

NASDAQ STOCKHOLM'S                      DECISION                      11 September 2018  
DISCIPLINARY COMMITTEE                      2018:07

Nasdaq Stockholm

Oscar Properties Holding AB (publ)

## **DECISION**

The Disciplinary Committee orders Oscar Properties Holding AB to pay a fine to Nasdaq Stockholm corresponding to two times the annual fee.

## **Motion**

The shares in Oscar Properties Holding AB (publ) ("Oscar Properties" or the "Company") are admitted to trading on Nasdaq Stockholm AB ("Exchange"). The Company has signed an undertaking to comply with the Exchange's rules for issuers in effect from time to time (the "Rule Book").

The Exchange has alleged that Oscar Properties has:

- violated section 3.1 and section 2.4.3 of the Rule Book by not making public as soon as possible information about the fact that the chairman of the Company's board of directors had been arrested on suspicion of a crime, thus demonstrating deficiencies in the Company's routines and systems for ensuring that the requirement is fulfilled regarding the issuer's obligation to provide the market with accurate, relevant and clear information in accordance with the Rule Book; and
- violated section 3.1 of the Rule Book by not having made public sufficiently complete information in conjunction with a forecast adjustment.

The Exchange has moved, citing section 5 of the Rule Book, that the Disciplinary Committee consider the violations of the Rule Book and establish an appropriate sanction.

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2

Oscar Properties has primarily stipulated to the factual circumstances invoked by the Exchange but denied that the Company is guilty of the alleged violations of the Rule Book.

A hearing was held in the matter before the Disciplinary Committee on 29 August 2018, at which the Exchange was represented by Karin Ydén (Head of Issuer Surveillance), Niklas Ramstedt (Associate General Counsel), Caroline Sjölund (Regulatory Compliance Specialist) and Andreas Blomquist (Senior Legal Counsel). Oscar Properties was represented by director Oscar Engelbert and *Advokat* Björn Kristiansson.

## **Reasons for the decision**

### The Rule Book

Section 3.1 of the Rule Book prescribes that an issuer must disclose inside information in accordance with Article 17 of Regulation (EU) no. 596/214 of the European Parliament and of the Council (“MAR”) as soon as possible. The guidelines for the section state that inside information which is made public by the issuer must be accurate, relevant and clear and may not be misleading. In addition, information regarding decisions, facts and circumstances must be sufficiently thorough to make possible an assessment of the significance of the information for the issuer and its financial instruments. The omission of information can also entail that the issuer’s disclosure of information is incorrect and misleading.

Section 3.3.6 prescribes that any forecast an issuer publishes must contain information regarding the assumptions and conditions forming the basis for the forecast. To the extent possible, the forecast must be presented in an unambiguous and consistent manner. According to section 3.3.1, information which is made public within the scope of a forecast must also be made public in the same manner as inside information according to section 3.1.

According to section 2.4.3, an issuer must establish and maintain adequate procedures and systems for disclosure of information, including systems and procedures for financial reporting, to enable compliance with its obligation under the Rule Book to provide the market with accurate, relevant and clear information.

According to Article 17.1 of MAR, the issuer must ensure that inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public.

According to Article 17.4 of MAR, an issuer may, on its own responsibility, delay disclosure to the public of inside information provided that all of the conditions of the MAR are met.

According to Article 17.7 of MAR, when the disclosure of inside information has been delayed and the confidentiality of the information is no longer ensured, the issuer must disclose the inside information to the public as soon as possible.

### Considerations

*Disclosure of information in conjunction with the arrest of the chairman of the Company's board of directors and the Company's capacity for disclosure of information*

On the morning of 26 September 2017, the chairman of the board of directors of Oscar Properties was taken into custody by the police and the Company was informed of this the same morning by persons close to the chairman. The reasons for the arrest were unknown at the time since the Company was unable to contact the chairman of the board, which would later prove to be a result of the fact that contact restrictions had been imposed on the chairman. During the morning of the same day, the police executed a search warrant at the Company's offices in Stockholm. At this time as well the Company did not receive any information as to why the search had taken place or why the chairman of the board of directors had been taken into custody. When the Company was unable to contact the chairman for almost two days and it appeared all the more likely that the chairman had been arrested on suspicion of a crime, the Company concluded on the evening of 27 September that the events were to be considered as inside information. The Company decided at this time to postpone the disclosure of inside information and a logbook was prepared. The chairman was released on 28 September and he immediately contacted the Company at 11:35 AM. The Company convened a meeting of the board of directors at 1:00 p.m. on the same day, at which the Company was informed that the chairman of the board of directors had been informed that he was suspected of aggravated insider crimes related to transactions in shares in Oscar Properties. At 2:25 PM on the same day, the Company published a press release containing information regarding the suspicion of crimes and the arrest of the chairman of the board of directors (the "Press Release"). The Press Release contained information stating the information was inside information which the Company had made public in accordance with MAR.

*The Exchange* has argued: The Company became aware of the criminal suspicions against, and the detention of, the chairman of the Company's board of directors at 11:35 AM on 28 September. *Dagens Industri* published an article at 12:19 PM the same day with information stating that the chairman had been taken into custody and interrogated by the Economic Crimes Unit regarding suspicion of aggravated insider crimes. However, the Company would not publish the press release until 2:25 PM. In the opinion of the Exchange, such a delay cannot be deemed to fulfill the requirement of disclosure as soon as possible. In addition, inside information must be made public immediately in the event of a leak of information. Consequently, the Company violated section 3.1 of the Rule Book. With respect to Company's overall handling of the disclosure of information regarding the relevant events, the Exchange is also of the opinion that it demonstrates that the Company lacked the necessary routines and systems to ensure that the requirement was fulfilled concerning the issuer's capacity to provide the market with accurate, relevant and clear information in accordance with the Rule Book. The Company thereby also violated section 2.4.3 of the Rule Book.

*The Company* has argued: The chairman of the board of directors telephoned the Company at 11:35 AM on 28 September, and informed the Company that he had just been released. During the conversation, the chairman did not provide any cohesive information regarding what had taken place since he was under a preliminary investigation secrecy order. The Company subsequently convened a meeting of the board of directors at 1:00 PM at which the chairman informed the board of what had occurred and the suspicion of criminal acts. Immediately after the board meeting, which lasted for 30 minutes, the Press Release was drafted on the advice of the Company's legal advisers and IR advisor and the defense attorney for the chairman of the board of directors so that the Press Release would be worded taking into consideration both the information disclosure rules and the preliminary investigation secrecy. Following this, the Press Release was immediately published after having been completed at 2:25 PM. According to the Company, it thus disclosed the information as soon as possible. In addition, the Company questions whether the information concerning a suspicion of a crime against the chairman and the arrest of the chairman even

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4

constitutes inside information since a new chairman can always be appointed and the chairman does not have any operational role which is impeded by his or her detention. In the opinion of the Company, the information is thus not the type of information which an investor would rely on as the basis for an investment decision.

The Disciplinary Committee concludes that the Company, at the relevant point in time, had concluded that the arrest and detention of the chairman of the board of directors and the suspicion of crimes against him constituted inside information. In its assessment, the committee therefore proceeds upon the basis that this information constituted inside information in accordance with the committee's fixed case law (see, for example, decision 2018:05 of the Disciplinary Committee). The chairman of the board of directors is an important position in a company. When the chairman was released and contacted the Company at 11:35 AM on 29 September, there was thus an obligation for the Company to disclose as soon as possible the now relevant inside information. In the opinion of the Disciplinary Committee, it cannot be deemed to have been necessary for the Company to convene and hold a meeting of the board of directors prior to the disclosure. Consequently, the conclusion by the Disciplinary Committee is that the Company violated section 3.1 of the Rule Book by not making public information regarding the arrest of the chairman of the board of directors and suspicions of crimes against him as soon as possible. However, the Disciplinary Committee does not find grounds for a ruling that the Company thereby also violated section 2.4.3 of the Rule Book, as argued by the Exchange.

*The Company's revision of the full-year forecast for 2017*

On 23 October 2017 at 11:00 PM, the Company published a press release with the heading "Oscar Properties revises the Company's forecast for the full year 2017". The press release stated that the Company had revised its forecast downwards for the year from a minimum of SEK 500 million to a minimum of SEK 400 million in operating profit before changes in value and that the reason was primarily poorer market conditions and that the Company had been affected by higher costs. The press release contained a reference to the fact that the information was inside information which the Company was making public in accordance with MAR.

*The Exchange* has argued: The press release stated poorer market conditions and higher costs as the reasons for the revised forecast. However, no more specified description was given of which market conditions were intended or more specific details regarding the increased costs. The Company has stated that with respect to the worsened market conditions, it must be considered to be generally known that the earlier consistent price increases for homes leveled off after the summer of 2017 and that cost increases which had already occurred were not of the level of significance that the information regarding these constituted inside information. Regardless of whether investors could be expected to have known that the poorer market conditions related to a leveling off of the price of homes, the Company in any event did not state what the higher costs were which caused a revision of a previously provided forecast. The information contained in the press release can therefore not be deemed to have been sufficiently complete in order to make possible an assessment of the significance of the information for Oscar Properties and its financial instruments. The Company has thereby not fulfilled the requirements set forth in section 3.1 of the Rule Book.

*The Company* has argued: In the opinion of the Company, in its disclosure of information, the Company fully fulfilled the requirements contained in section 3.1 of the Rule Book. With respect to the poorer market conditions, the Company believes that it is generally known that previous consistent price increases in homes leveled off after the summer of 2017 and that the public, lenders, and professional actors on the market were pessimistic regarding future price trends. In its forecast for the full year 2017,

the Company did not specify that the forecast was based on any particular market assumptions and it should be obvious to anyone that the anticipated worse price trend for private homes on the markets where the Company is active might have a negative effect on the Company's future earnings. Consequently, the Company did not have an obligation to explain changes in the market assumptions in more detail. With respect to the reference to increased costs, in the opinion of the Company, it must be borne in mind that the press release constituted a forecast adjustment and not a press release regarding increased costs. It should also be pointed out that the price increases which had already occurred were not at such a level of seriousness that the information regarding these *per se* constituted inside information. With respect to the Company's costs, the Company did not provide any particular guidance, either in previous forecasts or otherwise, regarding anticipated costs or their breakdown. In the opinion of the Company, it was thus not the obligation of Oscar Properties, in conjunction with the forecast adjustment, to provide more detailed information regarding anticipated costs.

The Disciplinary Committee makes the following conclusion. According to section 3.3.6 of the Rule Book, an issuer which chooses to make public a forecast or forecast adjustment must report the underlying factors which form the basis for the forecast so that the market has an opportunity to effectively assess the assumptions of the forecast. According to sections 3.3.1 and 3.1, the forecast must also contain sufficiently complete information to make possible an assessment of the significance of the information to the issuer. With respect to the forecast revision which Oscar Properties made public on 23 October 2017, in the opinion of the Disciplinary Committee, there cannot be deemed to have been an obligation for the Company to more specifically explain the meaning of the changes in the market conditions since it was already generally known how the property market had developed over the course of the period of time now relevant. However, the Disciplinary Committee believes that the Company was not sufficiently thorough in its description of the increased costs which were stated as the other reason for the forecast adjustment in order to make possible an assessment of the significance of the adjustment to the Company and its financial instruments. The Company has thus, in this respect, violated section 3.3.6 in combination with sections 3.3.1 and 3.1 of the Rule Book.

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In summary, the Disciplinary Committee believes that Oscar Properties violated section 3.1 and section 3.3.6 in combination with sections 3.3.1 and 3.1 of the Rule Book.

The Disciplinary Committee views the violations with particular seriousness taking into consideration the fact that the Company was recently criticized by the Disciplinary Committee for deficient disclosure of information in a previous matter (see decision 2017:03 of the Disciplinary Committee). The Disciplinary Committee imposes a fine corresponding to two times the annual fee.

On behalf of the Disciplinary Committee,

Marianne Lundius

A handwritten signature in black ink, appearing to read 'Marianne Lundius', is shown within a light gray rectangular box.

Former Justice Marianne Lundius, MBA Ragnar Boman, authorized public accountant Svante Forsberg, director Carl Johan Högbom, and director Jack Junel participated in the committee's decision.

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6

Secretary: *Jur. kand.* Erik Lidman