E. 4d aa), not the integrity of the capital markets. Compliance with this provision should not, therefore, be sufficient to make issuers immune to any reproach of market abuse. This issue, however, may remain unsettled. The Takeover Board primarily enforces the rules applicable to public takeover offers (Art. 23.3 SESTA), which are complied with in the present matter.

3.2 The delegation considers doubtful that the Swiss company law really gives the board discretion to invest corporate resources in an attempt to influence the market in the company's shares. However, the Takeover Board, in principle, leaves the enforcement of company law to shareholders. It will only bar a transaction in presence of a gross violation of these rules. As Altin's buyback scheme is not manifestly contrary to company law, the delegation will grant the requested exemption.

4. Where a buyback program is not implemented on a special trading line, para. 3 of the Communication No 1 requires the issuer to provide information every ten trading days over the electronic media on the number of shares bought back. Since Altin does not foresee to cancel the shares purchased and reserves the right to resell these securities, it will be required to disclose both purchases and sales of its shares. Such information is necessary to allow investors to appreciate the extent to which the announced buyback scheme has been implemented.

5. The Takeover Board shall levy a fee of Fr. 10'000.-- for the review of this matter (Art. 23.5 SESTA and 62.6 TOO).

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

1. Subject to:

   a. publication of consolidated financial statements, the closing date of which lies no more than nine months prior to the announcement of the buyback;

   b. amendment of the proposed public announcement in order to state explicitly:

      - that the shares purchased will not be cancelled and that, consequently, no special trading line will be created for the implementation of the program and

      - the time limit within which the proposed buyback will be implemented, such time limit not to exceed 30 April 2000;

   c. publication in the electronic media every ten trading days of the number of own shares bought and sold;

   the buyback program of Altin Ltd is exempted from the obligation to comply with the provisions on public takeover offers until 30 April 2000.

2. The fee amounts to Fr. 10'000.--.

The Chairman:

Hans Caspar von der Crone

This recommendation is communicated to:

- Altin Ltd, through its representative