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**Nasdaq STOCKHOLM'S**

**DECISION**

**8 July 2021**

**DISCIPLINARY COMMITTEE**

**2021:05**

Nasdaq Stockholm

Amasten Fastighets AB

## **DECISION**

The Disciplinary Committee orders Amasten Fastighets AB to pay a fine to Nasdaq Stockholm in the amount of SEK 1,000,000.

### **Motion**

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

The Exchange has argued that the Company violated section II.3 in combination with section I.4 of the Takeover Rules of Nasdaq Stockholm ("Takeover Rules") and section 3.1.1 of the Rule Book. With reference to section VI of the Takeover Rules and section 6.3 of Supplement B of the Rule Book, the Exchange has moved that the Disciplinary Committee evaluate the alleged violations of the Takeover Rules and impose a reasonable sanction.

Amasten has admitted the violations of the Takeover Rules and 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 II.3 of the Takeover Rules of Nasdaq Stockholm ("Takeover Rules"), anyone who has made the decision to make a public tender offer must, as soon as possible, make public the decision through a press release containing the information set forth in detail in that section. According to section I.4 of the Takeover Rules, the information based on a planned offer or an offer has been made must be made public so that the information becomes available to the general public in a non-discriminatory manner.

In the comments to section I.4 of the Takeover Rules, it is made clear that information which must be made public through a press release, for example an offer press release according to section II.3 of the Takeover Rules, must be given in the press release itself. It is not sufficient that the information is found in an appended document or can be obtained via a link in the press release. According to section 3 of Appendix F of the Rule Book, an issuer whose shares are listed on Nasdaq First North Premier Growth Market must apply the dissemination of information rules which apply to companies whose shares are admitted for trading on the regulated market Nasdaq Stockholm.

According to section VI of the Takeover Rules, if a tenderer circumvents or violates the Takeover Rules or the Swedish Securities Council's interpretation or application of the rules, the disciplinary committee may impose a separate fine on the tenderer. The comments to the provision state that the rules regarding sanctions only apply to tenderers and apply equally regardless of whether or not the tenderer is a company listed on the Exchange, which entails that the sanctions rules in the Exchange's Rule Book for issuers are not applicable if a listed company violates the takeover rules.

Pursuant to section 3.1.1 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"). Pursuant to Article 17 of the MAR, the issuer shall inform the public as soon as possible of inside information which directly concerns that issuer. The inside information must be made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public. Pursuant to Article 2 of Commission Implementing Regulation (EU) No. 2016/1055 of 29 June 2016 (the "Implementing Regulation"), such public disclosure of inside information shall take place using technical means that ensure that the information is disseminated to as wide a public as possible on a non-discriminatory basis.

### Considerations

Due to the planned public tender offer to the shareholders of SSM Holding AB (publ) ("SSM"), Amasten submitted to the Exchange on 13 October 2020 an undertaking to comply with the Takeover Rules. At 7:30 AM on 14 October 2020, Amasten published a press release containing information regarding the public tender offer. The press release, with respect to the tender offer as such, only contained a hyperlink through which it was possible to obtain a press release on the Company's website. The press release also contained a reference that the information was of the type that the Company was obligated to make public pursuant to the MAR. Following a request by the Exchange, the Company published a new press release on the same day at 4:10 PM, this time including the information which was contained in the press release on the Company's website.

*The Exchange has argued:* The Exchange notes that the Company's press release on the morning of 14 October 2020 only contained information that the Company had made a public tender offer to the shareholders of SSM and otherwise referred to the Company's website for further information. Since further information regarding the public tender offer was thus not included in the press release, but instead was provided on the Company's website, this information was made available to the public in a discriminatory manner. The Company thus violated section II.3 in combination with section I.4 of the Takeover Rules. Since the information in question constituted inside information, the Company also violated article 17

of MAR and article 2 of the Implementing Regulation and the obligation prescribed therein to make public such information in a nondiscriminatory manner. The Company thereby also violated section 3.1.1 of the Rule Book. The Exchange wishes to further emphasize that the comments to the sanctions section of the Takeover Rules state that these sanctions provisions must be applied exclusively upon the termination of the sanctions for violations of the Takeover Rules. This, however, naturally does not prevent the issuer being sanctioned for violations of another applicable regulatory framework – in this case the Rule Book – according to the provisions in this other regulatory framework.

*The Company has argued:* Due to an administrative mistake, the abbreviated press release was made public instead of the complete tender offer press release and the Company admits that Amasten thereby breached the Takeover Rules and the Rule Book. Amasten would, however, like the disciplinary committee take into consideration the following in its evaluation. 1) even if it was the abbreviated press release which was made public, the full tender offer press release was immediately picked up by news agencies and reflected in the share prices of both the Company and the target company when trading commenced. The Company's violations thus did not lead to any effects on trading. 2) the particular procedure which led to the administrative mistake in the publication was intended to lower the Company's risk exposure in relation to foreign securities legislation. 3) the publication did not relate to a customary business transaction or financial report but rather a transaction which the Company very seldom participates in. The procedure is therefore not representative of the Company or the routines for the dissemination of information which the Company applies. The Company does not possess its own expertise or experience with respect to the publication of public tender offers and must instead rely on its advisors' instructions for the publication. The Company carried out thorough preparations prior to the publication of the offer, including retaining financial and legal advisors well acquainted with the Swedish securities market and its regulatory structure. Amasten also notes that the comments to section VI of the Takeover Rules state that "The rules regarding sanctions only apply to tenderers and apply equally regardless of whether or not the tenderer is a company listed on the Exchange. This means that the sanctions rules in the Exchange's regulatory framework for issuers is not applicable if a listed company violates the takeover rules", which according to Amasten's interpretation means that sanctions cannot be levied under both the Takeover Rules and the Rule Book.

*The Disciplinary Committee observes* that it is undisputed that the Company violated both the Takeover Rules as well as the Rule Book. The Disciplinary Committee holds that the violations of both of the regulatory schemes are serious and therefore sanctions must be levied. The question is thus whether sanctions are to be levied according to both of the regulatory schemes.

The comments to section VI of the Takeover Rules state that the sanctions rules in the Rule Book are not applicable when a listed company violates the Takeover Rules in its capacity as a tenderer. In the instant case, through the drafting of the press release of 14 October 2020, the Company did indeed violate both the Rule Book as well as the Takeover Rules. Since both of the violations relate to the same action, however, in line with the comments, a fee is only payable according to section VI of the Takeover Rules.

According to section VI of the Takeover Rules, the specific fine for violations of the rules is payable in a minimum amount of SEK 50,000 and a maximum amount of SEK 500,000,000. In light of the fact that Amasten's violation of the Takeover Rules cannot be deemed to have entailed any serious damage to the market and that Amasten published a correctly drafted press release on the same day, the disciplinary committee sets the fine at SEK 1,000,000.

On behalf of the Disciplinary Committee,

A handwritten signature in blue ink, appearing to read 'Marianne Lundius', with a large loop at the end of the name.

Marianne Lundius

Former Justice Marianne Lundius, justice Petter Asp, former authorised public accountant Svante Forsberg, company director Carl Johan Högbom, and company director Jack Junel, participated in the Committee's decision.

Secretary: Erik Lidman, J.D.