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NASDAQ STOCKHOLM'S DISCIPLINARY COMMITTEE	DECISION 2017:04	June 22, 2017

Nasdaq Stockholm

GomSpace Group AB

Decision

The Disciplinary Committee orders GomSpace Group AB to pay a fine to Nasdaq corresponding to annual fees for two years.

Motion

The shares in GomSpace Group AB (publ) ("GS" or the "Company") are admitted to trading on the Nasdaq First North trading facility of NASDAQ Stockholm AB (the "Exchange"). GS has signed an undertaking to comply with the Exchange's Rule Book for Nasdaq First North applicable from time to time (the "Rule Book") for such time as the Company's shares are traded on Nasdaq First North.

The Exchange has claimed that GS violated section 4.1 of the Rule Book by, on October 14, 2016, inaccurately disclosing misleading and erroneous information regarding the acquisition of the shares in NanoSpace AB, and by failing to disclose correct information as soon as possible after the Company became aware of the leak of information regarding the acquisition on October 15, 2016.

The Exchange has further claimed that GS violated section 4.1 of the Rule Book by failing to disclose inside information as soon as possible regarding a potential order or by taking a decision regarding delayed disclosure.

The Exchange has referred the matter to the Disciplinary Committee to assess the violations and impose a suitable sanction.

GS has disputed that the Company committed the alleged violations of the Rule Book. The Company has essentially stipulated to the facts but believes that it has applied the

rules correctly. An oral hearing in the matter was held before the Disciplinary Committee on June 1, 2017, whereupon the Exchange was represented by Karin Ydén (Head of Issuer Surveillance), Andreas Blomquist (Senior Legal Counsel) and Niklas Ramstedt (Regulatory Compliance Specialist). GS was represented by CEO Niels Buus, *advokat* Jörgen S. Axelsson and *advokat* Olof Reinholdsson.

The Disciplinary Committee's assessment

Section 4.1 prescribes as follows: The Issuer shall disclose inside information in accordance with Article 17 of the Market Abuse Regulation, EU No 596/2014 (MAR).

In the Exchange's guidance to section 4.1 it is stated that Article 17 of MAR sets out the disclosure obligations in respect of inside information. The term inside information is defined in Article 7 in MAR. According to Article 17 the Issuer may, on its own responsibility, delay disclosure to the public of inside information provided that all of the conditions set out in MAR are met (Article 17.4 in MAR and the Commission's Delegated Act on disclosure and for delaying disclosure of inside information).

According to the Exchange's guidance to section 4.1 the Issuer should ensure that all market participants have simultaneous access to any inside information about the Issuer. The Issuer should therefore ensure that inside information is treated confidentially and that no unauthorized party is given such information prior disclosure. Information may not be misleading or inaccurate in any manner. The information should contain facts which provide sufficient guidance to enable evaluation of such information and its effect on the price of the Issuer's financial instruments. Corrections to errors in information disclosed by the Issuer itself need to be disclosed as soon as possible after the error has been noticed, unless the error is insignificant.

Article 17(1) of MAR prescribes that an issuer must inform the public as soon as possible of inside information which directly concerns that issuer.

1. For the purposes of this Regulation, inside information shall comprise the following types of information:

(a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

2. For the purposes of paragraph 1, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments or the related derivative financial instrument, the related spot commodity contracts, or the auctioned products based on the emission allowances. In this respect in the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information.

3. An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article.

4. For the purposes of paragraph 1, information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments . . . shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decisions.

Disclosure of the acquisition of shares in NanoSpace AB

Background

On August 19, 2016, GS published a press release with the heading *"GomSpace (provider of nanosatellites) has entered into a non-binding letter of intent to acquire all shares in NanoSpace AB"*, which stated that the Company had entered into a non-binding letter of intent with "the Swedish Space Corporation" regarding an acquisition of 100 per cent of the shares in the Swedish company NanoSpace AB. Immediately after publication of the press release, GS's share price increased with 6 per cent. At the end of the trading day, the share price dropped with 5.6 per cent.

On Friday, October 14, 2016, at 1:22pm, GS published a press release on its website containing information that the acquisition of NanoSpace AB had been completed. GS's Certified Adviser, FNCA Sweden AB ("CA") contacted the Exchange on Saturday, October 15, 2016, at 1:45pm and the Exchange was informed that the press release of the preceding day had been published on the Company's website by mistake. On Sunday, October 16, 2016, at 11:30pm, the Company published a press release with the heading *"GomSpace completes acquisition of NanoSpace"*. The press release stated, among other things, that the acquisition would be completed the next day. Initially, at the opening of trading on Monday, October 17, 2017, GS's share price increased with 4 per cent and subsequently closed at the end of trading with a price increase of 2.2 per cent.

The Exchange has stated: The issuer is always responsible for timely disclosure of correct information. It is undisputed that the Company observed that the information in the press release of Friday, October 14, 2016, which was mistakenly published on the Company's website at 1:22pm, comprised inside information. The press release was published on the website before the parties had signed the acquisition agreement and before the Company had disclosed the information through its news distributor in a correct and non-discriminatory manner. Immediately after publication of the press release on October 17, the price of the Company's shares increased with 4 per cent, indicating that the Company's assessment regarding that the information should be considered as inside information was correct. Accordingly, GS violated section 4.1 of the Rule Book by inaccurately disclosing misleading and erroneous information regarding the status of the acquisition transaction on October 14, 2016.

The publication of the press release on the website must be deemed to constitute an information leak since the information was not disclosed in a manner which gave the public fast access to the information and the possibility to make complete, correct and timely assessment of the information. When inside information has not been disclosed in such a manner, the issuer is obligated to disclose correct information as soon as possible in a non-discriminatory manner. This obligation applies irrespective of whether the situation

occurs during trading hours or not. The Exchange also informed CA that the Company was required to publish a press release with corrections immediately. The erroneous press release was available on the website during ongoing trading.

The Company did not, however, publish correct information until 11:30pm on October 16, 2017. It is irrelevant that GS attempted to expedite the completion of the acquisition in order to avoid publishing a correction of the erroneous information. Accordingly, the Company has violated section 4.1 of the Rule Book by failing to publish a correction as soon as possible after the Company became aware of that inside information had leaked through the erroneous press release.

GS has stated: In light of the detailed press release of August 19, 2016 regarding the non-binding letter of intent, which contained all financial terms and conditions for the acquisition and because the seller, the Swedish Space Corporation (a publicly owned company), was a motivated seller on the detailed terms and conditions published in the press release, the risk of a detrimental outcome of the due diligence process was limited since GS was fully aware of the products and technology which NanoSpace used. In GS's opinion, market expectations were such that the market was almost entirely certain that a definitive agreement would be reached. The information which was mistakenly published on GS's website therefore cannot be deemed to have constituted inside information since it could not be expected to have a significant effect on the share price. The reason for the detailed press release on August 19, 2016 was specifically to reduce the risk of a leak.

GS responded as soon as the Company found out that the press release was published on the website. At lunchtime on Saturday, October 15, 2016, the press release was removed from the website and CA was contacted; CA, in turn, informed the Exchange of the incident at 1:45pm. The Company was not opposed *per se* to releasing a corrective press release but it followed advice given by CA and its legal counsel. GS was advised to check whether anyone had downloaded the information and whether there was any sign of a leak on other websites. GS attempted to contact the seller in order to have the agreement signed so that it could publish a press release to this effect prior to 12 midnight on October 17.[1] GS contacted CA at approximately 1:15pm on Sunday, October 16; CA, in turn, contacted the Exchange to inform the Exchange about the situation. The Exchange concluded that the information was inside information and that a leakage press release must be disclosed as soon as possible in accordance with MAR. GS immediately drafted a leakage press release, which was ready by 3pm. At the same time, GS was able to get in touch with the seller. The agreement was signed late on Sunday night and the press release announcing the signing of the agreement was published at 11:30pm on Sunday, October 16, 2016. GS considers that the information was not inside information under MAR. Irrespective of whether the erroneous press release is to be deemed inside information, GS acted so that it could, as quickly as possible over the weekend, provide the market with correct, relevant, and reliable information. Correcting the information in a press release as soon as possible, knowing that the final press release which would con-

[1] Translator's note: the Swedish original states 24:00 on Sunday, 16 October.

firm the erroneous press release was being drafted, would be misleading for the market. Moreover, there was no indication that anyone had opened the erroneous press release. "As soon as possible" should encompass time for a company to draft information which assists the investors.

Analysis

Essentially, the actual chain of events is undisputed. Accordingly, it has been established that during ongoing trading on Friday, October 14, 2016, GS mistakenly published a press release on its website stating that the acquisition of NanoSpace AB had been completed. The press release was inaccurate since the agreement regarding the acquisition in question had not been signed. Although the August 19, 2016 press release regarding the non-binding letter of intent was very detailed in respect of the terms and conditions and purchase price for the acquisition of NanoSpace AB, the Disciplinary Committee is of the opinion that information that the acquisition had been completed must be deemed inside information pursuant to Article 7 of MAR; this is supported by, among other things, the 4 per cent increase in the price of the GS share in opening trading after a correct press release regarding the completion of the transaction had been published on the Sunday. Accordingly, as soon as possible after the Company became aware of the erroneous press release, the Company was required to disclose correct information in a non-discriminatory manner.

In the Disciplinary Committee's opinion, it is immaterial that the Company's investigation had established that that no one had clicked on the link to the press release and that the press release was removed the next day. In addition, expediting the signing of the agreement did not, in the Disciplinary Committee's opinion, does not remove the obligation to correct the erroneous press release. The Disciplinary Committee finds that, by the press release having been published on the website, it must be deemed to have reached the general public notwithstanding that no one had clicked on the reference link or that it was removed the next day. The situation as regards the erroneous press release must be treated in the same way as a so-called information leak and the Company is thus obligated, as soon as possible and regardless of whether or not trading is taking place, to publish a press release containing a correction in a correct and non-discriminatory manner.

Accordingly, the Disciplinary Committee finds that GS has violated section 4.1 of the Rule Book by having disclosed misleading and erroneous information and by failing to disclose correct information regarding the acquisition of NanoSpace AB as soon as possible.

Disclosure of information regarding a major order

Background

On February 14, 2017, CA contacted the Exchange and informed it that GS was negotiating with a potential customer regarding an order which would be the largest order ever placed with the Company and that a press release regarding the order was scheduled to be

published on February 17, 2017. The Exchange and CA took a joint decision that the shares would be subject to a so-called special observation.

On February 17, 2017, CA informed the Exchange that the negotiations had not been completed and that the press release would probably be published on February 20, 2017. On February 20, 2017, CA notified the Exchange that the agreement would be signed in a face-to-face meeting on February 28, 2017. The Exchange reminded the Company of its responsibility to ensure that the conditions for delayed disclosure was met and asked the Company to provide the Exchange with a written explanation regarding the conditions for delayed disclosure, which the Company did on the same day. According to the written explanation, the Company considered that the potential order constituted inside information as of February 14, 2017, and the Company had on February 20 decided to delay disclosure of the information. The terms and conditions were not finally negotiated and established on February 20, and thus GS could not be certain that the Company would receive any order. On February 24, 2017, at the Exchange's request, the Company stated that the Company had commenced preparation of an insider list in respect of the order in question on December 28, 2016.

The Exchange has stated:

It is the issuer's responsibility to disclose correct information in a timely manner. It must be considered as undisputed that GS considered the information about the potential order as inside information. According to the written explanation to the Exchange, the Company stated, on February 20, 2017, that the information about the February 14, 2017 negotiations on the potential order was deemed to constitute inside information. According to the explanation the Company decided to delay the disclosure of the inside information on February 20, 2017.

Section 4.1 of the Rule Book prescribes that inside information must be disclosed as soon as possible. A company may, however, on its own responsibility, delay disclosure of the inside information. This means that when a company concludes that information is inside information, the company must either disclose it immediately or, provided that the conditions for delay are met, decide to delay the disclosure.

GS decided to delay disclosure six days after the Company had concluded that the negotiations regarding the order constituted inside information. Accordingly, the Company violated section 4.1 of the Rule Book by failing to disclose inside information or take a decision regarding delay of disclosure as soon as possible. Already on December 28, 2016, the Company had compiled an insider list regarding the potential order; as a result, it is unclear whether the Company believed that information regarding the potential order constituted inside information already before February 14, 2017. In such case, the decision to delay disclosure was taken 53 days after it was concluded that the potential order constituted inside information.

GS has stated:

The order in question emanated from an invitation to tender which was initiated by the procuring buyer during the summer/autumn of 2016. On December 28, 2016, the buyer informed GS that the Company, together with other tenderers, had been selected to negotiate with the buyer. GS decided to prepare a register regarding the tender procedure which was not a formal insider register. CA erroneously interpreted the register as an insider register associated with the tender procedure. All personnel who were involved were registered on a permanent insider list.

On February 14, 2017, GS informed CA regarding the potential order and CA informed the Exchange. During the negotiations with the buyer two important issues – which could be regarded as deal breakers – arose, in particular a technical issue regarding the communication system and an issue regarding responsibility for currency risk since the buyer wanted to conduct the transaction in USD instead of EUR, which was the currency which had been applied in the tender procedure. During GS's negotiations with the buyer in London on February 13-14, 2017, there was a breakthrough regarding the technical issue. However, no agreement could be reached as to which party would bear the currency risk upon implementation of the transaction in USD. Following the negotiations in London, GS believed that there was a significant risk that the Company was out of the deal; the Company's assumptions regarding the possible identities of the competing tenderers led it to believe that other tenderers would be prepared to assume the currency risk associated with an agreement in USD. In light of the fact that this was a procurement procedure and that, due to the customer's strict confidentiality regarding the identity of the competing tenderers, GS did not know the number or identity of the parties who remained in the tender procedure, the uncertainty was so great that there could not be deemed to be any inside information regarding the negotiations until the Company knew with certainty that an agreement would be reached with the buyer. Accordingly, it was not until shortly before the signing of the agreement that GS could be deemed to have inside information as defined in Article 7 of MAR. It was not until thirty minutes before the agreement was signed that an agreement was reached regarding the commercial terms and conditions. Prior thereto, the likelihood of agreeing on the technical, legal, and commercial terms and conditions was less than 50 per cent.

The Company did not have any direct contact with the Exchange; all contact was conducted by CA. GS's decision to delay disclosure was made only to satisfy requirements imposed by the Exchange. The date of February 14, 2017, which is stated as the date on which inside information existed, was chosen randomly and became the day on which the negotiations in London had taken place. The date of the decision was selected as the day after the form provided by CA was signed. Disclosure prior to signing of the agreement would have been speculative and would not have constituted complete and correct information.

Analysis:

The procurement procedure in this case constituted a protracted process with intermediate steps. An initial step was the Company's submission of a tender in the procurement. Additional steps were the negotiations with the buyer on February 13-14, 2017 in London and the technical breakthrough at that time and the subsequent confirmation that the buyer wished to sign a contract with the Company. The end result of this process was reached when the parties entered into the agreement. In light of the fact that a procurement procedure was involved, it is difficult to determine when the inside information in this case arose. However, the Disciplinary Committee is of the opinion that the information regarding the negotiations of February 14, 2017, during which the technical breakthrough regarding the communication system took place, generated such a sufficiently strong level of certainty that the information in this intermediate step was *per se* sufficiently specific to constitute inside information. At the time in question, there were also realistic prospects that the end result would be attained. In order for the information to constitute inside information, the information must also be price-sensitive insofar that a reasonable investor would use it as part of its investment decision. In light of the size of the relevant order as compared with orders previous placed with the Company, the anticipated effect of the information regarding the February 14, 2017 negotiations would be an increase in the price of the Company's shares. Upon this determination, the Disciplinary Committee believes that it is not necessary to establish a preponderant likelihood that the end result will be reached.

Accordingly, the Disciplinary Committee finds that GS has violated rule 4.1 of the Rule Book by failing to disclose, as soon as possible on February 14, 2017, information regarding the negotiations or, at such time, taking a decision regarding delayed disclosure.

In summary, the Disciplinary Committee finds that in several respects, GS has violated section 4.1 of the Rule Book. Due to the difficulties in applying the new rule book in respect of negotiations for an order in a tender procedure, the Disciplinary Committee finds that the sanction may be limited to a fine corresponding to annual fees for two years.

On behalf of the Disciplinary Committee,

/signature/

Marianne Lundius

Former Justice of the Supreme Court Marianne Lundius, MBA Ragnar Boman, Company Director Anders Oscarsson, Company Director Erik Einerth, and *Advokat* Patrik Marcelius participated in the Committee's decision.