

**NASDAQ STOCKHOLM'S
DISCIPLINARY COMMITTEE**

23 July 2017

DECISION
2017:07

Nasdaq Stockholm

XBT Provider AB

Decision

The Disciplinary Committee orders XBT Provider AB to pay a fine to Nasdaq in the amount of SEK 1,000,000.

Motion

Commercial paper issued by XBT Provider AB ("XBT" or the "Company") is admitted for trading on Nasdaq Stockholm (the "Exchange"). The Company has signed an undertaking to comply with the Exchange's Rule Book for covered warrants and certificates applicable from time to time (the "Rule Book").

The Exchange has argued that XBT violated Article 28.5 of Commission Regulation (EC) No 809/2004 of 29 April 2004 (the "Prospectus Regulation") and Chapter 2, section 29 of the Financial Instruments Trading Act (1991:980) when the Company failed to possess documents which were incorporated by reference in the main prospectus and documents which must be made available for inspection on its website during the entire term of validity of the main prospectus.

The Exchange has also argued that XBT violated section 2.3 of the Rule Book and Chapter 16, section 4 of the Securities Markets Act (2007:528) when the Company failed within the prescribed, statutory deadline to publish annual reports for 2015 and 2016 and section 2.3 of the Rule Book when the Company failed to publish any interim report for the first half of 2015 on its website until this was pointed out by the Exchange.

The Exchange has also argued that XBT failed to comply with the internal routines and procedures (the “Internal Rules”) which the Company provided in conjunction with its application by failing to ensure that the risk function reported to the Board of Directors, by not carrying out an audit of the Company’s intranet and IT security, by not handling a material change in the operations in accordance with the Internal Rules, and by not ensuring that the regulatory compliance function supervised and controlled the Company’s compliance with applicable legislation and the Internal Rules or reported to the Board of Directors in accordance with the Internal Rules. The Company thereby acted in violation of the terms and conditions of the Exchange’s decision for granting an exemption from the requirements set forth in section 2.1 of the Rule Book requiring that, in order to be approved, an issuer must be a credit institution or a securities company authorized by the Swedish Financial Supervisory Authority or an equivalent authority within the EEA.

The Exchange has further argued that XBT violated sections 4.1 and 4.2 of the Rule Book by not having published information through press releases via news distributors and by selectively providing information covered by the publication requirement.

The Exchange has finally argued that XBT, in light of the violations, breached section 2.2 of the Rule Book by not possessing adequate routines for reporting and monitoring in order to ensure that the Company complies with applicable legislation and the Rule Book and that it possesses secure technical systems.

The Exchange has moved that the Disciplinary Committee adjudicate the violations and impose a suitable sanction.

XBT has largely admitted the facts argued by the Exchange and pointed out that, of all of the violations, only four occurred after Global Advisors became an owner of XBT. The Company has moved that the Disciplinary Committee, when deciding the

sanction, take into consideration the fact that most of the violations took place before Global Advisors took over ownership of XBT and the major efforts carried out in order to bring about proper procedures at XBT as well as the expertise which has been brought into the Company.

A meeting before the Disciplinary Committee was held in the matter on 17 July 2017 where the Exchange was represented by Karin Ydén (Head of Issuer Surveillance) Andreas Gustafsson (Senior Vice President) and Niklas Ramstedt (Regulatory Compliance Specialist).

XBT was represented by Daniel Masters (Chairman XBT and Global Advisors), Laurent Ksiss (Managing Director), Jean Marie Mognetti (Director of XBT and CEO Global Advisors), Simon Allen (Group In-house General Counsel), and Attorney Anders Malm.

The Disciplinary Committee's assessment

The Exchange has argued, *inter alia*, the following:

In conjunction with the decision by the Exchange to approve XBT, the Exchange granted the Company an exemption from the requirements set forth in section 2.1 of the Rule Book according to which an issuer, in order to be approved, must be a credit institution or a securities company licensed by the Swedish Financial Supervisory Authority or a corresponding authority within the EEA. The exemption was granted on the basis that the Company would only issue the types of instruments which were described in its application and that the Company would inform the Exchange in the event of any change in the Company's operations or the financial instruments, agreements, and the procedures implemented by the Company as a part of the application process which are described in the Company's application.

With reference to a guarantee agreement between the Company and its owner at the time, KnC Group AB ("KnC" or the "Guarantor"), the Exchange also granted the Company an exemption from the requirement set forth in section 2.5 (ii) of the Rule Book according to which an issuer must provide the Exchange with its three most recent annual reports.

Finally, the decision stated that the Exchange would monitor and follow up on the Company's activities in order to ensure that the Company was complying with the

Internal Rules which the Company had provided the Exchange in conjunction with the application.

XBT has generally argued the following: XBT affirms that the Company is guilty of the violations argued by the Exchange but argues that only 4 of the 24 violations occurred after the new owner, Global Advisors, took over ownership of XBT. Global Advisors has made major efforts to ensure that XBT maintains the highest standards with respect to regulatory compliance in the future.

Analysis

The wording of the Rule Book prior to 3 July 2016 applies to the matter.

Section 1.1 of the Rule Book prescribes that the Rule Book shall apply in the wording in effect from time to time to issuers of covered warrants commencing on the date on which the issuer signs an undertaking that all rules and the Exchange's guidelines and any other undertakings made by the issuer in relation to the Exchange shall apply as long as the company's warrants and commercial paper are traded on the Exchange.

Section 2.1 of the Rule Book prescribes, *inter alia*, that in order to be approved an issuer must be a credit institution or a investment firm licensed by the Swedish Financial Supervisory Authority or a corresponding authority within the EEA.

Section 2.2 of the Rule Book prescribes that an issuer must have the appropriate organization for the operations with adequate routines for risk management, secure technical systems and reporting and monitoring systems which make it possible to fulfill the requirements applicable to issuers of public traded covered warrants and which otherwise are deemed appropriate for an issuer of covered warrants paper traded publicly according to the applicable legislation and the Rule Book.

Section 3.2.4 of the Rule Book prescribes that covered warrants may be admitted for trading provided a prospectus has been approved by the authorized supervisory authority in a country within the EEA and made available to the public by the issuer in accordance with applicable legislation.

Section 3.5 prescribes that the Exchange may approve an application for admission to trading notwithstanding that all of the requirements have not been fulfilled, provided the Exchange believes:

- (a) that the purpose of the relevant requirement or any legislative requirement is not jeopardized; or
- (b) the purpose underlying the relevant requirement can be achieved in another manner.

Section 4.1 of the Rule Book prescribes that facts and circumstances as well as decisions regarding the issuer which are considered to have a significant effect on the price of the listed instruments, or on the issuer's ability to fulfill its obligations under the Rule Book or applicable legislation, must be published as soon as possible. This includes, but is not limited to, facts, circumstances or decisions likely to have a significant effect on the issuer's solvency, liquidity, etc. as well as any and all decisions or actions made or taken by the authorized supervisory authority.

Section 4.2 of the Rule Book prescribes that publication of the information must be made in such a way that the information becomes available to the general public quickly and in a nondiscriminatory manner.

Section 11.1 of appendix 11 to the Rule Book prescribes that where an issuer contravenes the Rule Book, the Exchange may – (iii) if the violation is serious – delist the issuer's instruments or, in other cases, (ii) order the issuer to pay a fine corresponding to not less than SEK 100,000 and not more than SEK 5,000,000. Where the violation is less serious or excusable (i) the Exchange may issue a warning in lieu of imposing a fine. If the issuer has failed in material respects to fulfill the applicable requirements for admission to trading, the Exchange may delist the issuer's instruments.

The following, *inter alia*, is apparent from the relevant provisions in this matter.

According to Chapter 2, section 20 of the Financial Instruments Trading Act, information may be provided in a prospectus through reference to one or more public documents which have been previously approved and registered by the Financial Supervisory Authority or made public in accordance with Chapter 17 of the Securities Markets Act. The information in such cases becomes incorporated into the prospectus.

According to Chapter 2, section 29 of the Financial Instruments Trading Act, a prospectus must, among other

things, be published on the company's website.

Chapter 16, section 4 of the Securities Markets Act states that the issuer must publish its annual accounts, and where applicable consolidated accounts, as soon as possible and not later than four months after the expiration of each financial year.

According to Article 28.5 of the Prospectus Regulation, an issuer that applies for admission to trading on a regulated market is obligated to ensure that the information incorporated through reference does not endanger investor protection in terms of the comprehensibility and accessibility of the information.

.....

In the investigation, it has been demonstrated by the evidence that the actual chain of events is, in principle, uncontested. The Company has raised a number of legally technical objections. However, it follows from the Rule Book that these do not affect the assessment of the matter.

Consequently, XBT has violated sections 2.2, 2.3, 4.1 and 4.2 of the Rule Book, Chapter 16, section 4 of the Securities Markets Act, Chapter 2, sections 20 and 29 of the Financial Instruments Trading Act, and Article 28.5 of the Prospectus Regulation. The Disciplinary Committee views the violations seriously, in particular with respect to the deficiencies regarding the undertakings XBT made towards the Exchange which were a precondition for the Company's covered warrants being admitted to trading despite the fact that the Company was not a credit institution or a investment firm licensed by the Financial Supervisory Authority. The Disciplinary Committee notes the improvements which have been achieved since Global Advisors became an owner of XBT but, according to the established practice of the Disciplinary Committee, the issuer is responsible for violations committed regardless of whether new procedures have been put into effect by the issuer. The Disciplinary Committee orders the sanction to be a fine in the amount of SEK 1,000,000.

On behalf of the Disciplinary Committee,



Marianne Lundius

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