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Nasdaq STOCKHOLM'S	DECISION	23 November 2022
DISCIPLINARY COMMITTEE	2022:08	

Nasdaq Stockholm

Brighter AB (publ)

DECISION

The Disciplinary Committee orders Brighter AB (publ) to pay a fine to Nasdaq Stockholm corresponding to eight times the annual fee.

Motion

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

The Exchange has argued that Brighter repeatedly violated the Rule Book by failing to publish insider information in the correct manner and by holding the general meeting of shareholders too late.

Brighter has stipulated to the facts in the case.

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

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Reasons for the decision

The Rule Book

Pursuant to section 4.1 of the Rule Book in force at the time, 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. Insider information must be published in a manner which enables complete, correct, and timely assessment of the information by the public.

The guidance text for section 4.1 in the Rule Books makes clear that inside information that is made public by the issuer may not be misleading or inaccurate in any manner.

According to section 1.3 of the Rule Book, the issuer must comply with the law applicable to the issuer.

According to Chapter 7, section 10 of the Swedish Companies Act (2005:551), a limited liability company must hold an annual general meeting within six months of the end of each financial year.

Considerations

Press release regarding distribution agreement

On November 30, 2020, the Company published two press releases with information that the Company signed five-year distribution agreements in Nigeria and Ghana. Both press releases contained a reference that the information in the press releases was of the type that the Company was obligated to make public pursuant to the MAR. The press releases contained, *inter alia*, information that the agreed minimum order volume during the first 12 months corresponded to an estimated total revenue of approximately EUR 9.4 million, and that the Company received first orders with a total value of approximately EUR 3.5 million in connection with the signing of the agreements. It was also stated that the parties agreed on an increasing minimum order volume during each year, where year five of the agreement alone corresponds to an order volume of a total of 254,000 subscriptions with an estimated revenue of approximately EUR 182 million. It was further stated that there were no guarantees that these volumes would be reached, and that Brighter would receive advance payments of EUR 882,000 in connection with the orders and the remaining amount in connection with delivery. The agreements were stated to give the distributors exclusive rights to sell the relevant products in the respective countries for the duration of the agreements, and the market approval processes were stated to be estimated at approximately 9 and 6 months in the respective countries.

On January 5, 2021, the Company published a clarifying press release regarding the distribution agreements. This 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. The press release stated, *inter alia*, the following:

> In connection with market approvals, distributors will automatically order a minimum of 3,000 (Nigeria) and 1,500 (Ghana) subscriptions respectively and will be required to pre-pay the first 6 months of the 24-month subscription, of which 50% is payable immediately and the remaining amount on delivery. Brighter will also invoice in advance for each remaining 6-month interval for the remainder of the 24-month subscription. Subsequent orders during the term of the contract are also paid on a 6-month advance basis.

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> With respect to Nigeria, this entails an initial upfront payment of at least EUR 576,000 of which 50% is paid on order and 50% on delivery, followed by 3 corresponding advance payments at 6-month intervals to reach a total of at least EUR 2.3 million.
>
> For Ghana, this entails an initial upfront payment of at least EUR 306,000 of which 50% is paid on order and 50% on delivery, followed by 3 corresponding advance payments at 6-month intervals to reach a total of at least EUR 1.2 million.
>
> Completing the orders is subject to the approval of the local authorities and is formally executed in connection therewith.

The Exchange has argued: The Exchange has observed that the Company's disclosures on December 30, 2020, did not include any information at all that payment for initial orders received, as well as future orders, will be received in six-month intervals over the 24-month subscription periods. In this respect, the press releases only contained information that amounts remaining after advance payments would be received upon delivery. In this context, it is also observed that the press releases obviously contained incorrect information regarding the amounts to be received immediately in connection with the first orders as so-called advance payments. Read in light of the Company's supplementary press release, according to which all payments under the agreements constitute advance payments, in the opinion of the Exchange, there are reasons to question the Company's original terminology in this regard. Simply based on the above-mentioned facts - and thus not taking into account the questionable wording from the perspective of clarity with regard to necessary market approvals and prescribed minimum order volumes - it is the Exchange's assessment that the Company's press release on 30 December 2020 did not allow for a complete and correct assessment of the inside information in the way prescribed by Article 17 of the MAR. Consequently, the Company has also breached section 4.1 of the Rule Book.

The Company has argued: The Company believes that the first press releases fulfill the regulatory requirements for disclosure. However, after receiving queries from interested shareholders who pointed out that the purpose of the advance payment could be misinterpreted, the Company wanted to further clarify the information, which prompted the press release of 5 January 2021.

The Disciplinary Committee observes that the Company provided information on minimum order volumes and expected revenues in its press releases of 30 November 2020. The press releases did not include information on when the payments for these orders would be made. However, the Disciplinary Committee does not believe that this is information necessary to allow a complete and correct assessment of the significance of the information for the Company and its financial instruments, provided the payments are actually expected to be made under the agreement, which has not been called into question by the Exchange. The Company has therefore not infringed Article 17 of the MAR in this respect. However, the clarifying press release of 5 January 2021 states that "completing the orders is subject to the approval of the local authorities and is formally executed in connection therewith". This is not information that is reflected in the press releases of 30 November 2020, which only referred to the estimated time to regulatory approval, and not how these could affect the agreements described in the press releases. As the agreements are, according to the Company, subject to these regulatory approvals, this is the type of information that the Company should have included in the press releases of 30 November 2020 in order for them to allow a complete and

correct assessment of the information. The Company has therefore violated Article 17 of the MAR and thus section 4.1 of the Rule Book.

Publication by the Company of the terms and conditions of warrants

On 29 January 2021, Brighter published a press release with information that the Company resolved to carry out a rights issue of shares and warrants of series TO6. The press release stated, *inter alia*, the following method for determining the subscription price upon exercise of the warrants:

> Three (3) TO6 warrants are required to subscribe for one (1) new share at a subscription price equal to the volume weighted average price (VWAP) measured over the fifteen (15) trading day period ending two (2) business days prior to the start of the warrant subscription period, but not less than SEK 1.2 and not more than SEK 2.0.

The press release contained a reference that the information was of the type that the Company was obligated to make public pursuant to the MAR.

On 5 February, Brighter published a prospectus in connection with the rights issue. The prospectus repeated the same method for determining the subscription price upon exercise of the warrants. On 22 April 2021, the Exchange noted that the full terms and conditions of the warrants available on the Company's website instead, and thus in derogation of the above-mentioned published information, provided as follows with respect to the determination of the subscription price:

> Three (3) warrants shall carry the right to subscribe for one (1) new share in the Company at a subscription price corresponding to seventy (70%) percent of the volume weighted average price of the Company's share measured during the period of fifteen (15) trading days ending two (2) business days prior to the start of the warrant subscription period, but not less than SEK 1.20 and not more than SEK 2.00 per share.

After the Exchange contacted the Company's then Certified Adviser regarding this discrepancy, the Company published a press release later the same day containing information that the subscription price upon exercise of the Warrants would be correctly determined in the manner set forth in the terms and conditions, and that the Company's previously published information in this regard had therefore been incorrect.

The Exchange has argued: The Exchange has observed that the Company's initial disclosure of the terms and conditions of the warrants contained an immediate inaccuracy in such a key piece of information as the subscription price for exercise of the instruments. In view of the fact that the subscription price was in fact as much as thirty percent lower than that stated in the disclosure, this error must also be regarded as material. In light thereof, it is also the Exchange's assessment that the disclosure did not enable a complete and correct assessment of the inside information in question. Thus, the Company violated Article 17 of the MAR and consequently also section 4.1 of the Rule Book.

Brighter has argued: The description of the calculation of the subscription price in the press release of 29 January 2021, and in the subsequent prospectus, deviated from the terms and conditions of the Board's resolution to issue warrants and consequently also from the decision to issue warrants registered by the Swedish Companies Registration Office. The error is the result of a mistake. The Company considers this regrettable, but at the same time it is merely

a proofreading error. There are large amounts of text to be read in a short time for a transaction of the kind in question and despite a project organization, including a qualified financial advisor, established, *inter alia*, for this purpose, it was an oversight that the figure of 70 percent was missing.. When the error was eventually pointed out, an investigation was immediately launched with the Company's Certified Advisor, after which Brighter distributed a correction by press release.

The Disciplinary Committee concludes that the Company has assessed the information in question regarding the warrants as inside information, and the Disciplinary Committee, in accordance with its established practice, bases its assessment on this information. The original press release contained information on the subscription price that was directly inaccurate, which meant that the information in the press release did not allow for a complete and correct assessment of the significance of the inside information for the Company. Thus, the Company has violated Article 17 of the MAR and section 4.1 of the Rule Book. The fact that the Company characterizes the material error in the press release as "merely a proofreading error" does not excuse the violation.

Postponement of the Company's Annual General Meeting

On 15 June 2021, Brighter published a press release including information that the Company had decided to postpone its Annual General Meeting until 21 July 2021. On 21 July 2021, Brighter published a communiqué from the Annual General Meeting held on the same day.

The Exchange has argued: As the Company's 2021 Annual General Meeting was not held within six months of the end of the previous financial year, but only on 21 July 2021, the Company violated Chapter 7, section 10 of the Swedish Companies Act and, consequently, section 1.3 of the Rule Book. The fact that the Company's postponement of the Annual General Meeting was due to formal shortcomings in the Company's preparation of such does not, of course, change this assessment.

Brighter has argued: The Company would like to emphasize that the postponed Annual General Meeting was the result of the Company identifying formal deficiencies in the preparations - on the one hand, the annual report had been provided to the shareholders too late, and on the other hand, the postal voting form was missing directors who would be subject to a resolution regarding discharge from liability at the Annual General Meeting. This was announced in a press release on 16 June 2021. As the late submission of the annual report risked invalidating the resolutions of the Annual General Meeting, the Company had no choice but to cancel the convened Annual General Meeting and reconvene it on a date which unfortunately could not be earlier than six months after the end of the financial year. The Company can hardly be blamed for such decision, as the alternative would have been to hold an Annual General Meeting with resolutions that risked being declared invalid.

The Disciplinary Committee holds that it is undisputed that the Company's Annual General Meeting was not held within the time prescribed by the Swedish Companies Act. The Company thereby violated section 1.3 of the Rule Book. The fact that the background to the violation is that the Company did not provide the annual report to the shareholders in a timely manner and that the postal voting form was incorrectly designed makes, if anything, the current breach of the Rule Book more serious.

Disclosure by the Company of the form of employment of the CEO

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On 17 January 2022, Brighter published a press release entitled "Brighter extends the contract with Erik Lissner as acting CEO with an agreement on permanent employment from 16 June". The press release stated that the Company is extending its contract with Erik Lissner "as acting CEO of Brighter until 15 June 2022 and that a permanent employment agreement will take effect thereafter". The press release contained a reference that the information was of the type that the Company was obligated to make public pursuant to the MAR. On June 16, 2022, the Company issued a press release entitled "Brighter's agreement with Erik Lissner as permanent CEO is under negotiation and expected to be finalized by the end of June". It was evident from the press release that Erik Lissner, “[s]ince the contract negotiations had been postponed due to a heavy workload focused on the commercialization in Qatar, the Annual General Meeting and the ongoing subscription period", would continue as acting CEO of the Company "until the contract as permanent CEO is signed". On June 30, 2022, disclosed Brighter in a press release information that the Company "has agreed on a contract with Erik Lissner regarding his permanent role as CEO of Brighter" and that the agreed contract became effective on the same day.

The Exchange has argued: It is undisputed in the matter that at the time of the Company's announcement on 17 January 2022, there was no binding contract of permanent employment with Erik Lissner as CEO of the Company as per 16 June 2022. In light thereof and taking into account that the disclosure included information that Brighter extended the contract with Erik Lissner as acting CEO with an agreement of permanent employment from 16 June, it is the Exchange's assessment that this did not reflect the true circumstances in this regard. The disclosure therefore did not allow for a complete and correct assessment of the inside information in question as required by Article 17 of the MAR. Thus, the Company violated section 4.1 of the Rule Book.

Brighter has argued: Prior to the announcement in the press release of 17 January 2022, Brighter and Erik Lissner had negotiated to extend Erik Lissner's contract as acting CEO. In addition, between themselves, the parties had expressed their agreement that Mr. Lissner's appointment would be converted into a regular appointment after the expiry of the term of the acting appointment (but only after the parties had entered into a written employment contract). The main message of the press release of 17 January 2022 was the mutually expressed will of Brighter and Erik Lissner that Erik Lissner would continue as CEO of the Company. In retrospect, it can also be noted that exactly as announced in the press release of 17 January 2022, Erik Lissner continued as CEO of Brighter, a position which continued also beyond 15 June 2022 and which he still holds today. The only deviation from that which was explained in the press release of 17 January 2022 is that the transition between "acting" CEO and "permanent employment" was slightly delayed - a fact that Brighter also provided information on in the press release of 16 June 2022. Brighter believes that there was an agreement on future permanent employment for Erik Lissner at the time of the press release on January 17, 2022. The fact that the employment anticipated a written contract, which was still not signed at the time, is of insignificance. Even with a written contract in place, there would have been no guarantee that Erik Lissner would actually have been Brighter's CEO after 15 June 2022, or even up to including this date. The stock market is aware that an appointment as a CEO can be terminated quickly at the initiative of either party, regardless of the contractual situation. What constituted inside information at the time of the January 17, 2022 press release was the mutually expressed desire of the Company and Erik Lissner that Erik Lissner would continue as CEO of Brighter. In Brighter's view, this was communicated in a way that allowed a complete and correct assessment of the inside information in question.

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The Disciplinary Committee concludes that in this case it is undisputed that the information in the press release of 17 January 2022 constituted inside information. The press release contained the following wording: "Brighter extends the contract with Erik Lissner as acting CEO with a *permanent employment agreement* from 16 June", and that the Company has extended its contract with Erik Lissner "as acting CEO of Brighter until 15 June 2022 and that *a permanent employment agreement will take effect thereafter*". [Emphasis Added]. The Company has argued that this was intended to describe that "the parties (between themselves) expressed their agreement that Erik Lissner's appointment would change to a regular appointment after the expiry of the term of the acting appointment". However, the wording of the press release now quoted by the Committee gives a clear picture that a permanent employment agreement was in place between the parties, and that this would take effect after 15 June. In particular, the latter terminology (take effect) can hardly be considered compatible with a non-binding expression of will between the parties. The information contained in the press release was therefore not fair and did not allow for a complete and correct assessment of the inside information in question. Thus, the Company violated Article 17 of the MAR and section 4.1 of the Rule Book.

The Disciplinary Committee finds that the Company has repeatedly violated Article 17 of the MAR, and thus section 4.1 of the Rule Book, as well as section 1.3 of the Rule Book by holding the Annual General Meeting too late. The Disciplinary Committee finds that the violations are serious, and therefore a fine must be imposed as a penalty. In view of the repeated violations and the fact that the reasons for these appear to primarily be due to a failure in the capacity to disclose information on the part of the Company, the Disciplinary Committee sets the fee at eight times the annual fee.

On behalf of the Disciplinary Committee,

Marianne Lundius

Former Justice Marianne Lundius, former Authorized Public Accountant Svante Forsberg, company director Jack Junel, *Advokat* Wilhelm Lüning and *Advokat* Erik Sjöman participated in the Committee's decision.

Secretary: Associate professor Erik Lindman