

**OMX NORDIC EXCHANGE STOCKHOLM
DISCIPLINARY COMMITTEE**

RULING
2008:10

September 3, 2008

OMX Nordic Exchange Stockholm AB

Bankaktiebolaget Avanza

Petter Nilsson

Bankaktiebolaget Avanza is a member of OMX Nordic Exchange Stockholm AB (formerly Stockholmsbörsen AB). The membership is regulated by the Stock Exchange regulations Norex Member Rules (NMR). Avanza has undertaken to comply with NMR as long as its membership is active.

As shown in the enclosed appendix, the Exchange, by virtue of the NMR rules, has requested that the Disciplinary Committee announce a ruling regarding disciplinary action against Avanza and that the Avanza stockbroker Petter Nilsson be issued a warning.

Avanza and Petter Nilsson have contended the charges.

The Disciplinary Committee has reviewed the documentation in this case. None of the parties has requested oral negotiations.

The Swedish Financial Supervisory Authority has stated that it has no contribution to make to this case.

Item 4.6.1 of NMR, first paragraph, stipulates the following:

Orders placed in the Order Book, Automatically Matched Trades and Manual Trades must reflect the current market value of the Instrument in question and constitute genuine Orders and Trades. The same applies to Orders subject to Accept Matching.

“Current market value” for Trades means prices, which, upon a comprehensive assessment, reflect the current pricing of the Instrument in question. When assessing the current market value, consideration should be made to, among other things, the changes in the pricing of the Instrument during the relevant Exchange Day, the changes in the pricing of the Instrument on previous Exchange Days, the volatility of the Instrument and the general changes in the pricing of comparable Instruments and, where relevant other particular conditions related to the Trade.

An Order will not reflect current market value if placed in the Order Book with a price that would not be considered current market value for a corresponding trade. The Orders period of validity must be taken into consideration when assessing the price of the Order.

In Item 4.4.2 of NMR it is established that a member of the Stock Exchange is responsible for all actions taken by a stockbroker or other parties via the member’s affiliation to the trading system,

The Stock Exchange has issued the following statement.

On February 4, 2008 at the time of 11:33:50, Avanza placed a buy order through broker Petter Nilsson for 29,000 shares of Mediaprovider Scandinavia AB subject to a limit of SEK 7.50. The order immediately led to trades, first for 4,000 shares at a price of SEK 5.30 and thereafter for 25,000 shares at a price of SEK 7.50. Since the preceding trade was executed at a price of SEK 5.10, the price deviation was more than 45% in relation to the latest buy price and more than 40% in relation to the best sell price at the time the order was placed. The Stock Exchange decided to cancel the trade at SEK 7.50 with reference to NMR item 5.7.3, which empowers the Stock Exchange to cancel an order that is a clear breach of NMR.

The Stock Exchange can conclude that the trade that was executed at a price of SEK 7.50 significantly deviated from the market value for the share concerned. Consequently, the trade constituted a breach of the NMR rules.

The trade was carried out by Avanza broker Petter Nilsson. The Stock Exchange has listened to a recording of the conversation between Petter Nilsson and the customer concerned. The recording reveals that Nilsson was aware that the share price at the time of the order was between “SEK 5.15 and 5.30” and that the customer was asked whether or not he wanted to “buy all the way up to SEK 7.50”. Nilsson proceeded to execute the order despite being well aware of the price deviation.

The Stock Exchange requests that Avanza, due to the current incident, be sanctioned in accordance with NMR and that Petter Nilsson be issued a warning.

Avanza and Petter Nilsson (in the following “Avanza”) have elaborated upon their position in detail, which is summarized as follows:

The shares in Mediaprovider Scandinavia AB are listed on First North. The company has 9,025,000 shares outstanding. In reality, only about 1,800,000 shares are available on the market since the remaining shares are controlled by major owners who are retaining their shares long-term. The minimum trading lot is 1,000 shares. The shares are illiquid. During the period January 1, 2008 to May 30, 2008, the shares were not subject to any trading for 38 of the 105 trading days. During a further 27 trading days, only one trade was made. The turnover was particularly low during the period from January to March 2008, when the shares were not traded at all for 28 of the total of 62 trading days and for 14 of these days only one trade was executed.

The volume of this particular trade was substantial. The shares have traditionally been traded in minor blocks. In 2008, prior to the period in question, daily trading had never exceeded 22,000 shares. The normal size of the blocks traded until the period in question appears to have been about 1,000 to 4,000 shares.

Since the volatility of the shares is high, quick and substantial price fluctuations are not unusual and were, on the contrary, common in the period around the time of the matter concerned.

The customer had placed a buy order as early as January 31, 2008 via the internet for 10,000 shares of Mediaprovider at SEK 4.35. This order was not matched. The following day, the customer decreased the volume to 6,000 shares for the purpose of completing a trade. No trade was made then either. The buy order remained in place until February 4, 2008. During the morning of February 4, 2008, a sell order was placed by Öhman for 34,000 shares at SEK 7.50. When the customer noted this, the customer attempted to place a buy order for 29,000 shares for a maximum of SEK 7.50 via the internet to match the sell order. The buy order, however, could not be placed since the customer received an error message regarding a lack of liquidity. The customer then contacted the broker Petter Nilsson around 11.30 a.m. The customer was well aware that the sell order was in place and that the latest trade had been executed at a price of SEK 5.30. He was therefore well aware of the levels at which the shares had previously been traded and that there was a significant deviation from the prevailing Stock Exchange price. The customer, however, wanted to acquire a significant block of Mediaprovider and knew that a block as significant as 34,000 shares was almost never available on the market. He was therefore prepared to pay the price for the volume concerned. However, he lacked the liquidity to buy all 34,000 shares, so instead he wanted to buy 29,000 shares to later acquire more capital and thereafter buy the remaining shares in the block. He was asked twice if he wanted to make the trade despite the share

trading at SEK 5.30. The customer wanted to complete the trade. The customer therefore made a well-informed decision when he instructed the Avanza broker to execute the order.

As previously stated by the Disciplinary Committee, Item 4.6.1 of the Norex regulations is difficult to interpret and difficult to apply. To date, no guidance have been issued by OMX about how the rule is to be interpreted and applied in different circumstances.

The *price* at which transactions in the instrument occurred earlier in the day would naturally be the grounds for an assessment of whether the deviation is acceptable. When making this assessment, how decisive the price is depends on the conditions of the individual case. The significance of the price rises (and the size of permissible deviations decreases) if the matter concerns a well-analyzed, liquid and stable stock. Earlier Disciplinary Committee practice has established that greater deviations from earlier prices must be permitted when the matter concerns a *small listed company* whose shares are subject to *low liquidity* and *high volatility*. The aforementioned account of the Mediaprovider stock reveals that the company is a very small listed company, that the liquidity in the stock is very low and that the volatility is very high. The volatility was significant, particularly during the month in question, February 2008.

Avanza is also of the opinion that there was no other possibility for the customer to acquire a position in the company of this size at a lower price than the one offered in the outstanding sell order either at the time in question or in connection to it. Given this situation, a price of SEK 7.50 would be the market value. There is a difference between a matter in which the order in question was placed first (meaning that it constituted an offer) and one in which it was placed in reply to the outstanding order (meaning that it constituted an accept). If the order in question was placed first – that it was, for example, a buy order at a price clearly exceeding the latest price for the instrument – then the trade itself is not necessarily evidence of market value since the accept may have occurred precisely because the offer deviated from the market value to such an extent that it became favorable to accept. But if the chronology is reversed, meaning that if a sell order already exists on the market at a price clearly exceeding the latest price for the instrument, then the evidence value of the trade in question cannot be dismissed in the same way. In such a case, the other party's order cannot be explained by the fact that the order to be judged in an artificial way produced the sell order. *In this specific case*, in fact, there is an informed potential seller that first placed an order at the price that he thought could lead to a trade. If there are no apparent reasons to believe that the buyer, meaning the person instructing the broker to place the order in question, does not fulfill the criteria of an informed participant etc, then, in this case, the trade must be evidence of market value. Neither when the buy order in question was placed nor after the fact have any circumstances been revealed that would lead Avanza and Petter Nilsson to believe anything

other than that both the buyer and the seller made an informed and rational decision based on normal commercial considerations. The trade must therefore itself be evidence of market value. The matter in question is unlike any other matter relating to item 4.6.1 that has previously been ruled on by the Disciplinary Committee. To a certain extent, it is an extreme case in that it reflects nearly every factor that, based on experience, could generate significant deviations in the price (small listed company, low liquidity, high volatility, relatively high volume, penny share, etc). Avanza argues that the deviation in this concrete case, for this concrete instrument and this concrete volume, combined with the history of how the shares were traded and the outstanding sell order, were not greater than that the level of SEK 7.50 “could possibly” constitute the market value for a trade corresponding to the trade in question.

Finally, Avanza argues that no breach, or at least no punishable breach, of item 4.6.1 could be deemed to have occurred since the price deviation is such that it would have been accepted by the filter in a number of automatic trading systems whose value limits have been accepted by OMX, such as by Avanza’s internet trading system and OMX’s own SAXESS system.

In summary, *the Stock Market* replied as follows:

It is correct that Mediaprovider is a very small company and the distribution of its shares can be considered minor in scope. For companies like this there is a risk that a liquid trading with effective pricing will not be achieved. Therefore, the Stock Exchange has applied a model for a number of years whereas such companies can commission a member of the Stock Exchange to pose as a liquidity provider for trading of shares in the company. The Stock Exchange member takes it upon himself for most of the trading day to maintain buy and sell orders in the trading system for those companies encompassed by the undertaking. Such buy and sell orders shall consist of at least four trade lots and the difference between the price limits may not exceed 4%, based on the price limit for the sell order. A share that is to be included in the undertaking of a liquidity provider is labeled, among other places, in the price list on the Stock Exchange’s website in order to inform the public and the participants of the market of the existence of a liquidity provider.

Mediaprovider has commissioned a member of the Stock Exchange to be a liquidity provider for trading in the company’s shares. The existence of a liquidity provider makes the claim that the share should be considered illiquid questionable.

The liquidity provider ensures that the person who wants to execute a share trade is able to, at least in minor volumes. Those wishing to trade in major volumes can also benefit from the existence of a liquidity provider by dividing their orders into a number of blocks and executing them in tact with the liquidity providers renewing their order volume. The Stock Exchange also wishes

to emphasize that this matter does not concern the barriers and filters Avanza employs to automatically and systematically stop orders from being sent to the Stock Exchange. For your information, it can be noted that the Stock Exchange from time to time is informed by its members about which levels for price barriers the member implements but that the Stock Exchange never approves or in any other manner sanctions these. The order in question was not sent to the Stock Exchange by Avanza's internet trading system but through a manual order placed by the authorized broker Petter Nilsson.

The current matter concerns the considerations an authorized trader is expected to make when a decision is made concerning whether a customer order can and should be registered in the Stock Exchange's trading system. According to the Stock Exchange's rules and regulations, the trader is then responsible to make his own assessment as to whether or not the order that is being made does in fact reflect the current market value for the instrument in question. The fact that the customer appears to want to buy at a certain price is not sufficient enough for a broker to be able to place the order since the broker and the member of the Stock Exchange have a responsibility for every order that is placed and every trade that is executed. To place an order, as in this case, without regard to the fact that this would lead to a price increase of over 40%, must be considered a clear violation of the rules and regulations.

In summary, *Avanza* has additionally also stated:

The existence of a liquidity provider is not an argument for the liquidity being higher than that which can be derived from trading statistics. However, and this naturally further speaks in favor of Avanza's position, it is only through the existence of the liquidity provider that any significant liquidity exists at all. Avanza would like to emphasize that market liquidity obviously dictates the price at which the *providers* can acquire shares and cover the position that they take when their sell order is matched and thereby dictates the sell price that the *providers* will set.

Regarding the question of the customer having been able to divide his order into smaller blocks and thereby being able to execute trades at a lower price level, Avanza notes that the liquidity providing undertaking, which in this case was accepted by Remium, is designed to ensure trades in *minor* volumes and is therefore limited to four trading blocks (meaning 4,000 shares). In order to reach a volume of 29,000 shares, the customer would have been forced to divide his order into eight orders of four trading blocks. The liquidity provider, Remium, would not have had anything close to this volume in its own stock.

Had Remium sought to *acquire the shares in the market* then every such new order would clearly have increased the price. The trading statistics reveal, furthermore, that it is very probable that Remium would not have been able to supply the customer with the volume in question within a reasonable amount of time.

Had Remium had a *securities loan agreement* in place with a majority owner then Remium would have utilized this instead. The effect of this would have been a lower *immediate* price increase. The borrowed shares must, however, naturally be returned to the owner. This return can only be made possible by Remium buying the shares from the market. Consequently, Remium would be the last player to act in a very illiquid market to acquire a substantial volume of shares. Due to the illiquidity of the shares, the price would have increased significantly in this case too, regardless of this occurring over a longer period, and, accordingly, the price increase would have been lower in relative terms. (However, it is not impossible that the price increase in this case could have reached SEK 7.50 too. To a certain degree, this would be due to the agreed length of the loan).

The question, however, is which scenario a broker and a brokerage firm can expect when they have a limited amount of time to figure out how to act. Expressed in another manner: which scenario is the Disciplinary Committee to base its decision on?

Neither Avanza nor Petter Nilsson was, or is, aware of the specific arrangements that Remium may have had in place for the shares of Mediaprovider at the time concerned.

According to Avanza and given the current conditions, sanctions should not be placed when the legalities are so unclear concerning what an individual broker in the specific case is or is not permitted to do.

The Disciplinary Committee makes the following ruling.

The Disciplinary Committee has in previous cases asserted that the rule in item 4.6.1 is of great significance for confidence in the way the Stock Exchange operates. Without such a rule, there would be significant risk for illegitimate activity by individual or cooperating parties affecting the price of shares. As the committee has emphasized, the rule entails that in certain situations the members of the Stock Exchange will be forced to refuse to execute the instructions' of their customers, if these instructions imply a risk of the rule being negated. The committee has simultaneously maintained that the rule is in part difficult to interpret. (Refer, inter alia, to the Committee's ruling 2005:8 and 2006:4).

In the present matter, it has been made clear that Avanza, through Petter Nilsson, executed a trade in Mediaprovider that deviated from the latest buy price by more than 45% and from the latest sell price by more than 40%. Whether or not the buyer and seller were in agreement to execute the trade lacks significance in assessments of whether or not the trade was in compliance with the rules. Whether or not it was a question of a significant block of shares or whether or not the trade executed by Avanza and Petter Nilsson constituted an accept on a sell order that was already in place also lacks significance.

In a previous case (ruling 2006:4), however, the committee decided to refrain from issuing disciplinary action in a case in which deviation occurred from the price in place when it was a question of a share in a small listed company subject to comparatively low liquidity and a certain volatility. In that case, however, the order led to a price that was only about 6.4% above the price that the share had previously traded at. In the present case, the deviation is far greater. In absolute terms, the difference was less than SEK 3, and it is, as Avanza points out, conceivable that a number of automatic filters and barriers implemented by securities institutions would have permitted the deal if it had taken place via an Internet-based trading system. This situation cannot be of any significance to a ruling on whether or not the transaction complied with the regulations, especially since this was a question of a deal that was manually placed in the system by the broker. The Disciplinary Committee would, however, like to emphasize that interpretation of the rule in question may be particularly difficult when it is a question of shares whose value is low in absolute terms.

Even taking into consideration the arguments presented by Avanza, the Disciplinary Committee still cannot see this case as anything other than a question of a clear breach of item 4.6.1 of NMR that cannot be considered minor or excusable. Particularly with respect to the broker responsible for the trade, however, it is to some extent regarded as an extenuating circumstance that the transaction could not have resulted in a disciplinary action if it had been executed via the automatic trading system. However, this does not preclude that Avanza be subject to disciplinary action and that the broker receive a warning.

Accordingly, the Disciplinary Committee fines Avanza SEK 100,000 and issues a warning to Petter Nilsson.

On behalf of the Disciplinary Committee

Johan Munck

The following persons participated in the Committee's decision: Supreme Court Justice Johan Munck, Madeleine Leijonhufvud, company director Carl-Johan Högbom, B. Sc (economy) Ragnar Boman and company director Stefan Erneholm. Unanimous.