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NASDAQ STOCKHOLM	DECISION	1 June 2020
DISCIPLINARY COMMITTEE	2020:05	

DECISION

In its assessment of the matter, the Disciplinary Committee has found no reason to impose any sanction on Cell Impact AB.

Motion

The shares of Cell Impact AB ("Cell Impact" or the "Company") are admitted to trading on Nasdaq First North Growth Market, which is a trading venue of Nasdaq Stockholm AB (the "Exchange "). The Company has signed an undertaking to comply with the Exchange's Rule Book for Nasdaq First North Growth Market in force from time to time (the "Rule Book").

The Exchange has argued that Cell Impact violated section 4.1 of the Rule Book by failing to include details of the counterparty's name in the press release dated 18 March 2019 bearing the heading "Cell Impact enters into a new phase with mass production of a newly developed flow plate for North America" (the "Press Release").

Citing section 6.3 in Supplement B to the Rule Book, the Exchange has moved that the Disciplinary Committee assess the violation of the Rule Book and order an appropriate sanction.

Cell Impact has stipulated to the factual circumstances but denies that the Company has committed the alleged violation of the Rule Book.

A hearing in the matter before the Disciplinary Committee took place on 13 May 2019, at which the Exchange was represented by Andreas Blomquist (Senior Legal Counsel), Elias Skog (Head of Enforcement & Investigations), Tobias Ställborn (Regulatory Compliance Analyst) and Karin Ydén. Cell Impact was represented by Pär Teike (CEO), Robert Sobocki (Board Chairman) and attorneys Dennis Westermark and Ola Svanberg.

Reasons for the decision

The Rule Book

Section 4.1 of the Rule Book prescribes that an issuer must publish inside information in accordance with Article 17 of Regulation (EU) No 596/2014 of the European Parliament and of the Council (the Market Abuse Regulation, "MAR").

Pursuant to Article 7 of the MAR, information of a precise nature which has not been publicly disclosed 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 […].

Pursuant to Article 17(1) of the MAR, an issuer shall inform the public as soon as possible of inside information which directly concerns that issuer. The issuer shall also ensure that the inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public […].

The guidance to section 4.1 of the Rule Book states that inside information which is made public by the issuer must be sufficiently detailed to enable an assessment of the significance of the information for the price of the issuer's financial instruments. Omitted information may also result in the disclosure of information by the issuer becoming incorrect and misleading. The guidance also states that the issuer cannot evade its disclosure obligation by entering into an agreement with another party whereby specific information, or details in such information, may not be disclosed by the issuer.

Considerations

In the Press Release, which the Company published on 18 March 2019, the Company disclosed information that Cell Impact had entered into a new phase of a newly developed flow plate for North America. The Press Release contained, *inter alia*, information that Cell Impact had been chosen as "supplier of a newly developed flow plate to a leading innovative North American fuel cell company". In the Press Release it was further stated "that the initial order value is less than half a million kronor, but Cell Impact makes the assessment that future orders within the coming 12-month period will increase significantly as a result of the customer's sales successes." However, the name of the counterparty was not stated in the Press Release. The Press Release also stated that the information comprised inside information pursuant to the MAR. In light of the fact that the Press Release lacked information concerning the name of the counterparty, the Exchange contacted Cell Impact's certified supervisor and enquired concerning the Company's view of the matter. The Company's certified adviser stated that instead of naming the counterparty the Company had provided an alternative description of that party which allowed for a correct and complete assessment of the information.

The Exchange has asserted: Public disclosure of inside information regarding an agreement entered into by an issuer must, as a starting point, contain information regarding the identity of the contractual counterparty in question. The actual reason why, in the Press Release, the Company omitted information concerning the identity of the contractual counterparty appears to have been due to confidentiality. The Company has further argued that its description of the contractual counterparty as a "leading innovative North American fuel cell company" limited the potential counterparties to four different fuel cell manufacturers and that it was

thereby possible for an investor to make a complete and correct assessment of the information in question based on the Press Release. In light of the fact that the Press Release stated that the Company makes the assessment that future orders within the coming 12-month period will increase significantly as a result of the customer's sales successes, it was the potential in the contractual relationship with the counterparty which was of importance when assessing the significance of the order in question for the Company. Under these circumstances, it must be assumed to have been of particular relevance for the investors to obtain information about the contractual counterparty. However, in the Exchange's opinion, based on the Company's meagre description of the contractual counterparty it has hardly been possible for an investor to limit the potential counterparties to the four different fuel cell manufacturers stated by the Company. In addition, the requirement that the general public be afforded prompt access to inside information and a possibility for a complete and correct assessment of such information at the right time must be deemed to entail that an investor, perhaps with certain limited prior knowledge concerning the issue in question, must be able to make such an assessment immediately based on the issuer's public disclosure of the information in question. Thus, it cannot be demanded that the investor, in conjunction with public disclosure by an issuer of the currently relevant type of agreement, be required to make further enquiries among other sources information, based on an alternative description of the contractual counterparty in question, in order to establish the identity of the potential counterparties to the agreement. Thus, the Press Release has not been structured in such a manner as to allow for a complete and correct assessment of the importance of the agreement in question for the Company and the price of its shares, and the Company has thereby violated section 4.1 of the Rule Book.

The Company has asserted: The information about the order which was publicly disclosed in the Press Release was of importance for investors in Cell Impact's shares since it constituted a sign that the Company might secure larger orders within the coming year. It was also of importance to clarify that it involved an order from North America, and not from China, since the Company has experience that projects in China can be uncertain within the industry in question.

However, for a number of reasons, even if the Company had stated the counterparty's name instead of describing the counterparty, it would not have been possible to make a more precise assessment of the potential resulting from a possible continued customer relationship other than that which was included by the Company in the Press Release. Cell Impact's manufacturing operations are in an expansion phase and, during the full year of 2019, the Company's sales amounted to SEK 12 million. The customer placing the order has sales of approximately SEK 500 million, while the value of the publicly disclosed order is limited to SEK 500,000. As the Company writes in the Press Release, the order in itself constituted a sign that larger orders might be placed with the Company in the near future, but the Company's limited production capacity and margins, and the need to develop confidence on the market, constituted limitations as regards the Company's sales growth from the low level at the time and thus as regards the size of orders that the Company could accept. In addition, there were alternative manufacturers of the component that the Company produces. From this perspective, the identity of the leading innovative North American fuel cell companies that Cell Impact had as customers was of no material significance for Cell Impact's investors. There are only four conceivable fuel cell producers to whom the aforementioned description

might conceivably apply within the subcategory in which the Company operates, namely fuel cells that produce energy at a low temperature. These four conceivable fuel cell producers are in all essential respects similar. In addition, the fuel cell industry is by no means as transparent as many other industries (for example, the automotive and mobile phone industries). Cell Impact is unaware of the number of fuel cells that the Company's customers produce or the percentage of the customers' products in which the Company's flow plate is used. Since a fuel cell is a source of energy, fuel cells can be used within a very large number of areas, for example as standby units that are switched on in the case of power outages in critical systems or as a power source in a passenger car, bus or goods vehicles. Fuel cells are also used in conjunction with new production of products, in various types of conversions of existing plant and vehicles (for example trucks). It is, therefore, very difficult to track certain manufacturer's products in an attempt to estimate the number of units produced and the sales prospects for a particular subcontractor to the producer.

In light of the foregoing, the information concerning the identity of the Company's counterparty following the Company's publication of the Press Release did not constitute such information as might be assumed to have a material impact on the price of the Company's shares, and the information that was made public was sufficiently detailed to make an assessment, to the extent possible, of the significance of the information for the Company.

The Disciplinary Committee notes that there is no disagreement regarding the facts of the matter or that the information in the Press Release constituted inside information. The question is thus whether the Company was obliged to publicly name the contractual counterparty to whom the Press Release referred.

Neither the MAR nor the Rule Book provides that an issuer has a specific obligation to publicly disclose the name of a contractual counterparty, and the sources of law also contain no presumption that the identity of a contractual counterparty comprises such information as an issuer is obliged to make public. The assessment of whether such an obligation exists must be made in each individual case taking into account all relevant circumstances, including the subject matter of the agreement, the importance of the agreement for the issuer, the identity of the counterparty, the nature of the market, and which information about the agreement is otherwise publicly disclosed.

In the assessment, particular importance must be attached to whether the agreement is price-sensitive due to the substantive content of the agreement (e.g. the size of a particular order) or whether the agreement is price-sensitive, wholly or in part, due to the contractual relationship itself and the identity of the contractual counterparty (e.g. in the case of important cooperation agreements). In the former case, the identity of the contractual counterparty can seldom be deemed to be of importance for the assessment of the issuer and the value of its financial instruments. In the latter case, as a starting point the identity of the contractual counterparty should be publicly disclosed, unless an alternative description of the contractual counterparty is provided which, in the individual case, allows for an assessment of the significance of the agreement for the issuer in the same manner as if the name of the counterparty had been stated (see the Disciplinary Committee's decision 2018:05). The Disciplinary Committee also wishes to provide a reminder that a confidentiality commitment never discharges an issuer from its disclosure obligation.

The information in the currently relevant Press Release comprised a specific order value, and also that "Cell Impact makes the assessment that future orders [from the counterparty] within the coming 12-month period will increase significantly as a result of the customer's sales ability", which is stated in the second paragraph of the Press Release. Thus, the potential in any continued customer relationship must be deemed to be of relevance for the assessment of the significance of the agreement in question for the Company and the value of its financial instruments. Thus, in line with that which is stated in the preceding paragraph, the question becomes whether, upon an overall assessment, the content of the Press Release allowed for the same assessment of the significance of such potential for the Company as in the case if the name had been publicly disclosed.

The Disciplinary Committee has been informed of the identity of the contractual counterparty. Even if the Company's description of the contractual counterparty is brief, in the Disciplinary Committee's opinion it may be deemed sufficient taking into consideration the undisputed market conditions and company-specific circumstances reported by the Company. Thus, the content of the Press Release may be deemed to have allowed for the same assessment of the significance of the agreement for the Company as in the case if the name of the counterparty had been publicly disclosed. The information in the Press Release has thus been publicly disclosed in accordance with section 4.1 of the Rule Book.

The Disciplinary Committee thus finds that Cell Impact's behaviour should not result in any sanction.

On behalf of the Disciplinary Committee

Marianne Lundius

Former Justice Marianne Lundius, former authorised public accountant Svante Forsberg, company director Carl-Johan Högbom, attorney Wilhelm Lüning and attorney Patrik Marcelius participated in the Committee's decision.

Secretary: Jur.dr Erik Lidman