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**NASDAQ STOCKHOLM'S** DECISION 7 January 2025

**DISCIPLINARY COMMITTEE** 2025:01

Nasdaq Stockholm

Ellwee AB (publ)

## DECISION

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

## Motion

The shares in Ellwee AB (publ) ("Ellwee" or the "Company") are traded on the Nasdaq First North Growth Market trading platform operated by Nasdaq Stockholm (the "Exchange"). The Company has signed a commitment 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 alleged that the Company has violated the Rule Book in several ways by failing to disclose its information in the correct manner or in a timely manner.

The Company has disputed that there has been a violation of the Rule Book.

Neither of the parties has requested 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 4.1.1 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 section 4.2.5 (a) of the Rule Book, an issuer shall disclose changes in the share capital and the number of shares. The information must include all necessary information regarding the change.

Pursuant to section 4.2.1 (a) of the Rule Book, an issuer shall disclose information in accordance with sections 4.2.2 - 4.4 of the Rule Book in the same manner as information disclosed in accordance section 4.1 regarding timing and methodology.

Considerations

*Disclosure of guarantee undertaking*

On 20 November 2023, Ellwee published a press release with information that the Company had resolved to carry out a rights issue of approximately SEK 25.41 million. The press release stated that the rights issue was guaranteed in the amount of MSEK 20 through a top guarantee and that no consideration would be paid for this undertaking. 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 28 November 2023, the Company published a press release with information that the Company had published an information memorandum as a consequence of the rights issue. The information memorandum stated that the top guarantee of SEK 20 million had been entered into with the company Goldcup 33999 AB. In the information memorandum, the fact that the guarantee undertaking was not secured was classified as a risk factor. The Company stated that the likelihood of the risk occurring, i.e. that the guarantor would not honour its undertaking, was low.

*The Exchange has argued:* In its response to the Exchange, the Company has stated that the guarantor, which was a shelf company, consisted in practice of a consortium of three natural persons who were investors, two of whom were well known to the Company. It was also stated that the guarantor was represented by Anders Liljekow and Fredrik Alstierna, who were also well known to the Company. Accordingly, in the Company's opinion, there was no reason to doubt performance of the guarantee undertaking by the guarantor or the representatives behind the guarantor. The Exchange has reviewed the guarantee agreement dated 15 November 2023, which was signed by Anders Liljekov. At the time the guarantee agreement was concluded, Anders Liljekov was not an authorised signatory of the guarantor. When the Exchange checked the guarantor's authorised signatories in the Swedish Companies Registration Office's Trade and Industry Register, it emerged that Anders Liljekow had also not been an authorised signatory at any time thereafter. In its press release of 20 November 2023, the Company published information that the rights issue was guaranteed, without having ascertained that the person who signed the guarantee agreement was authorised to represent the guarantor. Moreover, it did not state that the guarantor was a shelf company which lacked the financial capacity to honour the undertaking. Consequently, the Company's press release has not allowed for a complete and correct assessment of the information.

Accordingly the Company violated Article 17 of the MAR and section 4.1.1 of the Rule Book. The Exchange is also critical of the Company's assessment of the risk that the guarantor would not honour its undertaking in the information memorandum, in light of the fact that the Company had not ascertained that the guarantor's representative had authority.

*The Company has argued:* Until 6 May 2024, the Company had no reason to doubt that the guarantor would honour its undertaking. This assessment included the Company's knowledge about the natural persons who were the investors behind the guarantor and of the guarantor's representatives Anders Liljekow and Fredrik Alstierna; Anders Liljekow's acting as representative of the guarantor (it is not uncommon for Goldcup companies and other shelf companies to be represented, sometimes for several months after they have been acquired, by authorised persons other than the representatives registered with the Swedish Companies Registration Office, which in this case originates from Bolagsrätt Sundsvall); the fact that the guarantor could demonstrate that financing for the guarantee undertaking had been secured by loan agreements; and the fact that the guarantor's representative before and after the 28 March 2024 press release stated that additional time was needed to honour the guarantee undertaking, rather than that there was opposition to honouring it. With regard to Fredrik Alstierna in particular, it can be added that as late as 2022, he had represented an investor in connection with a new share issue in the Company and ensured that payment in the amount of SEK 14 million was received for subscribed shares. In that case as well, the investor was a former shelf company whose investment in the Company was secured by debt financing. Likewise, the fact that the guarantor's representative subsequently entered into a settlement with the Company demonstrates both the Company's good faith in relation to the guarantor and its representatives, and the representatives' intention to do the right thing with regard to the guarantee undertaking. As regards the authorisation of the guarantor's representative and the guarantor's financial capacity to honour the guarantee undertaking, the Company had previous experience with both the individuals behind the guarantor and the individuals who represented it. In addition, the guarantor had presented loan agreements which secured the financing of the guarantee undertaking.

*The Disciplinary Committee observes that* the Company entered into a guarantee for the share issue with a consortium of three investors through a newly formed company. Two of the investors were well known to the Company. As far as the Disciplinary Committee can assess, based on what has been submitted in the matter, there was no reason for the Company to question the consortium's intention and capacity to honour the guarantee for the share issue in the event that the issue was not fully subscribed. It is undisputed that the investors have demonstrated that the financing for the guarantee undertaking was obtained through loan agreements. Against this background, there is no reason to deem that the Company, through its communication in the 20 November 2023 press release, where the Company provided information that the share issue in question was guaranteed by a top guarantee commitment but not secured by a pledge, bank guarantee, or similar arrangement, did not enable a complete and correct assessment of the information in the manner stated by the Exchange.

*Disclosure of information regarding honouring the guarantee for the share issue*

On 18 December 2023, the Company published a press release with information about the outcome of the rights issue. The press release stated that the issue was subscribed for approximately 5.6 percent and that the equivalent of 78.7 percent of the rights issue was allocated to "guarantors in accordance with the guarantee undertakings entered into". 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 26 February 2024, the Company published its interim report in a press release. Under the heading *Significant events* during the fourth quarter in the press release, it was stated that the Company had not received the guaranteed amount from the guarantor in the rights issue. 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 Company's financial statement release stated that the capital from the rights issue would strengthen the Company's financial position and make the parent company debt-free, and thereby reduce the Company's costs and strengthen the business with working capital. It was also stated that, as at the reporting date, the guarantee had not been paid and that the Company had therefore not been able to benefit from the advantages that the liquidity had given the Company. According to the financial statement release, the Company estimated that the proceeds of the rights issue would be paid in the first quarter of 2024. The Company also stated that its operations in Gothenburg had not found a good inventory level while waiting for the rights issue capital and appurtenant operational financing. The Company's cash and cash equivalents at the end of 2023 amounted to TSEK 4,171, a decrease of MSEK 10.7 since the beginning of the financial year. The decrease was explained by negative cash flows from the operating activities and the financing activities. The Company's cash flow from operating activities before changes in working capital amounted to TSEK -4,291 for the period October – December 2023. On 28 March 2024, the Company published a press release with information that the guarantor's representative announced that the guarantor needed additional time to honour the guarantee. The press release did not contain a reference that the information was of the type that the Company was obligated to make public pursuant to the MAR. The application for liquidation of the guarantor was filed with the Swedish Companies Registration Office on 3 May 2024. On 6 May 2024, the Company published a press release stating that the Company had decided to write down the claim of MSEK 20 against the guarantor because the board of directors considered it unlikely that the guarantor would make payment for its commitment. It was stated that the Company decided to take legal action against the guarantor. According to the press release, the guarantor was allocated shares on 18 December 2023, after which a three-day payment period began. 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 7 June 2024, the Company published a press release with information that the Company had entered into a settlement agreement of SEK 1 million with the guarantor's representative, Anders Liljekov. 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 that the guarantor was allocated shares in the issue on 18 December 2023, after which a three-day payment period began. It was not until 26 February 2024, two months after the deadline for payment, that the Company provided an update regarding the proceeds of the issue. After an additional month, on 28 March 2024, the Company provided information that the guarantor had still not honoured its commitment. The Company made the determination that this information did not constitute inside information. It was not until four months after the expiry of the payment deadline for the guarantor, 6 May 2024, that the Company published a press release with information that the guarantor was not expected to perform the guarantee agreement. The press release contained a reference to the MAR. As stated in the Company's financial statement release, the Company's financial position at the end of the financial year 2023 was strained, with a burn rate for the previous quarter of TSEK -4,291 and a total of TSEK 4,171 in cash and cash equivalents. Moreover, the Company had communicated to the market that it deemed the risk of the guarantor not fulfilling its commitment as low. According to the Exchange's

assessment, information that the guarantor had not honoured the guarantee undertaking must therefore have been of great significance to the market and constituted inside information as soon as the three-day payment period expired in December 2023 or, in any event, a short time thereafter. The Exchange further argues that long before 6 May 2024, the Company could probably have expected that the guarantor would not honour its undertaking. In the Exchange's opinion, information that the Company could reasonably expect that the guarantor would not honour its undertaking constituted inside information, which should have been disclosed as soon as possible, i.e. much earlier than 6 May 2024. The Company's response to the Exchange's questions it is evident that the Company did not make that assessment, and thus has not taken any decision to delay disclosure of the information. By not having disclosed, as soon as possible, the inside information that the Company had not received the guaranteed sum and that it could reasonably be expected that the guarantor would not pay the guaranteed sum, the Company has violated Article 17 MAR and section 4.1.1 of the Rule Book.

*The Company has argued:* Until 6 May 2024, the Company had no reason to doubt that the guarantor would honour its undertaking. This assessment included the Company's knowledge regarding the natural persons who were investors behind the guarantor and of the guarantor's representatives; the fact that the guarantor could demonstrate that financing for the guarantee undertaking had been secured by loan agreements; and the fact that the guarantor's representative before and after the press release of 28 March 2024 stated that additional time was needed to honour the guarantee undertaking, rather than that there was opposition to honouring it. It was only after extensive discussions with the guarantor that the Company's board of directors finally determined, on 6 May 2024, that it was unlikely that the guarantor would make payment. Likewise, the fact that the guarantor's representative subsequently entered into a settlement with the Company demonstrates both the Company's good faith in relation to the guarantor and its representatives, and the representatives' intention to do the right thing with regard to the guarantee undertaking. Against this background, it appears surprising that the Exchange, without any further justification, believes that it is able to review the Company's assessments and conclude that the Company, there and then, incorrectly appraised the risk that the guarantor would not perform its commitment and that long before 6 May 2024, the Company could probably have expected that the guarantor would not honour its undertaking. The conclusion that inside information had already arisen in connection with the fact that payment had not been made when the payment deadline expired in December 2023 also appears to be very far-fetched. The Exchange's conclusion appears to be based on an assumption that the Company's need for capital was so acute that the slightest delay in the payment of the issue proceeds – regardless of the low risk that the commitment would not be honoured – was of great significance to the market. This assumption is not consistent with the assessment made by the Company, there and then; the Company did not deem the need for cash to be so urgent that a slight delay in payment of the issue proceeds constituted inside information. Moreover, like many other companies, the Company had options to ensure that a liquidity shortfall would not occur. Notwithstanding the previous year's burn rate, the Company did not make the determination that any delay in honouring the guarantee undertaking would have a significant impact on the share price.

*The Disciplinary Committee observes that* the subscription period for the rights issue in question ended on 13 December 2023 and the Company disclosed the outcome of the issue in a press release on 18 December 2023. The press release stated, among other things, that the guarantor had subscribed for 78.7 percent of the shares in the issue. On the same day, the payment period for the shares began. It ran for three days.

When an issuer discloses that an issue is guaranteed and, subsequently, that the guarantor has subscribed for a certain percentage of the issue to honour the guarantee undertaking, the market is justified in assuming that the payment for the shares will be received by the deadline for payment set for the issue, or reasonably close to it, unless otherwise communicated by the issuer.

In the present case, which involves a guaranteed new share issue that the Company has deemed to constitute inside information, the guarantee was not honoured through timely payment. Moreover, payment was not made in reasonably close proximity to the payment deadline that was set. In other words, a very significant part of the proceeds of the issue, almost 80 percent, did not arrive within the time frame that the market had been given legitimate reason to expect. Notwithstanding the Company's assertion that it was not in urgent need of the money and that the Company still deemed the risk that the guarantee would not ultimately be honoured as low, this was a very significant discrepancy in relation to what the market could justifiably expect and was a clear indication that the guarantor might lack the capacity or willingness to pay. Therefore, in the Disciplinary Committee's opinion, the circumstances of this case were such that a reasonable investor would be likely to use the information about the actual conditions as part of the basis for an investment decision within the meaning of Article 7 of the MAR.

Against this background, the information constituted inside information as per Article 7 of the MAR. The Company was therefore obligated to make the information public as soon as possible pursuant to Article 17(1) of the MAR. The Company first disclosed information about the delay in payment on 26 February 2024. The Company thus violated Article 17.1 of MAR and section 4.1.1 of the Rule Book.

*Disclosure of change in share capital and number of outstanding shares in the Company*

According to the Company's 18 December 2023 press release regarding the outcome of the rights issue, the rights issue increased the share capital by approximately SEK 2,141,404 from approximately SEK 907,610 to approximately SEK 3,049,014, and the number of shares by 1,070,702 shares from 453,805 shares to 1,524,507 shares, corresponding to a dilution of approximately 70.2 percent of the total number of shares and voting interests in the Company. On 4 January 2024, the Company's notification of change in the number of shares and share capital was registered with the Swedish Companies Registration Office. A total of 70,702 shares were registered, representing an approximately SEK 141,404 increase in the share capital. The interim report disclosed by the Company on 26 February 2024 showed that 70,702 shares were registered on 4 January 2024 and that the number of shares in the Company as of that date was 524,507.

*The Exchange has argued:* In the 18 December 2023 press release regarding the outcome of the rights issue, the Company disclosed that the rights issue would increase the share capital by SEK 2,141,404 and the number of shares by 1,070,702. Thereafter, the Company reported a change of approximately SEK 141,404 in the share capital and a change in the number of shares of 70,702, which was registered on 4 January 2024 with the Swedish Companies Registration Office. The change in the number of shares was not disclosed to the market until the Company's interim report was published on 26 February 2024. Thus, the Company violated sections 4.2.5 (a) and 4.2.1 (a) of the Rule Book.

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*The Company has argued:* The Exchange has pointed out that the Company had disclosed that the rights issue in question would entail an increase of SEK 2,141,404 in the share capital and an increase of 1,070,702 in the number of shares, and that a change in the share capital of approximately SEK 141,404 and in the number of shares of 70,702 was registered on 4 January 2024. In that context, the Exchange has noted that the change in the number of shares was not disclosed to the market until the Company's interim report on 26 February 2024. As the Stock Exchange has rightly pointed out, according to the Company's 18 December 2023 press release, the rights issue increased the share capital by approximately SEK 2,141,404 from approximately SEK 907,610 to approximately SEK 3,049,014, and the number of shares by 1,070,702 shares from 453,805 to 1,524,507 shares. In accordance with what the Company has otherwise stated, until 6 May 2024 the Company's assessment continued to be that the guarantor would honour its undertaking. Consequently, the Company's understanding was also that the rights issue entailed an increase of SEK 2,141,404 in the share capital and an increase in the number of shares of 1,070,702. The fact that the Company, in its interim report on 26 February 2024, updated the market regarding how much of the rights issue had been registered to date, through the notification which was registered on 4 January 2024, does not mean that the Company reported the final increase in the share capital and number of shares after the rights issue; in the same interim report, the remaining increase in the share capital of approximately TSEK 2,142 is reported in the balance sheet as "unregistered share capital". The Company's understanding of the Rule Book is that partial registrations as per the above, which take place within the parameters of the outcome of a completed new share issue, need not be disclosed individually, as they occur.

*The Disciplinary Committee observes that* the wording of the Rule Book does not support the conclusion that partial registrations in accordance with the already communicated outcome of a new share issue must be disclosed. The Company cannot be deemed to have violated sections 4.2.5 (a) and 4.2.1 (a) of the Rule Book in the manner argued by the Exchange.

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The Disciplinary Committee finds that the Company violated Article 17.1 of the MAR and section 4.1.1 of the Rule Book. The Disciplinary Committee holds that the violation is serious, and therefore a fine shall be imposed as a sanction. The Disciplinary Committee sets the fine at three times the annual fee.

On behalf of the Disciplinary Committee,

Marianne Lundius

Former Supreme Court Justice Marianne Lundius, Supreme Court Justice Petter Asp, *advokat* Wilhelm Lüning, Company Director Kristina Schauman, and *advokat* Erik Sjöman participated in the Committee’s decision.

Secretary: Associate Professor Erik Lidman