

## **THE DISCIPLINARY COMMITTEE OF NASDAQ ICELAND**

Decision in case no. 2/2020

Shares issued by Brim hf. (ticker symbol: BRIM) are traded on the Nasdaq Iceland exchange (Kauphöll Íslands hf., “the Exchange”). Brim hf. (“Brim” or “the Issuer”) has undertaken to comply with the rules governing this market, i.e. the Nordic Main Market Rulebook for Issuers of Shares (“the Rulebook”) issued on 1 May 2020.

Nasdaq Iceland has requested the Disciplinary Committee to decide whether to impose sanctions on the Issuer in accordance with the aforesaid Rulebook in a matter relating to Brim’s disclosure of related-party transactions.

The Committee’s decision is based on the written evidence available.

### I.

According to the documents of the case, the main facts are as follows:

On 2 July 2020, Brim published an announcement headed “Brim invests in Greenland” in relation to its investment in the Greenlandic seafood company Arctic Prime Fisheries ApS (“APF”). The announcement stated, among other things, that the Issuer would participate in APF’s funding, acquire a stake in the company and sell to it a newly built freezing trawler, Ilivileq. The total value of the Issuer’s investment in APF was approximately 85 million euros, according to the announcement. The announcement further stated that “Greenlandic parties hold the majority of shares in APF. Útgerðarfélag Reykjavíkur hf in Iceland has been a shareholder since 2013 and holds 16.5% and Brim will hold 16.5% of the shares after the transaction”.

On 17 July 2020, Nasdaq Iceland formally requested explanations from the Issuer on this matter. The Issuer’s reply was received on 29 July 2020 and stated, among other things, that through its Greenlandic subsidiary, Brim had acquired a 16.5% stake in APF from Útgerðarfélag Reykjavíkur (“ÚR”) for ISK 2 million, and that ÚR was Brim’s largest shareholder with a stake of 33.83% and was, therefore, a party closely related to the Issuer within the meaning of section 14 of Supplement C of the Rulebook. The reply continued that the Issuer had not, however, disclosed the subsidiary’s

counterparty in the sale of the stake because its purchase price of approximately ISK 2 million for a 16,5% stake in APF was, according to the Issuer, an insubstantial sum out of the company's 85 million euro investment in Greenland.

The explanations provided by the Issuer in the letter of 29 July 2020 stated that the Issuer and ÚR each held a 16.5% stake in APF. The letter further stated that APF was not a subsidiary of the Issuer, but that the stake certainly exceeded the 10% limit set out in section 14 of Supplement C of the Rulebook. The Issuer's explanations included that the managerial links between the Issuer and APF consisted of the fact that one of the Issuer's directors, Guðmundur Kristjánsson, also served as vice-chairman of APF's three-member board. The Issuer further stated that although it had omitted to mention this connection in the aforesaid announcement of 2 July 2020, APF should correctly be regarded as a party closely related to the Issuer in the light of point (ii) of section 14 of Supplement C.

## II.

Nasdaq Iceland points out that under section 14 of Supplement C of the Rulebook, a transaction between an Issuer and closely-related parties that is not entered into in the normal course of business must be disclosed as soon as possible after making the decision on such a transaction, unless the transaction is obviously insignificant. "Closely-related parties" includes managing directors, members of the board of directors and other managers in the parent company or significant subsidiaries exercising significant influence in the making of financial and operational decisions of the parent company or of the significant subsidiary in question. Legal entities controlled by these persons and shareholders controlling more than 10% of the shares or voting rights of the issuer are also considered closely-related parties. For further clarification of this section, Nasdaq Iceland makes reference to the explanatory notes accompanying it.

Nasdaq Iceland points out that the Issuer's explanations include that ÚR held a one-third stake in APF before Brim acquired the 16.5% stake from ÚR, through its Greenlandic subsidiary, for approximately ISK 2 million. In its explanations to Nasdaq Iceland, the Issuer states that the stake's purchase price represented an insubstantial part of the Issuer's total investment in APF, which amounted to 85 million euros. Nasdaq Iceland points out that the fact of the non-disclosure of Brim's acquisition of the stake from ÚR, which is closely related to the Issuer, has been established.

Given that ÚR holds a 16.5% stake in APF after the transaction and Guðmundur Kristjánsson is a director of Brim (the Issuer) as well as being registered as a beneficial owner of ÚR with an 88% stake through indirect ownership, Nasdaq Iceland considers that it would have been preferable to at least disclose the managerial links between the Issuer and ÚR to ensure confidence and credibility. Nasdaq Iceland considers that, in all probability it was necessary, however, for the Issuer to disclose publicly the managerial links between Brim and APF given that a member of Brim's board of directors, Guðmundur Kristjánsson, is also vice-chairman of the board of APF, in which the Issuer has invested a total of approximately 85 million euros, which cannot be considered an insignificant transaction.

In light of the foregoing, Nasdaq Iceland considers Brim to have violated section 14 of Supplement C of the Rulebook. Nasdaq Iceland has therefore requested a decision by the Disciplinary Committee regarding the possible imposition of sanctions in this case.

### III.

The Issuer states that the facts are clear from the documents of the case, i.e. that on 2 July 2020 Brim published an announcement of its investment in the Greenlandic seafood company APF. Subsequently, communications took place between Nasdaq and Brim regarding the contents of the announcement.

The Issuer considers it proper to classify APF as a party closely related to the Issuer in light of point (ii) of section 14 of Supplement C of the Rulebook and to handle the disclosure of transactions between the companies accordingly. The Issuer accepts that its disclosure could have been clearer on this point in the announcement published on 2 July 2020. The Issuer's explanations include that Brim's acquisition of the shares in APF was an insubstantial part of the total investment. It did not see fit to disclose that ÚR was the counterparty in the transaction, and considered it sufficient to mention the companies' joint involvement in APF after the transaction, particularly in light of the connection between the companies, which the Issuer claims is known from information and news that are public and available to investors.

Brim further states that since it cannot infer that its disclosure was in any way misleading to informed investors, with no remarks or queries received from anyone except Nasdaq, the imposition of sanctions over and above a reprimand, cf. paragraph (c) of point (i) of section 16 of Supplement C, would be unwarranted. The Issuer does not consider stricter sanctions, i.e. a public reprimand or the imposition of a fine, cf. paragraphs (d) or (f), to be necessary since it can hardly be deemed feasible to set

conditions for or suspend trading in Brim's shares or to remove them from trading on Nasdaq, cf. paragraphs (e) and (g). In this context, the company points out the appropriateness, on a first violation, of imposing the more lenient sanctions and of applying more onerous sanctions only upon repeated or serious violations. The Issuer does not find cause to publicly sanction the company.

#### IV.

Nasdaq Iceland has referred this present case to the Disciplinary Committee on the basis that the Issuer violated section 14 of Supplement C of the Nordic Main Market Rulebook for Issuers of Shares by means of an announcement published by the Issuer on 2 July 2020 in relation to its business transactions in Greenland.

As outlined in Part I hereof, on 2 July 2020 the Issuer published an announcement headed "Brim invests in Greenland" relating to the company's investment in the Greenlandic seafood company APF. The announcement stated, among other things, that the Issuer was participating in APF's funding, acquiring a stake in that company and selling to it a newly built freezing trawler, Ilivileq. The total value of the Issuer's investment in APF was to be approximately 85 million euros. The announcement further stated that Greenlandic parties held the majority of shares in APF; Útgerðarfélag Reykjavíkur hf. in Iceland had been a shareholder in the company since 2013 and held a 16.5% stake and Brim would hold 16.5% in the company.

Nasdaq Iceland points out that the Issuer's total investment in APF amounted to 85 million euros and the acquisition of the 16.5% stake in APF from ÚR, through a subsidiary, which amounted to ISK 2 million, was part of that investment. The Disciplinary Committee considers the purchase of the stake in APF to have been part of the overall transaction, even if the price paid for that stake was an insubstantial part of the Issuer's total investment in Greenland.

Section 14 of Supplement C of the Rulebook states verbatim regarding closely-related party transactions:

- i. A transaction between the Issuer and closely-related parties which is not entered into in the normal course of business shall be disclosed when the decision regarding such a transaction is taken, unless the transaction is insignificant to the parties involved.
- ii. "Closely-related parties" include managing directors, members of the Board of Directors, and other managers in the Issuer or significant subsidiaries who control or exercise significant influence in making financial and operational

decisions in the Issuer or in the relevant significant subsidiary. Legal entities controlled by these persons and shareholders controlling more than 10% of the financial instruments or voting rights of the Issuer are also considered as closely-related parties.

The above provision lays down the principle that a transaction between an Issuer and closely-related parties that cannot be regarded as entered into in the normal course of business must be disclosed once the decision regarding the transaction is taken, unless the transaction is considered insignificant. “Closely-related parties” includes managing directors, members of the board of directors and other managers of the Issuer or significant subsidiaries who exercise significant influence in making financial and operational decisions of the Issuer or of the significant subsidiary in question. Legal entities controlled by these persons and shareholders controlling more than 10% of the shares or voting rights of the Issuer also count as closely-related parties. The explanatory notes to this section of the Rulebook state that in order to ensure credibility and confidence, any transaction with a closely-related party should be disclosed unless it is insignificant.

From the wording of section 14 of Supplement C of the Rulebook and the explanatory notes to that section, it may be inferred that a transaction between an Issuer and closely-related parties that cannot be regarded as entered into in the normal course of business must be disclosed once the decision regarding the transaction is taken, unless it is considered “insignificant”. It has been established that, through its Greenlandic subsidiary, the Issuer acquired from ÚR a 16.5% stake in the Greenlandic seafood company APF and that ÚR holds a 33.83% stake in the Issuer and a 16.5% stake in APF after that transaction. Guðmundur Kristjánsson, who is registered as a beneficial owner of ÚR according to the documents of the case, with an 88% stake through his indirect shareholdings, also sits on the boards of the Issuer and of APF.

Given the wording of section 14 of Supplement C of the Rulebook, there can be no doubt that the transaction described above was between closely-related parties within the meaning of that section and that the Issuer was obliged to disclose the counterparty of the transaction in its announcement of 2 July 2020. This case concerns the acquisition of a 16.5% stake in APF. The Disciplinary Committee finds that it cannot ignore the fact that the acquisition of ÚR’s holding in APF was part of the Issuer’s larger investment in Greenland, which amounted to 85 million euros according to the company’s announcement of 2 July 2020. The contention that the transaction was insignificant within the meaning of the aforesaid section cannot be accepted when

regard is had to the explanatory notes to section 14 in Supplement C to the Rulebook set out above.

From all the foregoing, it is clear that the Issuer's conduct violated section 14 of Supplement C to the Rulebook with regard to disclosure requirements. It must be borne in mind that the aim of the rules on disclosure requirements is to ensure that investors always have equal access to up-to-date information necessary to form an opinion on the investment options available. Therefore, any violation of those rules is serious in nature.

With regard to sanctions, section 6.1.1 in Chapter 6 of the Rulebook refers to Supplement C thereof, more specifically Part E. Section 16 of Supplement C provides for the imposition of sanctions and disciplinary procedures for infringements of the Exchange's rules. Section 17 of Supplement C provides that if the Exchange finds that an issuer has violated provisions regarding disclosure requirements under Chapter 3 and that the violation may be sanctionable under paragraphs (d)–(g) of section 16 (i), the matter shall be referred to the Disciplinary Committee. Paragraph (d) of section 16 (i) states that in cases where an issuer is in breach of the Rulebook, the Exchange may make a public announcement on the case in question. Paragraph (f) of the same section provides that Nasdaq Iceland may impose fines on the issuer that may amount to up to ten times the annual fee paid by the issuer for the admission of its financial instruments to the Exchange, if the Exchange deems the violations to be major.

With reference to the above, it is found proper to reprimand the Issuer publicly for the aforesaid violation of the Rulebook.

Decision:

A public reprimand shall be issued against Brim hf. for violating section 14 of Supplement C to the Exchange's Rulebook.