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**NASDAQ STOCKHOLM'S**

**DECISION**

**8 December 2023**

**DISCIPLINARY COMMITTEE**

**2023:10**

Nasdaq Stockholm

Mavshack AB (publ)

## **DECISION**

The Disciplinary Committee orders Mavshack AB (publ) to pay a fine to Nasdaq Stockholm corresponding to ten annual fees.

## **Motion**

The shares in Mavshack AB (publ) ("Mavshack" or the "Company") are traded on the Nasdaq Stockholm (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 (the "Rule Book").

The Exchange has argued that the Company has repeatedly violated the Rule Book by failing to provide the Exchange with information in accordance with the Rule Book in due time, by failing to publish information in due time, and by violating good practice on the stock market.

The company has stipulated to the facts in the case.

A hearing in the matter was held before the Disciplinary Committee on 4 December 2023, at which the Exchange was represented by Head of Enforcement & Investigation Christine Malmberg and Peter Olivecrona, Lead Regulatory Compliance. Mavshack was represented by Chairman of the Board Andreas Borg, Director Thomas Edselius, and *Advokat* Jan Öhgren.

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## **Reasons for the decision**

### The Rule Book

Section 6.1.1 of the Rule Book provides that an issuer, upon request by the Exchange, shall supply the Exchange with any information it requires for the assessment or surveillance of the issuer.

Pursuant to section 4.2.3 (b) of the Rule Book, an Issuer shall disclose changes in its management. Section 4.2.1 (a) of the Rule Book, in combination with section 4.1.1 of the Rule Book, provide that, with regards to timing and methodology, such disclosure shall take place in the same manner as a disclosure of inside information.

Pursuant to Article 17 of Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014, (“MAR”), the issuer shall inform the public as soon as possible of inside information which directly concerns that issuer.

Pursuant to Supplement B to the Rule Book, an issuer whose shares are admitted to trading on Nasdaq First North Growth Market Sweden must comply with generally accepted practice on the securities market.

The Stock Market Self-Regulatory Committee's Rules regarding remuneration to executive management and regarding incentive programs (the "Remuneration Rules") provides for good practice on the stock market when a listed company prepares, decides on or implements an incentive program aimed at board members, members of the executive management or other employees.

Pursuant to section III.1 of the Remuneration Rules, prior to a general meeting resolution on an incentive program, shareholders shall be provided with correct, relevant, and clear information on which to base their decision. The information shall enable a complete and correct assessment of the importance of the incentive program for the company and that the incentive program has been prepared and designed in accordance with the Remuneration Rules. The same provision states in subsection 9 that the documentation to the general meeting shall provide the shareholders with information on the vesting period, specifying in particular and justifying why a vesting period or period from the commencement of the agreement until a share may be acquired is less than three years

The commentary states that the implication of subsection 9 in the second paragraph is that, as a general rule, the vesting period for an incentive program, or where applicable, the time from the conclusion of the agreement until a share may be acquired, shall not be less than three years. In the event that such a period is less than three years, this is to be stated explicitly in the information for the general meeting. In such cases, the information shall also contain an explanation of why the listed company has decided on a shorter period than three years.

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### Considerations

#### *Provision of information to the Exchange in connection with the publication of the interim report and change in management*

On 21 October 2022, Mavshack published its interim report for the third quarter of 2022. On the same day, the Exchange asked the Company's Certified Adviser ("CA") to obtain information from the Company regarding its working capital situation. On 28 October 2022, CA explained that the Company, despite repeated attempts to contact it, had not been heard from on the matter. The Exchange then asked CA to inform the Company that the Exchange, in the absence of the Company's report on its working capital situation, would be forced to place the Company's financial instruments on observation status on the next trading day, 31 October 2022, unless the Company returned with the requested material prior thereto. After the Company asked to submit the requested information on 1 November 2022, the Company did not submit a statement of its working capital situation until 2 November 2022. The Company explained that, due to the autumn holidays, it could not submit the requested supporting documentation until the following week. After the Exchange gave notice that the Company was required to submit any financing agreements by not later than 1:00 PM on 3 November 2022, on pain of the Company's financial instruments otherwise being placed on observation status, the Company submitted a copy of a financing agreement on 3 November 2022 at 4:25 PM.

On 27 January 2023, the Exchange received information that the Company's CFO had resigned from the Company in December 2022. As the Exchange could not find any disclosure from the Company regarding the change in management, the Exchange asked the Company's CA on the same day to clarify whether the information was correct. The CA was asked to remind the company of its obligation to disclose changes in management as required by the Rule Book. On 31 January 2023, the CA stated that despite repeated attempts to contact it, the Company had not been heard from. On 2 February 2023, the CA explained that on the same day the Company had responded and explained that the Company intended to publish a press release regarding the change in management.

*The Exchange has argued:* It is undisputed in the matter that it took 13 days for the Company to provide its CA and the Exchange with the requested information regarding the Company's working capital situation, and six days to provide information regarding the Company's change in management. In this context, the Exchange notes that the Company, in connection with its publication of the interim report in question, was given several explicit deadlines to comply with, and that the provision in the Rule Book must be understood according to its purpose such that requested information shall under all circumstances be provided as soon as possible. The Company has thereby violated section 6.1.1 of the Rule Book on two separate occasions.

*The Company has argued:* Section 6.1.1 provides that the company shall supply the requested information to the Exchange upon request. The Rule Book does not explicitly state how quickly this provision should be made. Since Mavshack provided the information to the Exchange, which was admittedly somewhat delayed due to autumn holidays, etc., the Company believes that it complied with section 6.1.1 of the Rule Book. In addition, the Company was of the understanding that the Exchange requested documentation that the Company needed to produce separately, which contributed to the delay.

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The *Disciplinary Committee* notes that section 6.1.1 of the Rule Book prescribes that an issuer provide the Exchange, upon its request, with all information necessary for the assessment and surveillance of the issuer. As the Company asserts, the section does not explicitly provide for the speed of such provision. However, in the opinion of the Disciplinary Committee, it is clear from both the wording of the section and its purpose that such provision must be made without undue delay. In the current situation, the Company has delayed 13 and six days respectively in complying with the Exchange's request for information, and the reasons given by the Company for the delay cannot be deemed to justify the delay. The Company has thereby violated section 6.1.1 of the Rule Book on two occasions.

*Disclosure of management change*

On 8 November 2022, the Company's CFO was dismissed as part of a savings program. On 6 February 2023, the Company published a press release with information that the Company has implemented a savings program and in this context terminated the agreement with its CFO, who thereby terminated his employment with the Company on 8 December 2022.

*The Exchange has argued:* As the Company's CFO left his position in December 2022, but the Company did not disclose information regarding this until 6 February 2023, this disclosure was not made as soon as possible. Thus, the Company violated the Rule Book.

*The Company has argued:* With respect to the delay in the disclosure of the change in management, the Company notes that this was an unfortunate misunderstanding, particularly in the light of the Company's dialogue with its CA, but that the Company subsequently corrected itself at the request of the Exchange. The Company also asks the Committee to note that, although the information should have been disclosed in the same way as inside information, the disclosure of the change in management did not *in fact* constitute inside information. In light of that alleged above, the Company is of the opinion that the information was provided as soon as possible.

*The Disciplinary Committee* notes that, pursuant to the Rule Book, changes in management must be disclosed as soon as possible. The change in Company management in question was decided on 8 November 2022, became effective on 8 December 2022, and was disclosed on 6 February 2023. Thus, the company has not disclosed the information regarding this as soon as possible and has thereby violated section 4.2.3 (b) in combination with sections 4.2.1 (a) and 4.1.1 of the Rule Book..

*Generally accepted practice regarding disclosure of information when deciding on incentive programs*

On 5 April 2023, the Company published a notice to attend its 2023 Annual General Meeting. The notice to attend contained, among other things, a proposal for a resolution on a directed issue of warrants within the framework of an incentive program for executive management and employees. According to the proposal, subscription for shares through the warrants could take place as from the registration of the warrants with the Swedish Companies Registration Office up to and including 30 June 2024. Regarding the length of the vesting period, the notice contained the following information:

The Company will deviate from section 9.7 of the Swedish Corporate Governance Code (should correctly refer to section III.1 of the Remuneration Rules) in that subscription for new shares

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through the warrants may be made after a shorter period than the minimum period of three years prescribed by the Swedish Corporate Governance Code. The Offer is considered to be [in] line with the purpose of the warrant program and the company's long-term business plan, strategy, and financial objectives.

On 5 June 2023, the Exchange requested that the Swedish Securities Council issue a ruling on whether the publication by the Company on 5 April 2023 - as regards the obligation that the documentation shall contain a justification for why the Company has decided on a vesting period of less than three years - was consistent with the Remuneration Rules and good practice on the stock market. In the Swedish Securities Council's ruling AMN 2023:27, the Swedish Securities Council found that the Company's information regarding the vesting period did not meet the Remuneration Rules' requirement to include, where applicable, a justification for why the Company decided to have a shorter vesting period than three years. The Committee found that the information was not consistent with generally accepted practice on the stock market.

*The Exchange has argued:* In its notice to attend the Annual General Meeting of the Company in 2023, the Company has not provided a justification for the Company deciding on a shorter vesting period than three years, which constitutes a violation of the Remuneration Rules. The Company has thereby violated generally accepted practice on the stock market and thus the Rule Book.

*The Company has argued:* The wording in the notice to attend the Annual General Meeting 2023 "[t]he offer is deemed to be in line with the purpose of the warrant program and the company's long-term business plan, strategy, and financial objectives" constituted the reason for the deviation. The Company has also pointed out that the same short explanatory sentence has been used verbatim by several other companies that are also obliged to apply the Remuneration Rules. In light of the lack of further regulation or guidance on the formulation of the justification in section III.1 of the Remuneration Rules, it would have been more appropriate to have a more principled ruling from the Swedish Securities Council, such as requested by the Exchange in the matters that resulted in the Swedish Securities Council's ruling AMN 2022:36. This is in light of the fact that several companies have acted in the same manner as Mavshack. To only expose the Company in this manner seems almost like discrimination based on the practice established in the application of the Remuneration Rules.

The *Disciplinary Committee* notes that the Swedish Securities Council has found that the Company has violated generally accepted practice on the stock market. The Company has thereby also violated Supplement B to the Rule Book.

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In summary, the Disciplinary Committee finds that the Company has violated the Rule Book on four occasions. The Disciplinary Committee takes a very serious view of the Company's failure to provide the Exchange with information in accordance with 6.1.1 of the Rule Book, and of the Company's violation of the Remuneration Rules. The Disciplinary Committee sets the fine at ten times the annual fee.

On behalf of the Disciplinary Committee,

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A handwritten signature in blue ink, appearing to read 'Lundius', with a large, stylized flourish at the end.

Marianne Lundius

Former Justice Marianne Lundius, Justice Johan Danelius, former authorized public accountant Svante Forsberg, *Advokat* Wilhelm Lüning, and director Joakim Strid participated in the Committee's decision.

Secretary: Associate Professor Erik Lidman