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NASDAQ STOCKHOLM'S

DECISION

10 February 2020

DISCIPLINARY COMMITTEE

2020:01

Nasdaq Stockholm

Bayn Europe AB (publ)

DECISION

The Disciplinary Committee orders Bayn Europe AB to pay a fine to Nasdaq Stockholm corresponding to four times the annual fee.

Motion

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

The Exchange has alleged that Bayn, on three occasions, violated Article 17(1) of Regulation (EU) No 596/2014 of the European Parliament and of the Council, and thereby section 4.1 of the Rule Book, and that the Company has demonstrated such defects in its capacity for disclosure of information that the Company, at the times of the violations, cannot be deemed to have satisfied the requirement in section 2.2.4 of the Rule Book applicable at that time. With reference to section 6.3 in Supplement B to the Rule Book, the Exchange has moved that the Disciplinary Committee evaluate the violations of the Rule Book and impose a suitable sanction.

Bayn has denied that the Company is guilty of the alleged violations of the Rule Book.

A meeting of the Disciplinary Committee took place in the matter on 22 October 2020 at which the Exchange was represented by Karin Ydén (Head of Issuer Surveillance), Andreas Blomquist (Senior Legal Counsel), Elias Skog (Senior Regulatory Compliance Specialist) and Tobias Ställborn (Regulatory Compliance Analyst). Bayn was represented by CEO Patrik Edström as well as *Advokat* Dennis Westermark and *Advokat* Ola Svanberg.

Reasons for the decision

The Rule Book

Section 2.3.5 (formerly section 2.2.4) of the Rule Book provides that an issuer must possess the organization and staff required in order to comply with the requirements regarding disclosure of information to the market.

Pursuant to section 4.1 of the Rule Book, an issuer shall make public as soon as possible inside information in accordance with Article 17 of Regulation (EU) No. 596/2014 of the European Parliament and of the Council (“MAR”). The guidance text for section 4.1 makes clear that inside information that is made public must reflect the issuer’s actual situation and may not be misleading or inaccurate in any manner. The most important information must be clearly presented at the beginning of the press release. Each press release must have a heading that summarizes its content.

According to Article 17.1 of the MAR, an issuer shall inform the public as soon as possible of inside information which directly concerns that issuer. The issuer must also ensure that inside information is published in a manner that informs the public of inside information which directly concerns that issuer and ensure that the inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public. The term “inside information” is defined in Article 7(1) of the MAR as information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments. Pursuant to Article 7(2) of the MAR, information is deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where this information is specific enough to enable conclusions to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments.

According to Article 2 of Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016 (the “Implementing Regulation”), public disclosure of inside information shall take place so that the information is disseminated to as wide a public as possible on a non-discriminatory basis. It shall also clearly identify that the information communicated is inside information.

Considerations

Press release of 17 September 2018

On 17 September 2018, the Company published a press release with the heading “Bayn’s chocolate without added sugar is ready for launch on the Chinese market”. The press release stated that Bayn had completed a successful production test with a local chocolate manufacturer, Cocoa-Linna Ltd., entailing that Cocoa-Linna could now produce chocolate in its facility with Bayn’s sweetening agent. After publication of the press release, the Company’s share price rose during the day by, at its peak, approximately 137 per cent. The

press release did not contain any reference that the information was the type of information as the Company was obligated to make public pursuant to the MAR.

The Exchange has argued: The Company's press release, containing information regarding the completed production test and that the Company's product was thereby ready for launch on the Chinese market, gives the impression of being of direct importance for the assessment of the Company's business activities. In its correspondence with the Exchange, the Company also explained that the approved production test was a fundamental condition for being able to launch the Company's product on the Chinese market, which strengthens the Exchange's opinion. Accordingly, in the Exchange's opinion, the information constitutes inside information. As a consequence of the Company not classifying the information in question as inside information, it was not handled, either up until the time of, or in conjunction with, disclosure to the public, in the manner prescribed in Article 17(1) of the MAR. Accordingly, the press release, in that context, also lacked reference to MAR which was misleading in and of itself, or at risk of being misleading. Accordingly, the Company acted in violation of Article 2 of the Implementing Regulation, Article 17(1) of the MAR, and section 4.1 of the Rule Book.

Bayn has argued: The content of the press release is that Cocoa-Linna, which carried out the production test, can now produce chocolate with Bayn's sweetening agent in its facility. Had the production test at Cocoa-Linna not been successful, Bayn could have easily turned to another Chinese chocolate manufacturer instead. Bayn is in cooperation with multiple chocolate manufacturers in different countries, and finding producers is not a problem in and of itself, notwithstanding that a production test is carried out in each production facility in order to ensure that Bayn's sweetening agent can be used in each producer's machines. Accordingly, that a chocolate manufacturer which can use Bayn's sweetening agent in its production facility was found is thus, admittedly, a condition for being able to launch the Company's product on the Chinese market, but it is not of such importance in the individual case that the information can be deemed to constitute inside information, since it does not have any actual significance in terms of Bayn's sales in China. In light of the fact that the press release now at issue did not contain information regarding any event or circumstance which has even anything remotely more than an extremely marginal significance to Bayn's business and prospects, Bayn disputes that the Company has committed any of the violations of the Rule Book as alleged by the Exchange.

The Disciplinary Committee observes that there does not appear to have been any uncertainty that the Company would have found another local producer if the production test at Cocoa-Linna had a negative outcome. It was also not generally thought to be noteworthy that the production test at Cocoa-Linna had a positive outcome. In light thereof, and in light of what emerged during the Disciplinary Committee's investigation, the information in the Company's press release of 17 September 2018 is not, in the Disciplinary Committee's opinion, to be regarded as inside information. The Disciplinary Committee does believe that the wording of the press release can be called into question since the information regarding the successful production test gave the impression of being of direct importance for the assessment of the Company's business activities. However, this is a question that is not included in the Exchange's statement of reprimand and which thus falls outside of the parameters of the Disciplinary Committee's assessment. The Disciplinary Committee's

assessment is thus that the absence of an MAR announcement in the press release does not, *per se*, constitute a violation of the MAR or the Rule Book in the manner claimed by the Exchange in its statement of reprimand.

Press release of 4 March 2019

On Friday, 1 March 2019, the Company's marketing director was notified that, according to a preliminary summary, the Company's incoming orders for the month of February were SEK 1.2 million, which would be a new record for incoming orders for a single month for Bayn, and the marketing director informed the Company's CEO of that fact. On Monday, 4 March, the Company verified the order volume and made public a press release at 3:40 PM, with information that the month of February 2019 resulted in a new record for orders. The press release contained a reference that the information was the type of information as the Company was obligated to make public pursuant to the MAR.

The Exchange has argued: Taking into consideration the information in the press release, the Exchange contacted the Company's CA and requested a report of the time when the inside information arose, and whether the Company decided on a postponed publication of the information. On the following day, the Exchange, via the CA, received information that an email message with a preliminary result in respect of incoming orders was sent from the Company's marketing director to the Company's CEO on Friday, 1 March 2019. The Exchange contacted the Company's CEO directly and, in that context, it was explained that the press release was not published until Monday because the CEO had not seen the press release in question. In addition, it was stated that the Company's CFO, who was also responsible for the publication of inside information, was off during the weekend and thus was not contacted. No decision regarding postponed publication of the information was taken. As the Exchange understands the Company's description of the chain of events, the Company, not later than during the weekend of 2-3 March 2019, made the determination that the information in question constituted inside information. Accordingly, the Company had an obligation, at the time in question, to make the information public as soon as possible or to take a position regarding whether the conditions existed to postpone the publication. The Company has not claimed that a decision to postpone publication was taken. Instead, the Company has explained that the decision to make the information public was not made until the next trading day, 4 March 2019. Accordingly, by virtue of its decision to hold off on publication of the information until the next trading day, 3:40 PM on 4 March 2019, the Company violated Article 17(1) of the MAR and section 4.1 of the Rule Book.

Bayn has argued: The Exchange has argued that the Company, not later than during the weekend of 2-3 March 2019, determined that the Company was in possession of inside information which was thereafter published in a press release on 4 March 2019. Bayn cannot stipulate to the Exchange's description of the chain of events. It was not until Monday, 4 March 2019, that the Company was able to verify that it was in possession of inside information and this inside information was thereafter made public as soon as possible.

The Disciplinary Committee observes that the Company made the determination that the information that the month of February 2019 resulted in a new record for incoming orders for Bayn constituted inside information. According to the Disciplinary Committee's

precedents, the Disciplinary Committee therefore bases its assessment on the fact that the information at issue constituted inside information, see, e.g. Disciplinary Committee Opinions 2019:01 and 2018:05. The Company's marketing director was informed of the information now at issue on 1 March 2019, and at that time also notified the CEO of the order volume. The Company has asserted that it did not make public the information now at issue until late in the afternoon on the following Monday because the Company needed to verify that the information was correct. The Disciplinary Committee observes, however, that the only item which the Company needed to verify in this context was incoming orders. In light of the fact that the Company's sales were very low and that the Company had a relatively small number of orders each month, which was also the case for the month now at issue, the Disciplinary Committee does not find it credible that the Company needed so much time to verify the information that it could not be made public earlier than 3:40 PM on 4 March 2019. Accordingly the Company did not make the information public as soon as possible in accordance with Article 17(1) of the MAR and thus violated section 4.1 of the Rule Book.

Press release of 10 January 2020

On 10 January 2020, the Company published a press release entitled "Bayn Europe AB acquires Pändy Foods AB and merges the businesses to form a leading Food Tech group". The first paragraph of the press release then stated that "Bayn Europe AB and Pändy Foods AB have signed a Letter of Intent that Bayn will acquire Pändy with the intention of creating a fast-growing and strong international Food Tech group. The last paragraph of the press release stated, in closing, that the acquisition "of Pändy Foods AB is subject to a customary due diligence process and is conditional on a resolution of Bayn's general meeting before the parties reach a binding agreement. The process is beginning immediately and is estimated to be completed during the month of January. Thereafter, a final agreement containing the terms and conditions of the acquisition will be signed, and the acquisition is then planned to be carried out during the first quarter of 2020."

The Exchange has argued: Both the title and introduction of the press release were intended to give the reader the erroneous impression that the Company had already entered into an agreement regarding the acquisition of Pändy Foods AB. Although a continued reading of the press release briefly reveals that the Company had executed a Letter of Intent in respect of such an acquisition, no additional information regarding the meaning of this letter of intent, or where the Company actually was in the acquisition process, was provided until the final paragraph of the press release. Before that, the press release contained a detailed presentation of Pändy Foods AB, together with statements from each company's CEO which, in the Exchange's opinion, were worded such that they may be assumed to have enhanced the reader's perception that a purchase and sale agreement had already been entered into or was only a formality. The press release thus did not satisfy the requirement that inside information be made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public. Accordingly, by means of the publication, the Company violated Article 17 of the MAR and, consequently, section 4.1 of the Rule Book.

The Company has argued: The Company's opinion is that the content of the press release is exhaustive and entails that Bayn has fulfilled its obligation to publish inside information. The Company agrees, however, that the heading of the announcement should have been clearer, but believes that the potential harm from the wording of the heading may be deemed to have been limited, taking into consideration the information in the press release in general, as well as the fact that the wording of the press release is consistent with market practice.

The Disciplinary Committee observes that both the heading and the introduction of the press release give a misleading impression of how far the process of acquiring Pändy Foods had progressed, and that the press release did not specify, in detail, the significance of the Letter of Intent which the Company had signed with Pändy Foods AB. The information in the press release was therefore misleading and did not make possible a complete and correct assessment of the significance of the information for the Company. Since the information regarding the acquisition constitutes inside information, the Company thus violated Article 17(1) of the MAR as well as section 4.1 of the Rule Book.

Capacity for disclosure of information

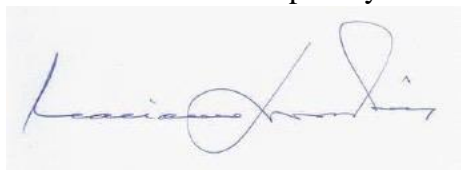
The Exchange has argued: Through the violations, the Company has demonstrated such a lack of capacity for disclosure of information that the Company, at the times of the violations in question, cannot be deemed to have satisfied the requirement in section 2.3.5 of the Rule Book.

The Company has argued: Since Bayn disputes that the Company committed a breach in respect of its disclosure of information, the Company also disputes that Bayn lacked the capacity to disclose information to the market in accordance with the Rule Book.

The Disciplinary Committee observes that the shortcomings in the Company's disclosure of information which have come to light in the Disciplinary Committee's investigation, insofar as they refer to three of the violations of the Rule Book now alleged by the Exchange, demonstrate that the Company's capacity in respect of the disclosure of information during the period now at issue was lacking. In that context, the Disciplinary Committee takes notice of the fact that the Company's disclosure of information was misleading. Bayn has thus not satisfied the requirements which follow from section 2.3.5 (formerly section 2.2.4) of the Rule Book at the time of the violations now at issue here.

In summary, the Disciplinary Committee finds that Bayn violated sections 4.1 and 2.3.5 of the Rule Book on two occasions. The Disciplinary Committee regards the violations as serious and establishes the sanction as a fine corresponding to four times the annual fee.

On behalf of the Disciplinary Committee,

A handwritten signature in blue ink, appearing to read 'Marianne Lundius', is shown within a light gray rectangular box.

Marianne Lundius

Former Justice Marianne Lundius, MBA Ragnar Boman, authorised public accountant Magnus Svensson Henryson, company director Carl-Johan Högbom, and *Advokat* Patrik Marcellius participated in the Committee's decision.

Secretary: *Jur. kand.* Erik Lidman