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## **PRELIMINARY RECOMMENDATION**

**of April 30, 1998**

### **Public exchange offer of Zurich Allied AG, Zurich, on the shares of “Zürich” Versicherungs-Gesellschaft, Zurich — Application of the rules on mandatory offers**

“Zürich” Versicherungs-Gesellschaft (“Zürich”) is a company with registered offices in Zurich. Its shares are listed on the Swiss Exchange.

On December 22, 1997, “Zürich” and the British company B.A.T. Industries p.l.c. (B.A.T.) entered into an agreement to merge B.A.T. financial services businesses with “Zürich” into Zurich Financial Services Group, a new company with registered offices in Zurich. The merger agreement is subject, among other conditions, to the approval of the shareholders of both B.A.T. and “Zürich”.

Prior to the merger, a reorganisation of both B.A.T. and “Zürich” groups will take place. The B.A.T. financial services businesses will be separated from the tobacco businesses, and “Zürich” will establish a new holding company for its group.

To implement the proposed reorganisation, “Zürich” will incorporate Zurich Allied AG (ZA), a new 100% Swiss subsidiary. “Zürich” then plans to cause ZA to offer the “Zürich” shareholders to exchange each of their “Zürich” shares against one ZA share. The offer would be subject to the same conditions as the merger agreement. In addition, the exchange offer would only become unconditional if more than 98% of the “Zürich” shares were tendered. The 98% threshold could, however, be reduced to 67%, under certain circumstances described in the merger agreement.

Prior to the exchange offer, the general shareholders meeting of “Zürich” will take the resolution to transfer the assets and liabilities of the company to one of its subsidiaries and to adopt articles of association identical to those of the new ZA company. The execution of these resolutions will be subject to the failure of the exchange offer. Thus, the final structure of the “Zürich” group will be the same, whether the exchange offer succeeds or not.

A delegation formed of Mr. Alain Hirsch (Chairman), Jean-Paul Chapuis and Ulrich Oppikofer has decided to rule separately on the question of the application of the rules on mandatory offers to the proposed transaction.

Their considerations are the following:

The implementation of the exchange offer will bring the ZA shareholding in “Zürich” from zero to more than the 33<sup>1</sup>/<sub>3</sub>% of the voting rights. The threshold of Art. 32 SESTA will formally be exceeded.

According to Art. 10.5 TOO, “[i]f an offer is made for a number of equity securities which, if acquired, would enable the offeror to reach the threshold requiring him to make a mandatory offer, Articles 24 to 43 of the Stock Exchange Ordinance of the FBC of June 25, 1997 (SESTO-FBC) shall apply”. The purpose of this rule is to avoid that an offeror having implemented a voluntary offer and, by doing so, reached or exceeded a threshold requiring him to make a mandatory offer, should find himself under the obligation to make immediately a new offer.

The rules on mandatory offers should allow the minority shareholders of listed companies to dispose of their shares at a fair price if the control of their company is materially altered.

In the present case, the proposed transaction is not intended to modify the structure of the “Zürich” shareholding, but only to transfer the same shareholders into a new holding company, further to a resolution of the general shareholders meeting. Furthermore, the shareholders’ rights will not be altered, since the consolidated assets and liabilities of the group will remain unchanged, and since the ZA’s registered offices and articles of association will be identical to those of “Zürich”’s, should the exchange offer not succeed.

It could be argued that the proposed reorganisation might result in a change of the “Zürich”’s shareholding structure if less than 98% of the outstanding shares are tendered in the exchange offer and that the remaining shareholders cannot therefore be squeezed out of the company (Art. 33 SESTA). The shareholders who will choose to keep their “Zürich” shares instead of exchanging them against new ZA shares would actually have to live with ZA as a new controlling shareholder of “Zürich”. This, however, is not relevant, since each shareholder of “Zürich” will have been given the opportunity of transferring its shareholding into the new holding company.

Even if applicable, the rules on mandatory offers would be of no incidence in the present matter. The fact that the offer will be made subject to certain conditions does not infringe the minority shareholders’ rights: either the conditions will not be met, and the 33<sup>1</sup>/<sub>3</sub>% threshold will never be reached, or the conditions will be met, and the offer will then extend to all the listed equity securities of the issuer, as required by the rules on mandatory offers. The requirements of Art. 32 SESTA will be satisfied in both cases. Furthermore, the application of the rules imposing a minimum offer price (Art. 32.4 SESTA and Art. 37 to 43 SESTO-FBC) would make no sense in the present matter, since the value of the shares offered in exchange will be equivalent to the value of the “Zürich” shares, and since the transaction will involve the payment of no premium to any “Zürich” shareholder.

As this recommendation acknowledges the non-existence of an offer obligation, it will be communicated to the Federal Banking Commission, pursuant to Art. 35.2 SESTO-FBC.

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

The rules on mandatory offers of the Federal Act on Stock Exchanges and Securities Trading of March 24, 1995 do not apply to the proposed public exchange offer of Zurich Allied AG to the shareholders of “Zürich” Versicherungs-Gesellschaft.

The Chairman

Alain Hirsch

The present recommendation is communicated to:

- “Zürich” Versicherungs-Gesellschaft, through its representative;
- the Federal Banking Commission