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NASDAQ STOCKHOLM's

DECISION

April 9, 2018

DISCIPLINARY COMMITTEE

2018:04

Nasdaq Stockholm

Clavister Holding AB

DECISION

The Disciplinary Committee orders Clavister Holding AB to pay Nasdaq Stockholm a fine corresponding to six times the annual fee.

Motion

The shares in Clavister Holding AB ("Clavister" or the "Company") are admitted to trading on Nasdaq Stockholm AB's (the "Exchange") trading platform, Nasdaq First North. The Company has signed an undertaking to comply with the Exchange's rules for Nasdaq First North, applicable from time to time (the "Rule Book").

The Exchange has argued that Clavister has:

– violated section 2.3 in combination with sections 4.2.1 and 4.1 of the Rule Book, as worded as from July 3, 2016 (the "July Rule Book"), in that proposals for resolutions for cancellation of warrants set forth in the notice of the extraordinary general meeting of the shareholders held on January 17, 2017 (the "2017 Notice") did not contain the reasons for the proposal and the information set forth in the notice was thereby not accurate, relevant and clear;

- violated section 4.2.3 in combination with sections 4.2.1 and 4.1 of the July Rule Book by not having made public correction of erroneous information contained in the bulletin from the extraordinary general meeting held on January 17, 2017;
- violated section 4.2.3 in combination with sections 4.2.1 and 4.1 and 4.2.6 of the July Rule Book in that information regarding proposals contained in the 2017 Notice concerning ratification of resolutions to issue financial instruments previously adopted by the board of directors was not accurate, relevant and clear and not sufficiently comprehensive;
- violated section 4.2.6 of the July Rule Book and section 4.12 of the Rule Book in effect prior to July 3, 2016 by not having made public, on six occasions, issues of financial instruments resolved upon by the board of directors and, on one of these occasions, having violated section 4.11 of the Rule Book in effect prior to July 3, 2016 when the issue related to warrants for an incentive program; and
- acted contrary to good practices in the Swedish stock market by having resolved, on three occasions, to carry out issues of financial instruments for incentive programs contrary to AMN 2002:01 and, in one of these cases, having formulated a resolution to issue shares as a resolution on authorization. The Company thereby violated section 4.9 (a) in combination with section 4.2 (a) of the Rule Book in effect prior to July 3, 2016, and section 7.2.1 of Supplement B to the Rule Book becomes applicable.

The Exchange has also argued that, in light of the aforementioned violations, Clavister failed to fulfill the requirement of sufficient capacity for disclosure of information to the market according to section 2.2.4 of the Rule Book.

With reference to section 7.3 and Supplement B to the Rule Book, the Exchange has requested that the Disciplinary Committee consider the violations and order a reasonable sanction.

Clavister has essentially admitted the factual circumstances invoked by the Exchange.

A hearing in the matter was held before the Disciplinary Committee on March 21, 2018, whereupon the Exchange was represented by Karin Ydén (Head of Issuer Surveillance), Niklas Ramstedt (Associate General Counsel) and Caroline Sjölund (Regulatory Compliance Specialist). Clavister was represented by the board members Jan Ramkvist and Annika Andersson, CEO Johan Vestberg and attorneys Dennis Westermark and Tora Larusdottir.

The Disciplinary Committee's assessment

The Rule Book prescribes the following provisions relevant in this matter:

Section 4.2 (a): Publication of information according to this Chapter shall take place as soon as possible, i.e. in direct conjunction with the adoption of a resolution, an election having taken place, or a circumstance becoming known to the Company. The information must be correct, relevant, and reliable, and must not omit any fact which is likely to affect the assessment of such information.

Section 4.9 (a): Notices to attend general meetings shall be published in accordance with the provisions of this Chapter in conjunction with the issuance of such notice.

Section 4.11: A decision by the Company to introduce a share-based incentive program must be disclosed. The information about this must be sufficiently detailed to facilitate an assessment of the program's impact on the Company's earnings and financial position.

Section 4.12: Where the board of directors or the general meeting of shareholders of the Company has adopted a resolution in respect of the issuance of new shares or financial instruments with a right to subscribe for newly issued shares or where the board of directors decides to propose such a resolution to the general meeting of shareholders, the Company shall immediately publish the resolution, the reasons for the issue, the principal terms and conditions for the issue, as well as the party/parties to whom the issue is directed.

Section 2.2.4: The Issuer must possess the organization and staff required in order to comply with the requirements regarding disclosure of information to the market as set forth in Chapter 4.

Section 7.2.1 in Supplement B: The Exchange may impose the sanctions set out in (a) (i)-(iii) also in situations where an already listed company, despite fulfilling all admission requirements, is considered to damage public confidence in the Exchange, Nasdaq First North or the securities markets in general.

The July Rule Book prescribes the following provisions relevant in this matter:

Section 4.1: The Issuer shall disclose inside information in accordance with Article 17 of the Market Abuse Regulation, EU No 596/2014 (MAR).

The Exchange's comments to Section 4.1: Article 17 in MAR sets out the disclosure obligations in respect of inside information. The term inside information is defined in Article 7 in MAR. According to Article 17 the Issuer, may, on its own responsibility, delay disclosure to the public of inside information provided that all of the conditions set out in MAR are met. [...] The Issuer should ensure that all market participants have simultaneous access to any inside information about the Issuer. The Issuer should therefore ensure that inside information is treated confidentially and that no unauthorized party is given such information prior disclosure. [...] The information the Issuer discloses must reflect the Issuer's actual situation and may not be misleading or inaccurate in any manner. The information should contain facts which provide sufficient guidance to enable evaluation of such information and its effect on the price of the Issuer's financial instruments. [...] Corrections to errors in information disclosed by the Issuer itself need to be disclosed as soon as possible after the error has been noticed, unless the error is insignificant.

Section 4.2.1: Sections 4.2 and 4.4 contains certain disclosure requirements that go beyond the requirements in Article 17 of MAR. Consequently, the information set out in Sections 4.2 and 4.4 should always be disclosed irrespective of whether it constitutes inside information which require disclosure pursuant to MAR. Information to be disclosed in accordance with these Sections shall, regardless if considered inside information, be disclosed in the same manner as inside information in Section 4.1, unless otherwise stated.

Section 4.2.3 (a): Notices to attend general meetings shall be published in accordance with the provisions of this Section 4.2 in conjunction with the issuance of such notice.

Section 4.2.5: A decision by the Issuer to introduce a share-based incentive program must be disclosed. The information about this must be sufficiently detailed to facilitate an assessment of the program's impact on the Issuer's earnings and financial position.

Section 4.2.6: Where the board of directors or the general meeting of shareholders of the Issuer has adopted a resolution in respect of the issuance of new shares or financial instruments with a right to subscribe for newly issued shares or where the board of directors decides to propose such a resolution to the general meeting of shareholders, the Issuer shall immediately publish the resolution, the reasons for the issue, the principal terms and conditions for the issue, as well as the party/parties to whom the issue is directed.

Proposal for resolution to cancel warrants

The Exchange has argued: In section 7 of the agenda in the 2017 Notice, the board of directors proposed the shareholders' meeting to resolve to cancel 429,200 warrants, of which board members were entitled to acquire 175,000. The Company has stated that the reason for the proposal was that the board of directors' planned acquisition of the warrants would contravene AMN 2002:01. However, it did not appear from the 2017 Notice that the reason for the proposal was that the incentive program contravened good practices in the stock market. The information was thus not accurate, relevant and clear and Clavister violated section 2.3 in combination with sections 4.2.1 and 4.1 of the July Rule Book.

Clavister has argued: The 2017 Notice complies with the rules set forth in the Swedish Companies Act (2005:551) regarding notices of shareholders' meetings and the Company argues that the relationship between the Rule Book and the Swedish Companies Act is such that where a notice fulfills the notice requirements set forth in the Swedish Companies Act, the basic premise is that it need not contain further information. The Company also argues that the information contained in the notice was accurate, relevant and clear.

The Disciplinary Committee notes that the facts are, in principle, uncontested. Even if the 2017 Notice, as argued by Clavister, may be deemed to fulfill the rules set forth in the Swedish Companies Act, the background to the cancellation resolution was not clearly presented. In this respect, in the opinion of the Disciplinary Committee, Clavister must therefore be deemed to have violated section 4.2.3 in combination with sections 4.2.1 and 4.1 of the July Rule Book.

Correction of erroneous information in the press release

The Exchange has argued: It is proposed in item 10 on the agenda in the 2017 Notice that the shareholders' meeting authorize the board of directors to issue financial instruments, which the shareholders' meeting also did. In the press release from the shareholders' meeting, the Company stated that the board of directors intended to use the authorization for issues related to incentive programs. The 2017 Notice did not contain information regarding such a purpose for the authorization. The Company has stated that this was due to an error in the

drafting of the press release. The error cannot be deemed to be insignificant and no correction was disclosed. Clavister therefore violated section 4.2.3 in combination with sections 4.2.1 and 4.1 of the July Rule Book.

Clavister has argued: The Company's opinion is that the erroneous information contained in the press release was not of such a nature that it required a corrective press release.

It is uncontested that the press release contained erroneous information. The Disciplinary Committee shares the opinion of the Exchange that the error cannot be regarded as insignificant and Clavister must therefore be deemed to have violated the July Rule Book as alleged by the Exchange.

Proposal for resolution to ratify the board of directors' resolution to issue financial instruments

The Exchange has argued: The ratification of a number of resolutions to issue financial instruments was proposed in the 2017 Notice for the shareholders' meeting since the previous resolutions were stated to be invalid and it was stated to be in the interests of the shareholders to ratify the resolutions. The Company has stated that this interest was due to the complications which could have arisen if the resolutions were deemed to be invalid, but that the Company's opinion is that no invalid resolutions had been adopted. It was further stated in the notice that complete proposals for resolutions and other documents required by the Swedish Companies Act would be made available on the Company's website, which did not take place. Consequently, the information was not accurate, relevant and clear and the Company did not adequately inform the shareholders of the underlying reasons for the issues of financial instruments. The Exchange therefore is of the opinion that Clavister violated section 4.2.3 in combination with sections 4.2.1 and 4.1 as well as section 4.2.6 of the July Rule Book.

Clavister has argued: The Company has not adopted any invalid resolutions to issue financial instruments. There was thus no requirement for approval of the issues at the extraordinary general meeting of the shareholders. The reason that ratification of the resolutions was nonetheless addressed was the unclear wording in the resolution minutes and the unclear legal position regarding some of the resolutions. At the shareholders meeting it was consequently a question of ratification of already adopted and registered resolutions, not any new resolutions to issue financial instruments. The Company does not believe that the ambiguity in the notice in this respect is a violation of the Rule Book since the notice fulfills the requirements of the Swedish Companies Act. With respect to publications of documents on the website, the complete proposals were set forth in the notice but the Company agrees that the board of directors' report of significant events and the auditor's report were not made available.

The Rule Book states that a notice of a shareholders' meeting, in addition to complying with the rules of the Swedish Companies Act, must be accurate, relevant and clear. The Disciplinary Committee finds that the shareholders of Clavister cannot be deemed to have received adequate information on which to base a decision regarding the proposed resolution for ratification as set forth in the 2017 Notice and that Clavister thereby violated section 4.2.3 in combination with sections 4.2.1 and 4.1 of the July Rule Book.

Disclosure of the issues of financial instruments

The Exchange has argued: The Company resolved to carry out issues of financial instruments on six occasions without disclosing information about these. The Company violated section 4.2.6 of the July Rule Book and section 4.12 of the Rule Book in effect prior to July 3, 2016, as well as section 4.11 since one resolution covered the issuance of warrants within the scope of an incentive program.

Clavister has argued: Clavister admits that the Company did not make public the securities issue resolutions at the time they were adopted but believes that the resolution on August 20, 2014, which was conditional upon subsequent approval by the shareholders' meeting according to Chapter 14, Section 24 of the Swedish Companies Act, cannot be deemed to have been adopted until the time of the subsequent approval by the shareholders' meeting on April 28, 2015 when the resolution was also made public on the same day in the press release from the shareholders' meeting.

The Disciplinary Committee notes that it is uncontested that, on five occasions, the Company resolved to carry out issues of financial instruments without publishing information about these. With respect to the resolution adopted by the board of directors on August 20, 2014, the Company argues that this was not a securities issues resolution and that the securities issue resolution was not adopted until the board of directors' resolution was approved by the shareholders' meeting on April 28, 2015. However, the Rule Book states that all resolutions to issue financial instruments, as well as resolutions adopted by the board of directors to propose to the shareholders' meeting the adoption of a resolution to issue financial instruments, must be made public. In the opinion of the Disciplinary Committee, by not publishing the five resolution to issue financial instruments which were adopted prior to July 3, 2016, the Company violated section 4.12 of the Rule Book applicable at the time the resolutions were adopted and, by not publishing the sixth resolution to issue financial instruments adopted in 2017, violated section 4.2.6 of the July Rule Book. The Exchange has further argued that, by not publishing as soon as possible the resolution of August 20, 2014 which related to warrants for a planned incentive program, in addition to having violated section 4.12, the Company also violated section 4.11 of the applicable Rule Book. However, section 4.11 imposes a requirement of publication of resolutions regarding the implementation of incentive programs. The decision to implement the incentive program for which the warrants were used was not taken until the annual general meeting of the shareholders held on April 28, 2015, after which the resolution was made public through the

press release from the shareholders' meeting. Consequently, the Company cannot be deemed to have violated section 4.11 of the Rule Book in effect at the time.

The resolutions to issue financial instruments at the 2015 and 2016 annual general meetings

The Exchange has argued: The agendas in the notice of the annual general meeting of April 28, 2015 and in the notice of the annual general meeting of April 21, 2016 contained resolutions regarding the issue of warrants, where the company's board members were granted the right to participate in the same incentive program as employees but where information according to AMN 2002:01 was not presented. Clavister thus contravened good practices in the stock market. In addition, one of the resolutions to issue financial instruments was drafted as an authorization for the board of directors to issue financial instruments in the notice, the minutes of the shareholders' meeting, and the press release from the 2015 annual general meeting. The Company has stated that the proposal was drafted as a resolution and that the shareholders' meeting adopted such a resolution but that it was incorrectly noted in the minutes as an authorization. The Company thereby violated section 4.9 (a) in combination with section 4.2 (a) of the Rule Book in effect prior to July 3, 2016, and section 7.2.1 in Supplement B to the Rule Book becomes applicable.

Clavister has argued: It is correct that the Company did not separate the incentive programs between the board members and employees on three occasions. Naturally, the Company must comply with good practices in the stock market, but wishes nonetheless to point out that the requirement of good practices was not made clear in the Rule Book until the update on July 3, 2016 and that AMN 2002:01 does not impose any requirements in the respects now relevant. It is also correct that the Company's notice of the annual general meeting of April 28, 2015, the subsequent minutes from the annual general meeting, and the press release, contained certain ambiguities. However, the relevant matter is set forth in the notice which states the primary content of the proposal. It is therefore the Company's opinion that the notice fulfilled the requirements of the Swedish Companies Act and that there is limited scope for finding that the notice contravenes the Rule Book.

The Disciplinary Committee notes that it is uncontested that Clavister, on three occasions, granted the board members the right to participate in the same incentive program as employees, that the notices of the annual general meetings at which the resolutions regarding incentive programs were adopted did not contain the information prescribed in AMN 2002:01, and that the Company published the resolution to issue financial instruments as a resolution regarding authorization to issue financial instruments. The wording of AMN 2002:01, in relevant parts, does not directly set forth any absolute obligations which the Company must comply with in relation to good practices in the stock market. Even if the meaning of the statement can be interpreted as argued by the Exchange, it is not up to the Disciplinary Committee to interpret the statements of the Swedish Securities Council to the disadvantage of an issuer in the assessment of whether disciplinary sanctions should be ordered against the issuer. The information which the shareholders of Clavister received

prior to the resolutions now relevant cannot, however, be deemed to have satisfied the qualitative requirements for disclosure of information as set forth in the Rule Book. The Company therefore violated section 4.9 (a) in combination with section 4.2 (a) of the Rule Book in effect prior to July 3, 2016.

The requirement for sufficient capacity for disclosure of information

The Exchange has argued: In light of the background regarding the above-stated violations and the long period of time during which these took place, and taking into consideration previous regulatory violations for which the Company has been criticized by the Exchange, Clavister does not fulfill the requirement of sufficient capacity for disclosure of information according to section 2.2.4 of the Rule Book.

Clavister has argued: Despite the fact that the Company admits several of the deficiencies pointed out by the Exchange, the Company argues that it possessed sufficient routines and systems for disclosure of information. In addition, the Company has taken several measures in order to strengthen its capacity for disclosure of information.

The violations which the Disciplinary Committee has found Clavister guilty of demonstrate that the Company's organization and staffing with respect to the disclosure of information were deficient over a long period of time. It is apparent from the evidence that, on several occasions, the Company lacked insight into the question of the requirements imposed on a listed company for disclosure of information. The Company's owners, board of directors, and management have credibly demonstrated that they have commenced a reinforcement of the organization and staffing in this respect. However, it is the conclusion of the Disciplinary Committee that, at the time of the violations, Clavister did not fulfill the requirements set forth in section 2.2.4 of the Rule Book in effect at the time.

In summary, the Disciplinary Committee finds that Clavister, in several respects, violated the applicable Rule Books. The fact that the Company of its own has attempted to correct these violations and has prioritized disclosure of information through various measures is positive but cannot discharge the Company from its liability for defects which occurred. The Disciplinary Committee views the Company's violations very seriously and orders sanctions in the form of a fine corresponding to six times the annual fee.

On behalf of the Disciplinary Committee



Ann-Christine Lindeblad

Justice Ann-Christine Lindeblad, director Anders Oscarsson, director Carl-Johan Högbom, director Jack Junel, and *Advokat* Wilhelm Lüning participated in the committee's decision.

Secretary: *Jur.kand.* Erik Lidman