

IMPORTANT NOTICE: This version is a translation of the original Swedish decision and is only made available for information purposes.

**NASDAQ STOCKHOLM'S
DISCIPLINARY COMMITTEE**

**DECISION
2017-06**

July 10, 2017

Nasdaq Stockholm

Skandinaviska Enskilda Banken AB

Decision

The Disciplinary Committee orders Skandinaviska Enskilda Banken AB to pay a fine to Nasdaq Stockholm corresponding to the annual fee for one year.

Motion

The shares of Skandinaviska Enskilda Banken AB (“SEB” or the “Company”) are admitted to trading on Nasdaq Stockholm AB’s (the “Exchange”) regulated market Nasdaq Stockholm. The Company has signed an undertaking to comply with the Exchange’s Rule Book for issuers in force from time to time (the “Rulebook”).

The Exchange has argued that SEB has violated item 3.1 of the Rulebook by failing to publicly disclose inside information as soon as possible and by failing to take a decision to delay the disclosure of the information. The Exchange has also argued that SEB has failed to draw up an insider register when such obligation arose pursuant to Article 18(1) of the EU Market Abuse Regulation (“MAR”).

The Exchange has moved that the Disciplinary Committee assess the stated violations and determine a reasonable sanction. SEB has essentially admitted the factual circumstances invoked by the Exchange, but denies that the Company has violated the Rulebook, arguing that the information in question has not constituted inside information.

A hearing in the matter was held before the Disciplinary Committee on June 28, 2017, at which the Exchange was represented by Joakim Strid (Head of European Surveillance), Karin Ydén (Head of Issuer Surveillance) och Andreas Blomquist (Senior Legal Counsel). SEB was represented by Gent Jansson (Head of Group Compliance), Viveka Hirdman-Ryrberg (Head of Communications), Jonas Söderberg (Head of Investor Relations) as well as attorneys Björn Tude and Oscar Nyren.

The Disciplinary Committee's assessment

Background

The Exchange has, in summary, argued as follows: On the morning of January 16, 2017, the Exchange was contacted by SEB, through the Company's Global Head of Compliance Monitoring, Linda Hedvall, who informed that the Company's president and CEO Annika Falkengren was leaving SEB and that the Company intended to disclose the information prior to the opening of the Exchange on the same day.

On January 16, 2017, at 07:30 CET, SEB issued a press release, "President and CEO Annika Falkengren is leaving SEB in July 2017". SEB published a similarly worded press release at 08:55 CET on the same day, this time with a reference to the fact that the information was published in accordance with MAR (after the Exchange had pointed out that the first press release had lacked such a reference).

On January 15, 2017, at 15:40 CET, SEB drew up an insider register concerning Annika Falkengren's resignation. On January 15, 2017, SEB's insider committee decided not to delay the disclosure of the information since there was no legitimate reason for such delay.

It is undisputed that, on January, 15 2017, SEB made the assessment that the press release which the Company published on January 15, 2017, that the President and CEO Annika Falkengren was to leave SEB, constituted inside information. The fact that the Company subsequently changed its position on this aspect to some extent is irrelevant to the assessment. In the Exchange's opinion, a change in the CEO of a listed company is, in principle, always to be regarded as inside information. This is also evident from the fact that item 3.3.9 of the Rulebook, with its guidance text, specifically states that changes regarding the managing director are deemed to be significant and must always

be publicly disclosed. In the Exchange's opinion, statements issued by the European Securities and Markets Authority ("ESMA") also provide support for the position that a change in CEO typically constitutes inside information.

The question is, therefore, when the inside information arose and whether SEB has fulfilled its obligation to publicly disclose the information as soon as possible.

The actual chain of events was initiated by Annika Falkengren commencing a discussion on December 13, 2016 with the Chairman of SEB's Board of Directors regarding her possible resignation. The discussion was resumed during the period between Christmas and the New Year. On December 29, 2016, SEB's Head of Group Communication (who is also a member of SEB's insider committee, and Ulf Peterson (a senior adviser to the CEO), were notified of the matter in order to assist in the process. On January 13, 2017, when the Chairman of the Board and Annika Falkengren decided to convene an extraordinary meeting of the Board of Directors and an extraordinary meeting of SEB's senior management to be held on January 15, 2017, Hans Bertil Ragnhäll, Jan Back and Ulf Falkengren were informed of the matter. On January 14, 2017 Gent Jansson, Linda Hedvall, Erik Söderberg, Johan Andresen, Signhild Arnegård Hansen, Samir Birkho, Sven Nyman, Sara Öhrvall, Åsa Isenborg, Anna-Karin Glimström, Björn Westerberg, Eva Lindholm, Winnie Fok, Helena Saxon, Urban Jansson, Jesper Ovesen, Tomas Nicolin and Birgitta Kantola – thus a large number of people – were informed of the matter. The Board meeting regarding the matter began at 14:00 CET on January 15, 2017 and Annika Falkengren's formal notice of termination was presented at this meeting. At 15:40 CET on the same day, SEB drew up an insider register. However, the insider register contains notations dated between December 13, 2016 and January 14, 2017 and information that a decision regarding a delayed disclosure was not taken. Further individuals were informed of the matter on January 16, 2017 prior to SEB's public disclosure on the same day and, on January 16, 2017 at 07:30 CET, SEB issued a press release with information that Annika Falkengren was resigning as CEO.

In light of the time when SEB drew up an insider register as a consequence of the relevant matter, the Exchange concludes that it was not until 15:40 CET on January 15, 2017 that the Company assessed that the information was sufficiently specific to constitute inside information. The chain of events may be regarded as intermediary steps in a protracted process and, in light of MAR and relevant case law, the information must be deemed to have been of a specific nature at an earlier time than the one argued by the Company.

With respect to the criterion that the information must be of a specific nature in order to be deemed to constitute inside information, in *Markus Gilt v Daimler AG* the Euro-

pean Court of Justice held that the phrases included in the definition of inside information, that circumstances or events “may reasonably be expected” and “may reasonably occur” are not to be interpreted to mean that it must be proven that there is a great likelihood that the circumstances or events will occur. Contrariwise, information regarding circumstances and events is not to be regarded as of a specific nature if it is unlikely that they will occur. Thus, according to the European Court of Justice, the phrases mean that after an overall assessment in light of the factors that are already available, there exist realistic prospects that the future circumstances or events will occur. Thus, in the Exchange’s opinion, the requirement of likelihood that circumstances might be deemed to exist or that an event might occur is set at a low level.

An element in a procedure concerning a CEO’s possible resignation, i.e. prior to the date of the CEO’s formal notice of termination, may thus constitute inside information and trigger a duty of disclosure. As the Exchange understands the matter, Annika Falkengren initially contacted the Chairman of the Board of SEB due to the fact that Annika Falkengren was considering leaving her position as CEO of the Company. The Exchange lacks any detailed information as to what was thereupon discussed and, therefore, is unable to assess the likelihood that, at that point in time, Annika Falkengren, would leave her position. The discussions between Annika Falkengren and the Chairman of the Board were resumed during the period between Christmas and the New Year. This gives the impression that Annika Falkengren’s thoughts at this stage became even more concrete and that the likelihood of the termination occurring was then greater than previously, possibly imminent – an impression which is reinforced by the fact that, on December 29, 2016, an additional two persons within SEB, namely the Head of Communications and a member of SEB’s insider committee, were informed in order to assist in the process.

The information that Annika Falkengren was considering resigning as CEO was of a specific nature and constituted inside information sometime during the days between Christmas and New Year, or in any event as from Thursday, December 29, 2016. Consequently, already on that date SEB should have publicly disclosed the information or drawn up an insider register and taken a decision regarding delayed disclosure. In any event, it must have been clear that Annika Falkengren’s submission of notice of termination could reasonably be expected to occur, and thereby constituted inside information, in connection with the fact that, on Friday, January 13, 2017, the Chairman of the Board and Annika Falkengren decided to convene an extraordinary Board meeting to be held on Sunday, January 15, 2017. However, SEB did not disclose the inside information until Monday, January 16, 2017, without a decision regarding a delayed disclosure being taken prior thereto.

The Exchange also notes that SEB did not draw up an insider register as a consequence of the relevant event until Sunday, January 15, 2017.

The fact that the full Board was not informed prior to Sunday, January 15, 2017, or that the information was held strictly confidential in order to avoid the risk of a leakage, shows nothing other than that SEB considered the information to be extremely sensitive. In the event inside information is deemed to have arisen in the afternoon of Sunday, January 15, 2017, the Company took no decision regarding a delayed disclosure despite the fact that the Company had assessed that the event constituted inside information and had drawn up an insider register. Nor did the Company publicly disclose the inside information as soon as possible. A length of time of approximately 15 hours between the formal notice of termination and the public disclosure cannot be deemed to satisfy the requirement of disclosure “as soon as possible”. In particular, not when the preparations pending the publication had commenced, or in any event might have commenced, as early as Friday, January 13, 2017 in connection with the decision to convene an extraordinary Board meeting. Nor can the actual information about the event be regarded as complex or extensive. Therefore, it should not have taken a particularly long time to summarise the information in a press release.

SEB has asserted as follows: MAR states that the question of whether information is of a specific nature, and can thus constitute inside information provided other conditions are fulfilled, must be assessed based on the information available at any given time.

With respect to the issue of whether a future event is sufficiently specific to be able to constitute inside information, the question is whether, upon an overall assessment of the factors pertaining at the relevant point in time, there are realistic prospects that the event will occur, i.e. whether there pertain actual prerequisites or actual prospects that the event will materialise. On each occasion, one should take into account the various potential outcomes and factors that pertain, and that inside information only arises when (1) one of these outcomes appears to be realistic compared with other potential outcomes; (2) the available information is sufficiently specific to make it possible to draw conclusions regarding the potential effect of the event on the price of the financial instrument; and (3) the outcome satisfies the other criteria for inside information pursuant to Article 7 of MAR.

In conjunction with the public disclosure and in connection with the drawing up of the insider register, SEB made the assessment that the information in the press release constituted inside information. In light of the fact that it subsequently transpired that the press release had no particular impact on the price of SEB’s shares, SEB’s assessment proved to be incorrect. The three circumstances, which taken together satisfy the definition of inside information, are: that SEB’s CEO had decided to leave SEB; that

SEB's CEO informed the bank's Board of Directors; and that the resignation would enter into effect in July 2017 at the latest. In conjunction with the assessment, it was of crucial significance that SEB's CEO and Board of Directors agreed that the termination would enter into effect in July 2017. The assessment of whether a piece of information of a specific nature would have a significant impact on the price of a financial instrument must be made taking into account whether the information is such as a reasonable investor would probably have utilised as part of the basis for an investment decision. Discussions concerning a potential voluntary resignation cannot *per se* constitute inside information since the CEO had not decided and since the issue of the date of the termination was unclear. A reasonable investor would not base an investment decision solely on the fact that SEB's CEO had informed the Board of Directors of her decision, since the time aspect is relevant also to the circumstance. The discussion between SEB's CEO and the Board of Directors could have resulted in a number of different chains of events, for example that the CEO decided to remain as CEO or in a different role; that she would continue for a certain period of time; that she would continue for a certain period of time alongside a new CEO; or that she would leave immediately. These are scenarios which might have resulted in different degrees of price sensitivity. Determining factors for SEB's assessment that there was inside information were (1) that the decision was definite and (2) that SEB's Board of Directors and CEO had agreed upon a timetable for the succession. These two factors did not pertain until Sunday, January 15, 2017. Nor were they a plausible consequence of the discussions held in December 2016 or on any occasion prior thereto. On Friday, January 13, 2017, when SEB's Chairman of the Board convened a board meeting, SEB's CEO had still not given her notice of termination. Nor had she reached agreement with the Board or the Chairman as to when such termination would enter into effect. It was not until the board meeting of Sunday, January 15, 2017 – when the details as regards the termination were decided upon – that the information became sufficiently specific to make it possible to draw the conclusion that it might potentially have an impact on the price of SEB's financial instruments. It was difficult to decide whether the information constituted inside information and SEB ended up making an erroneous assessment, and thus an insider register was drawn up after the decision had been taken. SEB assessed the information as being sensitive in light of the general news value of the information and the risk of misrepresentation, dissemination of rumours and speculation within the bank.

With respect to the 15 hours that elapsed between the decision and publication of the press release, SEB did not have the possibility to prepare a press release as early as Friday, January 13, 2017, since at that point in time there were far too many uncertainty factors to allow any specific draft to be produced. Furthermore, preparation of a press release as regards what was, at the time, the hypothetical situation that SEB's

CEO was to leave the bank, would have had an immediate detrimental impact on confidence in her internally and have been detrimental to SEB in the event she had chosen to stay at the bank after the board meeting held on January 15, 2017. Due to the general news value of the information and the fact that several individuals needed to prepare themselves for questions from the public and the media, there was a cogent interest in drafting a clear and unambiguous press release. After the Board meeting, large sections of SEB's communications department worked in principle non-stop on preparations. In light of the background and the fact that the public disclosure was unplanned as regards a large part of the organisation, SEB is of the view that the public disclosure took place as soon as possible.

Considerations

Item 3.1 of the Rulebook prescribes that an issuer shall, as soon as possible, publicly disclose inside information in accordance with Article 17 of MAR.

The guidance text to item 3.1 states, *inter alia*, that Article 17 of MAR prescribes an obligation to publicly disclose inside information. The term "inside information" is defined in Article 7 of MAR. According to Article 17, the issuer may, on its own responsibility, delay the public disclosure of inside information provided that all of the conditions in accordance with the MAR are satisfied.

According to Article 7 of MAR, inside information comprises 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 price of those financial instruments [...].

According to Article 7(2) of MAR, information is 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 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 [...] In the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those circumstances or that future event, and also the intermediate steps of the process which are connected with bringing about or resulting in those future circumstances or future event, may be deemed to be precise information.

According to Article 7(3) of MAR, 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 Article 7.

According to Article 18(1) of MAR, issuers or any person acting on their behalf shall draw up a list of all persons who have access to inside information and who are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information.

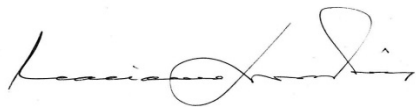
.....

The evidence shows that the actual chain of events is, in principle, not in dispute. The discussion as a consequence of SEB's CEO having raised the issue that she would leave the position of CEO of SEB constituted intermediary steps in a protracted process which began on December 13, 2016 when she initiated a discussion with SEB's

Chairman of the Board regarding her possible resignation as CEO, and which concluded with her formal notice of termination at the Board meeting held on Sunday, January 15, 2017. An initial step was thus the discussion that took place on December 13, 2016 between SEB's CEO and the Chairman of the Board and which continued during the period between Christmas and New Year. The next step was taken on December 29, 2016 when SEB's Head of Group Communications and Ulf Pettersson, senior adviser to SEB's CEO, were informed. The next step in the process was taken on January 13, 2017, when the Chairman of the Board decided to convene a Board meeting to be held on Sunday, January 15, 2017 as a consequence of the discussions conducted with the CEO about her resignation, and at which some 20 people were informed that the CEO had raised the issue of her resignation. At the point of time in question, there may be deemed to have been a realistic prospect that the CEO would resign sometime in the near future, which is supported by the fact that, with only a couple of days' notice, a Board meeting was convened to be held on a Sunday, at which the CEO submitted her formal notice of resignation. The Disciplinary Committee is thus of the opinion that, at this stage in the process, the information that the CEO was considering resigning must be deemed to have reached such a high level of specificity that the information regarding this intermediate stage was, *per se*, sufficiently specific to be able to constitute inside information. In order for the information to constitute inside information, it is necessary that the information can also be expected to have an effect on the price of financial instruments, inasmuch as a reasonable investor would use it as part of an investment decision. As a general rule, a change in CEO cannot be expected to be a price-sensitive event; rather, an assessment must be made on a case-by-case basis. In light of Annika Falkengren's twelve-year presidency at SEB, during which she had steered the bank through the financial crisis of 2008, an effect on the share price could be expected based on the information regarding the convening of the Board meeting on January 13 and the reason therefor. This is an assessment which SEB itself made in connection with publication of the press release on January 16, 2017. The fact that the information did not result in any price movement is irrelevant as regards the assessment of whether the information could be expected to affect the share price inasmuch as a reasonable investor would use it in the context of an investment decision. In the Disciplinary Committee's opinion, SEB was thus obliged, on January 13, 2017, to draw up an insider register and adopt a decision to delay the disclosure pending the CEO's formal notice of termination or her withdrawal of the relevant resignation from the position as CEO.

SEB has thus violated item 3.1 of the Rulebook. The Disciplinary Committee sets the sanction at a fine corresponding to an annual fee for one year.

On behalf of the Disciplinary Committee,

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

Marianne Lundius

Former Justice of the Supreme Court Marianne Lundius, Justice of the Supreme Court Ann-Christine Lindeblad, MBA Ragnar Boman, company director Anders Oscarsson and authorised accountant Svante Forsberg participated in the Committee's decision.