

THE DISCIPLINARY COMMITTEE RULING
AT NASDAQ OMX STOCKHOLM 2009:2

April 6, 2009

NASDAQ OMX Stockholm AB

Kaupthing Bank Sverige AB

Magnus Lundquist

Kaupthing Bank Sverige AB is a member of NASDAQ OMX Stockholm AB (“the Exchange”). The bank has pledged to comply with the Norex Member Rules (NMR) applicable at each point in time as long as its membership is active.

As shown in the enclosed appendix, the Exchange requested, by virtue of the NMR rules, that the Disciplinary Committee announce a ruling regarding disciplinary action concerning Kaupthing and the Kaupthing stockbroker Magnus Lundquist.

Kaupthing and Magnus Lundquist denied the charges.

Neither of the parties requested oral negotiations. The Disciplinary Committee familiarized itself with the documentation concerning the case.

After the Disciplinary Committee, in accordance with the Swedish Financial Supervisory Authority’s regulations, had given the Supervisory Authority an opportunity to comment on the matter, the Supervisory Authority stated that due to the event that formed the basis of the matter in question, it will conducting an investigation later in the year of Kaupthing’s procedures for reporting matters pursuant to Section 10 of the Financial Instruments Trading (Market Abuse Penalties) Act (SFS 2005:377). In other respects, the Swedish Financial Supervisory Authority 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.

“Current market value” for Trades denotes prices that upon collective assessment reflect the applicable price of bonds of the instruments in question. Upon determining the current market value, the Norex Stock Exchange(s) shall, among other things, consider fluctuations in the price of bonds for Instruments during the current trading day and previous trading days, the volatility of the instrument, general changes in the price of bonds for comparable Instruments and, in the applicable cases, change specific conditions that relate to the Trade.

An Order does not reflect the current market value if the Order was placed in the Order book at a price that could not constitute the current market value for the corresponding Trade. The period of validity of the Order must be considered upon determining the price of the Order.”

In Item 4.6.2 of NMR it is established, inter alia, that:

The Member may not place Orders or enter into Trades which, individually or together, are intended to improperly influence the price structure in the Trading System, which are devoid of commercial purpose, or which are intended to delay or prevent access to the Trading System by other Members. The above general rule means, for example, that it is prohibited:

To place an Order or automatically match/enter into a Trade with the intention of influencing the price of an Instrument in order to alter the value of one's own, or any other party's, holding of any Instrument at any given time, for example prior to the end of the year or end of a month;

The Exchange stated as follows on the matter.

On December 30, 2008 – the final day of trading during the year – between 5:11 and 5:17 p.m., Kaupthing, through the broker Magnus Lundquist, executed trades pertaining to a total of 2,100 shares in eWork Scandinavia AB, a company whose shares are traded on First North. The trades led to the price of the share rising from SEK 19 to SEK 24.80, equal to a price deviation of about 30%. Since there were no further trades in the share, SEK 24.80 was quoted as the closing price for the year.

The Exchange has familiarized itself with the telephone call between the bank's client – who is also the fourth largest shareholder in eWork Scandinavia and a member of the company's Board – and the broker. From this call, it is apparent that the client wished to “boost the price” and that, preferably, he would have liked the price to have ended up at SEK 27.40; in other words, he wanted “100 at SEK 27.40.” When the trades at SEK 24.80 were reported, the client stated that “it's a pity we couldn't go all the way to SEK 27.40” and that “it would have been neat to have closed at SEK 27.40.” He concluded, laughingly, by noting that he had achieved an increase of “26.53”%, to which the broker commented “well done.”

The trades executed at SEK 24.80 deviated significantly from the prevailing market value of the particular share. In the opinion of the Exchange, the deviation, even if the liquidity and volatility of the share are taken into account, was so considerable that the actions taken must be regarded as a breach of NMR Item 4.6.1.

As a result of the recorded conversations, the Exchange also regards it as obvious that the client's intention, when purchasing the shares during the final minutes of the last trading day of the year, was to increase the price to a level that significantly exceeded the prevailing market price. Accordingly, the trades improperly affected price formation in the Trading System, whereby the actions were also in breach of NMR Item 4.6.2.

The trades were executed by a broker employed by Kaupthing. A Member is always responsible for all actions that brokers or other parties take via the Member's connection to the Trading System (NMR Item 4.4.2). Accordingly, the Member has strict responsibility for

his employee's actions; also refer to the Disciplinary Committee's previous rulings 1999:1 and 2007:1.

Kaupthing has stated:

In accordance with 4.6.1 of NMR, orders and trades must reflect the current market value of the instrument. According to this provision, the term "current market value of a trade" pertains to a collective assessment of prevailing pricing.

Of previous practices in the market, it can be concluded that the rule is difficult to interpret in certain respects (the Disciplinary Committee's rulings 2005:8 and 2006:4). In addition, according to the practices established as acceptable by the Disciplinary Committee, considerable deviations from the previously quoted price must be permitted when the trade involves shares in a small listed company subject to low liquidity as well as some volatility. According to the bank, these considerations must be the points of departure for an assessment of whether or not a breach of the rules has been committed concerning the point in question. The aforementioned may be considered to mean that an individual broker may find it very difficult to determine whether an action might contravene the rules and, in certain cases, the capacity of the individual broker to anticipate the consequences of the provision may be questioned. The shares of eWork had been relatively illiquid and characterized by volatility, meaning their market price had been subject to considerable fluctuations. In this context, it should also be taken into account that turnover of the shares had been low in a volatile market. Thus it cannot be excluded that placing orders at a higher level could be a prerequisite for executing trades in an illiquid share. It can also be difficult to set a current market value for an illiquid share, whereby such trades will, of some necessity, always fluctuate, because a market participant has to make his own assessment of the value given the particular circumstances.

According to NMR Item 4.6.2, a Member may not place orders or execute trades that are intended to improperly influence the price structure in the Trading System. There is a specific ban on placing an order or executing a trade with the intention of influencing the price of an instrument in order to alter the value of the instrument at a given time, for example prior to the end of the year.

It may be concluded that if the placing of an order is to be regarded as contravening this regulation, there must be an intention to affect the price structure. According to the bank, this must mean that a degree of premeditation must be demonstrated. Establishing this requires that all relevant circumstances be taken into account. Simply the fact that the trades were executed on the last day of trading during the year and that the client had stated that he wanted to "boost the price" cannot alone form the basis for determining whether an active attempt to affect price formation in the Trading System had occurred in an improper manner. The trades were executed in the market without any contact being made by the Exchange's market surveillance unit. In view of the fact that Magnus Lundquist had explained to the client that the Trading System would detect excessive price movement and the fact that he was aware of the client's large holdings of the company's shares and of his position as a member of the Board of eWork, the bank does not regard it as established that there was any improper intent to affect the price, because Magnus Lundquist had cause to take these circumstances into account when placing the order. The client had placed a large number of orders for eWork shares over time and, although it cannot be excluded that the intention was to keep the price of the share at a high level, this cannot be regarded as improper action as

long as the information disclosure obligation is observed (also refer, inter alia, to Alf-Peter Svensson and Hans Schedin, Guidance to the right price, page 44). The fact that the matter of impropriety in cases such as the present is not self-evident is also apparent from a verdict by Stockholm City Court, dated March 5, 2009 (B 22909-07), where in a similar case the charge of market abuse against a president of an NGM-listed company, who was also a major shareholder, was dismissed.

There is no lack of reason to direct criticism against the actions taken by the broker when placing the order and, particularly, in respect of his passivity during the communication between him and the client that preceded the placing of the orders. In addition, the broker placed excessive faith in the ability of the Exchange's Trading System to address the movement in the price of the share.

The investigation into the matter does not provide sufficient support of the claim that the bank should have been able to determine that the orders placed in the order book did not reflect the current market value. Nor had the bank any opportunity to form an opinion of the intention of the bank's client when placing the order.

Magnus Lundquist stated the following in essence.

Magnus Lundquist has had a broker-client relationship with the client for 12 years and has had conversations with him several times a day. He considers it wrong to assess a single conversation, in which the focus is only on a couple of individual expressions, without taking into account Magnus Lundquist's response concerning how the Trading System deals with major price movements. It is also apparent from the tape that Magnus Lundquist did not encourage the client and that, in fact, he actually tried to restrain him.

In his capacity as a broker, it is difficult for Magnus Lundquist to determine the degree of price movement that would be regarded as permissible. During the year, the client had regularly increased his holding of eWork shares but had never sold any. It is impossible to determine why his objective would have been to increase the share price in the short term, because neither he nor any other party would benefit from this. The volatility and lack of liquidity also meant that price movements were not uncommon. The trades also occurred in a market where much larger companies had experienced more powerful price movements over the day than the movement in this company's shares. Magnus Lundquist states that he obviously had placed excessive faith in the circuit breaks in the system and the previously so well-functioning oral alarm clock previously provided by the Exchange's trading and corporate supervision units, which he regrets. Based on the decision-making basis he had at hand, his actions cannot be regarded as improper.

The Disciplinary Committee states the following.

The price at which Magnus Lundquist, on the client's account, executed the share purchase in question exceeded the prevailing price for eWork share by approximately 30%. The trades led to the price of the share rising from SEK 19 to SEK 24.80. It is not apparent from the documentation that this price increase could have been attributable to any special circumstances.

In a previous case (Ruling 2006:4), the Committee decided to abstain from taking disciplinary action in respect of a deviation that occurred from the prevailing price of a share in a minor

listed company whose shares, in common with the situation prevailing for the shares in eWork, were subject to comparatively low liquidity and some volatility. In that particular case, however, the order led to the price exceeding the price at which the share had been traded during the preceding trade by only 6.4%. In the current case, the deviation was much greater, even if in absolute terms it amounts to only SEK 6 per share.

What should be added to this, however, is that the client expressly informed Magnus Lundquist that his intention had been to “boost” the share price and the fact that the trade took place on the closing date for the year, meaning a time that is subject to special attention by being clearly prohibited in the rules and regulations and about which the Exchange has therefore urged that extra caution should be observed.

From Magnus Lundquist’s conversations with the client and his own statements on the matter, it should be regarded as apparent that he assumed that the orders would be automatically removed from the Trading System in the event that they led to improper price deviation, whereby he concluded that he need not consider the matter any further. However, this was a misconception; the system for the removal of deviating orders that is currently in place in the Trading System is not comprehensive and it does not relieve the broker concerned from responsibility. Nevertheless, it should be observed that it is also apparent from the conversations that Magnus Lundquist informed the client that the trading rules prevented excessively large price movements.

Although, based on the investigation at hand, the Committee does not consider it possible to state an opinion on whether the client had premeditatedly attempted to affect the price structure in an improper manner – in which case, the transactions would have been punishable as market abuse – it is beyond all doubt that Magnus Lundquist and thus also the bank contravened NMR Item 4.6.1 in a manner that cannot be regarded as minor or excusable. For this, the bank should be subject to disciplinary action. For Magnus Lundquist, a warning should suffice.

The Disciplinary Committee fines Kaupthing Bank Sverige AB four hundred thousand Swedish kronor (400,000) and issues a warning to Magnus Lundquist.

On behalf of the Disciplinary Committee

Johan Munck

Supreme Court Justice Johan Munck, Supreme Court Justice Marianne Lundius, Professor Madeleine Leijonhufvud, Company Director Hans Mertzig and Company Director Stefan Erneholm participated in the Committee’s deliberations.