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**NASDAQ STOCKHOLM'S**

**DECISION**

**11 August 2020**

**DISCIPLINARY COMMITTEE**

**2020:08**

Nasdaq Stockholm

Northbaze Group AB

## **DECISION**

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

## **Motion**

The shares in Northbaze Group AB (formerly Jays) ("Northbaze" 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 Northbaze violated section 4.1 of the Rule Book by failing, on two occasions, to publish press releases correctly, by failing to make press releases containing inside information available on the Company's website, and by not giving users of the Company's website the possibility to locate disclosed inside information in an easily identifiable section of the website. In addition, the Exchange has alleged that the Company violated section 4.2.3 (b) in combination with sections 4.2.1 and 4.1 of the Rule Book by failing to have published the press release from the annual general meeting held on 27 May 2020 as soon as possible.

With reference to section 6.3 in Supplement B to the Rule Book, the Exchange has moved that the Disciplinary Committee evaluate the alleged violations of the Rule Book and impose a reasonable sanction.

Northbaze has admitted that the Company violated the Rule Book by publishing a press release containing inside information without necessary reference to the fact that the information in the press release contained inside information and by not having made the press release containing inside information available on the Company's website, as well as by not having published the press release from the 27 May 2020 annual general meeting as soon

as possible. Northbaze has otherwise denied that the Company is guilty of the alleged violations of the Rule Book.

Neither of the parties has requested an oral hearing. The Disciplinary Committee has reviewed the documents in the matter.

## **Reasons for the decision**

### The Rule Book

Pursuant to section 4.1 of the Rule Book, an issuer shall disclose inside information in accordance with Article 17 of Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 (“MAR”).

Article 17 of the MAR provides that an issuer shall ensure that the inside information is made public in a manner which enables fast access and an opportunity to make a complete, correct and timely assessment of it by the public. For a period of at least five years, the issuer shall post on its website and cause to be available all inside information that it is obligated to make public.

The guidance text for section 4.1 of the Rule Book provides that inside information that the issuer discloses must reflect the issuer’s actual situation and may not be misleading or inaccurate. The information must be sufficiently detailed to allow for an evaluation of its effect on the price of the issuer’s financial instruments. The omission of information may also result in the disclosure of information by the issuer being inaccurate or misleading. The guidance text also states that the issuer cannot evade its obligation to disclose inside information by entering into an agreement with another party entailing that specific information, or details in such information, may not be disclosed by the issuer.

Pursuant to Article 2 of Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016 (the “Implementing Regulation”), the issuer’s publication of inside information must clearly identify that the information communicated is inside information.

Pursuant to Article 3 of the Implementing Regulation, a user must be able to locate the information in an easily identifiable section of the issuer's website.

Pursuant to section 4.2.3 (b) of the Rule Book, following a general meeting of shareholders, the issuer must disclose information about any resolutions adopted by the general meeting that are not insignificant. Section 4.2.1 of the Rule Book, in combination with section 4.1 of the Rule Book, provide that, with regards to time and method, an issuer’s disclosure of resolutions adopted by the general meeting of shareholders shall take place in the same manner as a disclosure of inside information. The guidance text for section 4.2.3 of the Rule Book also clarifies that as soon as possible after the close of the general meeting of shareholders, the issuer shall disclose information about any resolutions adopted by the general meeting that are not insignificant.

### Considerations

#### *The press releases of 7 February 2019*

On 7 February 2019 at 1:30 PM, Northbaze published a press release, “Jays and MegaFon in Russia enter into an agreement with an initial order value of MSEK 11.1”, with information that the Company had received an order from MegaFon, Russia’s second-largest mobile telephone operator and third-largest telephone operator (Press Release 1”). The press release in question did not contain any reference to the fact that the information was the type of information which the Company was obligated to make public pursuant to the MAR. On the same day, at approximately 4:10 PM, the Company published an additional press release “Correction - Lack of reference to MAR - Jays and leading retailer in Russia enter into an agreement with an initial order value of MSEK 11.1” (“Press Release 2”). The press release

contained essentially the same information as the previously published press release but was modified such that the other party to the agreement, MegaFon, was no longer identified by name or described in detail. Instead, the other party is only described briefly as one of Russia's largest retailers. The Company's modification was made due to the fact that the party contracting with the Company had threatened the Company with cancellation of the agreement unless the Company removed the contracting party's identity from the press release. The press release contained a reference that the relevant information was of the type that the Company was obligated to make public pursuant to the MAR. Thereafter, the Company removed the press releases from the Company's website; they were, however, again made available some time later on the website.

*The Exchange has argued:* Press Release 1 did not contain any disclosure that the information contained in the press release constituted inside information. By not including such a disclosure in Press Release 1, the Company violated Article 2 of the Implementing Regulation. The Exchange further observes that Press Release 2, unlike Press Release 1, did not include the other party's identity or detailed information about the other party. A disclosure of inside information to the effect that an issuer has entered into an agreement must, as a baseline, contain information about the identity of the relevant other party to the agreement. The Exchange understands that it is undisputed that the detailed information about the Company's contracting party which was included in Press Release 1 was of significance for the evaluation of the importance of the agreement for the Company. By virtue of the fact that Press Release 2 excluded information regarding the relevant contracting party, the Company has thus failed to comply with the requirement set forth in Article 17(1) of the MAR that a disclosure of inside information must enable a complete and correct assessment of it. Read in light of Press Release 1, Press Release 2 - to the contrary - runs the risk of being misleading to the investors since it almost gives the impression that the other contracting party in question was not relevant. The Exchange further observes that the above-mentioned press releases were not available on the Company's website for a period of time and that the Company thereupon did not cause inside information to be available in the manner prescribed by Article 17(1) of the MAR.

*The Company has argued:* Northbaze concedes that the Company violated the Rule Book by not including a reference to the MAR in Press Release 1 but is of the opinion that the violation must be regarded as minor since the press release was distributed in the correct channels and the defect was quickly rectified.

In relation to the other alleged breach, that the Company violated Article 17 of the MAR by not stating the identity of the Russian operator in Press Release 2, Northbaze does not share the Exchange's opinion. Information was provided in Press Release 2 that the customer was one of Russia's largest retailers, which would sell Jays headphones with mobile telephones through a nationwide campaign. These circumstances limit the identity of the other party to what is, from Northbaze's perspective, a limited number of equivalent operators and electronics chains. In addition, information was provided in Press Release 2 regarding the order value, the period of time during which the deliveries would take place, that Northbaze was of the opinion that new orders could come from the Russian operator, that Northbaze had won the order in stiff competition with other suppliers, and that Northbaze's Jays Headphones trade mark would be given beneficial marketing through the nationwide campaign in Russia. Taken as a whole, Northbaze believes that Press Release 2 contained all inside information associated with the order.

In relation to the third violation alleged by the Exchange, that the press releases were not available on the Company's website for some time, it is clear that Northbaze, in its contractual relationship with the Exchange, did not have express support for removing a published press release from the Company's website. In the case at hand, there are, however, strong arguments to support the proposition that the Company found itself in a situation which justifies not imposing sanctions on the Company for its actions. Since the Russian operator made it clear that the order would be annulled unless Northbaze removed the original press release, which the other party was not entitled to do under the terms of the agreement with Northbaze, Northbaze is of the opinion that the Company encountered an obstacle in performing the Company's obligation pursuant to the rules for issuers, which could only be overcome if the Company made a sacrifice which is not reasonable in light of the Exchange's interest in Northbaze performing the above-mentioned obligation. Moreover, the fact that the Russian operator's identity is not to be regarded as inside information should be weighed into the assessment. Northbaze thus believes that there is support for discharging the Company from the above-mentioned obligation under the Rule Book in this very special case.

*The Disciplinary Committee observes* that it is undisputed that the Company violated the Rule Book by failing to include a reference to the MAR in Press Release 1. In respect of the other alleged violation, that the Company violated Article 17 of the MAR by not stating the identity of the Russian operator in Press Release 2, the Disciplinary Committee observes that Press Release 2 stated that it was a correction of Press Release 1 since it did not have a necessary reference to the MAR. In the Disciplinary Committee's opinion, such a modification of the substantive content of the original press release in connection with such a correction was likely to mislead the market. The Company therefore violated Article 17 of the MAR as well as section 4.1 of the Rule Book. In respect of the third violation alleged by the Exchange, that the Company's press releases were not available on the Company's website for some time, the Company has admitted that it violated the Rule Book but argued that the reasons for doing so were such that the Company should not be subject to disciplinary sanctions for this. However, the Disciplinary Committee believes that this violation as well was likely to mislead the market since there was no information regarding the relevant order on the Company's website for an extended period of time. The violation must thus be taken into consideration in conjunction with the determination regarding sanctions.

#### *The organisation of the Company's website*

On 3 October 2019, the Exchange received information that it was not possible to differentiate among the press releases that the Company made available on its website in respect of which press releases were regulatory and which were non-regulatory. On 16 December 2019, the Exchange notified the Company's CA that this shortcoming in the website's functionality needed to be rectified immediately, and the Company notified the Exchange that it was completed on 24 January 2020.

*The Exchange has argued:* During a certain time, there was no possibility for a user of the Company's website to distinguish between regulatory and non-regulatory disclosures and, as a consequence, a user could not locate inside information in an easily identifiable section of the Company's website. The Company thereby violated section 3 of the Implementing Regulation.

*The Company has argued:* Northbaze understands that the Exchange is alleging that the Company violated Article 3(1) b) of the Implementing Regulation through the Company, up

to and including January 2020, making available on the Investor Relations section of its website all of the Company's press releases under a tab labelled *Press releases* where there was no possibility to sort by regulatory press releases - i.e. all press releases which the Company is obligated to publish pursuant to the MAR and the rules for issuers - and non-regulatory press releases. Northbaze disputes that Article 3(1) b) of the Implementing Regulation has the import alleged by the Exchange. In the original proposal from ESMA for the provision in question, it was prescribed that the issuer would keep all disclosed inside information available in a separate section of the website, for example an investor relations section, which could only contain disclosed inside information and no other disclosed information. Following objections in the course of the public consultation procedure, this requirement was, however, deleted and ESMA instead presented a proposal to the commission entailing that it would be sufficient for the inside information to be on an easily identifiable section of the website. The reason for the modification was the opinion that, in light of standard practice prevailing at the time, there was no reason for preventing issuers from keeping all communication with investors available on a single section of the issuer's website. According to ESMA, the current wording means that inside information must be "easily located and distinct from marketing materials". Northbaze believes that the Company has kept disclosed inside information available on the Company's website in accordance with the regulations of the MAR; the information has been easy to find and separated from marketing material.

*The Disciplinary Committee observes* that Article 17(1) of the MAR requires that for a period of at least five years, an issuer must post on its website and make available all inside information that it is obligated to publish, and that Article 3 of the Implementing Regulation requires, *inter alia*, that an issuer's website must be designed so that users can locate inside information in an easily identifiable section of the website. The design of the Company's website during the time in question meant that the Company did not make any distinction between press releases that the Company was obligated to disclose and those press releases that the Company was not obligated to disclose. In the Disciplinary Committee's opinion, such design of the website cannot be deemed to meet the requirements stated above, even when interpreted in light of the statements by ESMA to which the Company makes reference. Accordingly, the Company violated Article 17(1) of the MAR in combination with Article 3 of the Implementing Regulation, and thereby section 4.1 of the Rule Book.

*The press release from the annual general meeting of shareholders held on 27 May 2020*

The Company's 2020 annual general meeting was held on 27 May 2020 at 2 PM. The press release from the annual general meeting of shareholders was published at 8:30 AM on 28 May.

*The Exchange has argued:* The issuer's obligation to disclose a press release from the annual general meeting of shareholders in accordance with the Rule Book is foreseeable and such a disclosure can thus also be prepared before the relevant general meeting of shareholders is held. In light of the information submitted, and since the Company did not publish a press release from its annual general meeting of shareholders after it was closed on 27 May, but instead published it during the morning of 28 May, the Exchange is of the opinion that it did not take place as soon as possible. The Company thus violated section 4.2.3 (b) in combination with sections 4.2.1 and 4.1 of the Rule Book.

*The Company has argued:* The Company admits the violation of the Rule Book alleged by the Exchange.

*The Disciplinary Committee observes* that it is undisputed that the Company violated section 4.2.3 (b) in combination with sections 4.2.1 and 4.1 of the Rule Book by failing to have published the press release from the annual general meeting of shareholders held on 27 May 2020 as soon as possible.

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In summary, the Disciplinary Committee finds that Northbaze violated the Rule Book in several respects. In relation to the Company's violations of the Rule Book associated with Press Releases 1 and 2, the Disciplinary Committee has some understanding for the difficult situation in which the Company found itself but, at the same time, takes a very serious view of the violations since the Company's disclosure of information in connection with the publications was likely to mislead the market. The Disciplinary Committee establishes the sanction as a fine corresponding to six 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, Justice Ann-Christine Lindeblad, former authorised public accountant Svante Forsberg, company director Carl Johan Högbom, and *Advokat* Patrik Marcelius participated in the committee's decision.

Secretary: Erik Lidman, J.D.