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**Nasdaq STOCKHOLM'S**

**DECISION**

**14 March 2023**

**DISCIPLINARY COMMITTEE**

**2023:03**

Nasdaq Stockholm

AegirBio AB (publ)

## **DECISION**

The Disciplinary Committee orders AegirBio AB to pay a fine to Nasdaq Stockholm corresponding to eight times the annual fee.

### **Motion**

The shares in AegirBio AB (“AegirBio” or the “Company”) are admitted for trading on Nasdaq Stockholm’s (the “Exchange”) Nasdaq First North Growth Market trading platform. AegirBio 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 claimed that AegirBio has repeatedly and in various ways violated section 4.1 of the Rule Book, and that the Company has lacked the necessary capacity to provide information to the market in the manner prescribed in section 2.3.5 of the Rule Book. In light of this background, the Exchange has moved that the Disciplinary Committee evaluate the violations in question and order delisting of the Company's financial instruments from Nasdaq First North Growth Market.

AegirBio has contested the breaches 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 the inside information is to be 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.

Pursuant to Article 2.1 of Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016 (the "Implementing Regulation"), the issuer shall disclose inside information using technical means that ensure that the information is disseminated to as wide a public as possible on a non-discriminatory basis.

### Considerations

#### *Concerning the disclosure of information on distribution contracts and orders*

On 4 May 2021, AegirBio published a press release with information that the Company had signed an agreement with NowMed Sweden AB ("NowMed") for the distribution of the Company's COVID-19 tests (the "Distribution Agreement") and that the Company in this context had received an order of at least SEK 40 million. 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. During the relevant trading day, the Company's share price rose by more than 25 percent. On 11 June 2021, the Company published a press release with information on the sales of its COVID-19 tests. The press release stated, among other things, that the Company had started delivering products to its distributors two weeks ago, who in turn had started selling and delivering the products. On 25 June 2021, the Company published a press release with information that the Company, together with NowMed, had received a first trial order worth approximately SEK 100 million for delivery to Asia and that the Company expected to be able to deliver later in the summer. 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. During the relevant trading day, the Company's share price rose by more than 33 percent. On 9 July 2021, the Company published a press release with information that the Company together with NowMed received a first order worth more than SEK 400 million for delivery soon to Cambodia, Thailand, Laos, Vietnam and Singapore. 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. During the relevant trading day, the Company's share price rose by almost 38%. On 16 July 2021, the Company published a press release announcing that the Company had received a new large order for COVID-19 tests worth more than SEK 400 million for delivery to Vietnam during August to October. 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. During the relevant trading day, the Company's share price rose by more than 16 percent.

On 7 October 2021, SVT published a news article in which it could be read that several people connected to the freight company that NowMed hired for the transport of the Company's covid-19 tests had links to a suspected VAT fraud. On 25 October 2021, the Company issued a press release announcing that the Company had terminated its distribution agreement with NowMed, pursuant to a termination agreement (the "Termination Agreement"), and that the Company was working to transfer all orders from its local distributor in Asia to the Company itself instead. On 2 November 2021, the Company published a press release with information that the Company had taken over all existing

orders for export outside Sweden and that the Company was working to verify these in terms of order volumes, call-offs and delivery times through direct contact with distributors in Thailand and surrounding countries. On 9 February 2022, the Company published a press release stating that negotiations regarding the execution of previously announced orders for the Asian market were still ongoing.

*The Exchange has argued:* In relation to the now relevant orders, the Company has emphasized that NowMed was the Company's customer and that it was not up to the Company to investigate or ensure what conditions, if any, applied to NowMed's resale of the COVID-19 tests. The Company has argued that the orders from NowMed were not subject to any specific conditions that the Company needed to inform the market about, and that the Company's publication of the orders thus enabled a complete and correct assessment of them. The Exchange notes, however, that section 10.2 of the Company's Distribution Agreement with NowMed provided an obligation for the Company to, at the end of the fixed contractual period of six months and at the same price paid by NowMed, repurchase the COVID-19 tests that NowMed had not then resold to customers. The Company's ability to ultimately and sustainably monetize the orders in question has thus been entirely dependent on NowMed being able to resell the tests at the next stage in a short time. In this context, it is noted that the Company lacked insight into NowMed's resale and what conditions, if any, were imposed in connection with this; since the orders concerned a product that normally requires regulatory approvals to be sold to end customers, such a condition, for example, cannot have appeared foreign to the Company. In such circumstances, irrespective of the actual conditions of NowMed's resale, it must have been relevant for the market to be informed that - in the event that NowMed, as a result of such conditions, or for any other reason, did not proceed with the resale - the Company would have to repurchase the products from NowMed. As the Company did not - either at the time of the publication of the Distribution Agreement or in relation to any of the orders received thereunder - inform the market of the aforementioned contractual conditions, the Company cannot be considered to have enabled a complete and accurate assessment of the relevant inside information in the manner provided for in Article 17 of MAR. Thus, the Company violated section 4.1 of the Rule Book. The Company's inadequate disclosure of information about the Distribution Agreement and the orders under it, and the difficulties in correctly evaluating the risk that these would ultimately not be realized, must be assumed to have had a strong negative impact on the possibility of adequately pricing the Company's share; from the time the Company communicated the order in May 2021, the Company's share price rose until the end of July 2021 by approximately 500 percent, and then fell by approximately 85 percent until the end of October 2021.

*AegirBio has argued the following:* The Exchange assumes that there was a repurchase commitment for the Company in the Distribution Agreement, which the Company did not inform the market about. The Exchange's interpretation is that the repurchase commitment has also been extended to include all orders for the Swedish as well as the Asian market and that the Company should therefore have disclosed this commitment on each occasion the Company published information about new orders from NowMed. However, the repurchase commitment only applied to the original order.

*The Disciplinary Committee concludes* that the Exchange and the Company have different views on the meaning of the Company's repurchase obligation under the Distribution Agreement. However, it is undisputed that a repurchase obligation for the Company applied to the initial order with a value of SEK 40 million that the Company announced on 4 May 2021. The Company's press release did not contain information about this obligation, which, in the view of the Disciplinary Committee, can be considered to have been the type of

information required to enable a full and accurate assessment of the significance of the order in question for the Company and the value of its financial instruments. The disclosure was thus not made in the manner prescribed in Article 17 of MAR, and the Company thus violated section 4.1 of the Rule Book. However, it is not clear from the material submitted in the matter whether the repurchase obligation included the orders subsequently announced. Thus, the Disciplinary Committee has not been able to find a breach of the Rule Book in the way the Exchange has argued regarding the Company's disclosure of these orders, even though the press releases completely lacked information about the risks that the orders would not be fulfilled, which, given the circumstances, can also be assumed in advance not to have been insignificant.

### *Approval in Thailand*

On 10 September 2021, the Instagram account @viraspec\_thailand published a post informing that Viraspec, a saliva test for COVID-19 developed by AegirBio, has been approved for home use by the Thai Medicines Agency. At 12:49 the same day, Nyhetsbyrån Direkt published a news item entitled "Aegirbio: Viraspec approved for home use in Thailand - CEO". At 12:59 pm, an updated version of the above-mentioned news release was published, in which it was now possible to read in more detail that "The diagnostics company Aegirbio's saliva test for covid-19, Viraspec, has been approved for home use by the Medicines Agency in Thailand. This is stated by Aegirbio's CEO Martin Linde to Nyhetsbyrån Direkt. [...] Aegirbio's partner JP World Medical recently announced the approval for home use, and according to Martin Linde, Aegirbio is just about to do the same. "We are publishing information about it now," he says." At 1:07 pm, the Company issued a press release stating that the Company's saliva test has been approved for home use by the Thai equivalent of the US FDA. 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.

*The Exchange has argued:* The Exchange notes that the Company's then CEO, according to what is stated in Nyhetsbyrån Direkt's news piece, confirmed to the news agency and thus before the Company published the same information through a press release to the market, that the Company's saliva test for covid-19 was approved for home use by the pharmaceutical authority in Thailand. According to the Exchange, there is no reason to question the accuracy of this information from Nyhetsbyrån Direkt, and it is therefore the Exchange's assessment that the Company, through the confirmation to the news agency, made this inside information available in a discriminatory manner in violation of Article 17 of MAR and Article 2(1) of the Implementing Regulation. Thus, the Company also violated section 4.1 of the Rule Book.

*The Company has argued:* The news piece published at 12:59 pm contained information consistent with the Instagram post previously published by NowMed's distributor in Thailand. One should be able to rule out the possibility that the reporter coincidentally called the Company's CEO at this particular time in order to get a general status update on the FDA process in Thailand. It also seems unlikely that the Company's CEO, who at the time was working on publishing the now relevant inside information, would put the Rule Book and the work on the press release aside to be the first to tell the reporter that the Thai distributor had published information about the approval, as the text of the news piece suggests. The Company therefore did not violate section 4.1 of the Rule Book at the time in question.

The *Disciplinary Board* notes that it is undisputed that the information that the Company's saliva test was approved by the Thai Medicines Agency as a home test constituted inside

information. It is also clear that Nyhetsbyrån Direkt published this information before the Company published the information in the press release on 10 September at 1:07 p.m., and the Disciplinary Committee finds, based on what has been stated in the matter, that the information, as stated by Nyhetsbyrån Direkt, must have been received from the Company's CEO. Thus, the Company did not make the information public in accordance with 17 of MAR and Article 2(1) of the Implementing Regulation, and thus violated section 4.1 of the Rule Book.

*Concerning change to order made public on 4 May 2021*

On 4 May 2021, AegirBio published a press release with information that the Company had signed an agreement with NowMed for the distribution of the Company's COVID-19 tests and that the Company in this context had received an order of at least SEK 40 million on the Scandinavian market. 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 25 October 2021, the Company published a press release stating that the Company had terminated its distribution agreement with NowMed and was working to transfer all orders from its local distributor in Asia to the Company itself instead. 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.

*The Exchange has argued:* The Company has stated in contacts with the Exchange that the order of SEK 40 million for the Scandinavian market that the Company announced on 4 May 2021 could only be recognized as revenue at an amount of approximately SEK 11.9 million and that no further revenue from the order will be booked as the Company's agreement with NowMed was terminated on 25 October 2021 and NowMed was placed into bankruptcy on 29 April 2022. The Exchange understands this to mean that the termination of the Company's agreement with NowMed, made public through the Company's press release on 25 October 2021, had an immediate impact on the order in question. It is noted that this order was previously made public as inside information and that the termination meant that the majority of this order would not be recognized as revenue. In light of this background, and as the Company's announcement on 25 October 2021 did not include any further information on the consequences of the termination on this order, but only informed that the Company was working to transfer orders from the local distributor in Asia, it is the Exchange's conclusion that the announcement did not allow for a complete and correct assessment of the termination. Accordingly the Company violated Article 17 of the MAR and thus section 4.1 of the Rule Book.

*The Company has argued:* When published on 4 May 2021, the original order of one million products worth at least SEK 40 million for the Swedish market constituted inside information. At the time of the Termination Agreement on 25 October 2021, when the Company was about to enter into a direct relationship with NowMed's distributor and secure the possession of delivered goods not paid for by either NowMed or the local distributor, the situation was completely different. The remainder of the original Swedish delivery was at that time only a small part of the total deal with NowMed. Of the Swedish order of SEK 40 million, SEK 11.9 million was recognized as revenue. In addition, a further SEK 40 million was recognized as revenue from the sale of one million tests to NowMed that were subsequently delivered to Thailand. The remaining SEK 28.1 million of the Swedish order represented just under three percent of the total published order value of at least SEK 940 million. The Company did not believe that detailed information about the Swedish order constituted specific inside

information that needed to be disclosed beyond what was agreed in relation to the order value of SEK 900 million for the Asian market and the products delivered to Thailand. The press release contains clear information that the Company with immediate effect was also taking over the control of the ongoing business in Sweden and the contacts with potential customers in and outside Sweden. The Swedish order from 4 May 2021 was covered by this information.

The *Disciplinary Committee* notes that during the fall of 2021, significant uncertainty arose regarding the conditions for the completion of the Company's received orders with a total order value of SEK 900 million. It can be assumed that the uncertainty related to the recognition of these revenues. In light of this, the information that only a small part of the initial order of SEK 40 million could be recognized as revenue must be assumed to have been of importance for the assessment of the conditions for the Company's received orders to be completed and thus for the assessment of the value of the Company's financial instruments. The Company's press release on 25 October 2021 was thus not formulated in accordance with MAR and the Company thereby violated section 4.1 of the Rule Book.

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The Disciplinary Committee finds that on repeated occasions the Company violated Article 17 of the MAR and thus section 4.1 of the Rule Book. The Disciplinary Committee holds that the violations are serious, and therefore a fine shall be imposed as a sanction. 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 Board sets the fee at eight 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 blue rectangular box.

Marianne Lundius

The Committee's decision was taken by former Supreme Court Justice Marianne Lundius, Supreme Court Justice Petter Asp, former head of the Exchange Carl Johan Högbom, Advokat Patrik Marcelius and Advokat Erik Sjöman.

Secretary: Associate Professor Erik Lidman