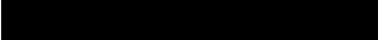




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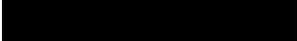
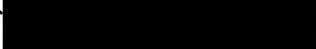
OUR REFERENCE
20/10651

YOUR REFERENCE

DATE
21.01.2021

DECISION REGARDING VIOLATION PENALTY

1. Introduction

Reference is made to previous correspondence, including the advance notification from The Financial Supervisory Authority of Norway's ("Finanstilsynet") dated 12 November 2020 ("Advance Notification"), Finanstilsynets email dated 4 December 2020 and to the reply by 
 on behalf of  ("Position holder") in the email of 4 December 2020.

Based on the information available to Finanstilsynet, it is concluded that Position holder has violated the notification requirement under section 3-14 of the Norwegian Securities Trading Act ("NSTA"), cf. Regulation (EU) No 236/2012 ("SSR") Article 5 cf. Article 9, by not notifying Finanstilsynet of the relevant net short positions (see section 3) within the deadline in accordance with the SSR. Finanstilsynet has concluded to issue a violation penalty to Position holder in this matter, pursuant to NSTA section 21-4 subsection (1) cf. section 3-14 (see section 6 for further details).

2. Legal Basis

A natural or legal person who *has* a net short position (a "position holder") in relation to the issued share capital of a company whose shares are admitted to trading on a trading venue¹ and for which Finanstilsynet is the relevant competent authority, shall in accordance with NSTA section 3-14 cf. SSR Article 5 and Article 9, notify Finanstilsynet of certain net short positions. The notification obligation will apply if a net short position *reaches, exceeds or falls below* a percentage that equals

¹ A "trading venue" means a regulated market or a multilateral trading facility within the meaning of point (14) and (15) of Article 4(1) of Directive 2004/39/EC, cf. SSR article 2 (1) litra (l)

0,1%² of the issued share capital and each 0,1% above that. Net short positions reported to Finanstilsynet shall be disclosed to the public if the position reaches or falls below 0,5 % of a company's issued share capital and each 0,1 % above that, cf. SSR Article 6.

According to SSR Article 9, the relevant time for calculation of a net short position shall be at midnight at the end of the trading day, and the notification must be made to Finanstilsynet no later than at 15:30 CET on the following trading day, cf. Article 9 subsection (2). The position holder is responsible for the notification of net short positions being correct and complete. A notification will not be considered to have been made before it is completed and/or any errors are corrected.

The NSTA section 21-4 subsection (1) empowers Finanstilsynet to impose a violation penalty for wilful or negligent violation of the obligation to notify Finanstilsynet about net short positions in accordance with NSTA section 3-14, cf. SSR Article 5 and cf. Article 9. Where the position holder is a legal person, the subjective condition of wilful or negligent violation implies a requirement that one or more natural persons acting on behalf of the legal person, have shown the necessary degree of subjective guilt.

When *assessing the size* of the violation penalty, NSTA section 21-4 subsection (5) prescribes that emphasis shall in particular be placed to the scale and effects of the violation, as well as the degree of fault that is found. Article 41 of the SSR states that penalties and administrative measures applicable to infringements of the SSR shall be effective, proportionate and dissuasive. Further, section 46 of the Norwegian Public Administration Act ("NPA Act") prescribes that Finanstilsynet may have regard to the following circumstances (among others) when deciding *whether* an administrative sanction shall be imposed on an enterprise and in the individual assessment of the size of the sanction:

- a) the preventive effect of the sanction
- b) the gravity of the breach, and whether any person acting on behalf of the enterprise is at fault
- c) whether the enterprise could have prevented the offence through guidelines, instructions, training, controls or other measures
- d) whether the breach was committed in order to promote the interests of the enterprise
- e) whether the enterprise has or could have obtained any advantage by the offence
- f) whether there is any repetition
- g) the economic capacity of the enterprise
- h) whether other sanctions have been imposed on the enterprise or any person acting on behalf of the enterprise as a consequence of the breach, including whether an administrative sanction or criminal penalty has been imposed on any natural person
- i) whether any treaty with a foreign state or international organisation presumes the use of administrative corporate sanctions or corporate criminal penalties.

² The notification threshold has been temporarily lowered from 0,2% to 0,1% as of March 16, 2020. See the latest decision of December 17, 2020 with links to previous decisions <https://www.finanstilsynet.no/en/news-archive/news/2020/short-sale-decision-by-the-efsa-surveillance-authority-esa-and-the-european-securities-and-markets/>

3. Factual background

The violation penalty concerns late reporting of net short positions on four occasions in two different shares (together referred to as the "Relevant Net Short Positions").

Net short positions in [REDACTED]

On [REDACTED] the Position holder's net short position in [REDACTED] changed from below 0,1% to [REDACTED]. The position was reported to Finanstilsynet on [REDACTED] at 15:41 CET. On [REDACTED] the Position holder's position (in [REDACTED] changed from [REDACTED] to [REDACTED]. The position was not reported until [REDACTED] at 15:45 CET. On [REDACTED] the Position holder's net short position in [REDACTED] changed again from [REDACTED] to [REDACTED]. The position was reported to Finanstilsynet on [REDACTED] at 15:45 CET.

Net short position in [REDACTED]

The Position holder also crossed a relevant notification threshold on [REDACTED] when its net short position in [REDACTED] changed from below 0,1% to [REDACTED]. The Position holder did not report the position until [REDACTED] at 16:48 CET. As a result of this late notification to Finanstilsynet, the position was not published to the market until [REDACTED] at 15:30 CET.

4. Position holder's statements

Position holder's statements were provided to Finanstilsynet in email letter dated 2 October 2020 and acknowledged that all of the four Relevant Net Short Positions were reported to Finanstilsynet after the notification time limit in NSTA section 3-14 cf. SSR article 9 subsection (2). The Position holder did not contest or object to the factual basis upon which the Advance Notification was sent.

Net short positions in [REDACTED]

Position holder has however stated inter alia that there were two regulative events that required substantial development work both to the systems for calculating net short positions and to the process to deal with increased number of notifications, during the days around the late reported positions in [REDACTED] which according to the Position holder contributed to the delays.

Position holder is *firstly* referring to the decision by ESMA on 16 March 2020³ which temporarily but immediately lowered the notification threshold for net short positions from 0,2% to 0,1%. According to the Position holder due to this change the team, reporting on behalf of the Position holder, had to "*employ additional manual processes to meet the demand thus resulting in the delays*". Further, the Position holder is claiming that as the Position holder's UK entity [REDACTED] on 18 March 2020 received approval from FCA to make use of the market maker exemption under SSR article 17 for its market making activities, the London compliance team had to

³ https://www.esma.europa.eu/sites/default/files/library/esma70-155-9546_esma_decision_-_article_28_ssr_reporting_threshold.pdf

employ further manual processes to exclude market maker positions from the positions to be notified, which also contributed to the delays.

Net short positions in [REDACTED]

Regarding the late notification of the net short position in [REDACTED] the Position holders offers no particular explanation or mitigating circumstances and states that the reason for the delay appears to have been a failure in the internal operational oversight.

5. Finanstilsynet's assessment

5.1 Infringement of the SSR

It is Finanstilsynet's assessment that the failure to notify Finanstilsynet within the time limit constitutes a clear violation of the reporting requirements under NSTA section 3-14, cf. Articles 5 and 9 of the SSR. The Relevant Net Short Positions were subject to the notification and all of the notifications were submitted after the deadline in SSR Article 9 subsection (2). On this background it is Finanstilsynet's assessment that the provided notifications did not fulfil the requirements under NSTA section 3-14, cf. Articles 5 and 9 of the SSR. Accordingly, Finanstilsynet finds that the objective conditions under NSTA section 21-4 subsection (1) for imposing a violation penalty on position holder are met.

When assessing whether the subjective conditions are met, Finanstilsynet has taken into account Position holder's statements in the letter of 2 October 2020, hereby the statement that the delays inter alia were caused by regulatory changes leading the team reporting on behalf of the Position holder, having to implement changes in the systems and processes for reporting net short positions during the days around when the Position holder were under the obligation to report the net short positions in [REDACTED]

Finanstilsynet has no reason to doubt the Position holder's statement, however it is our view that persons acting on behalf of the Position holder has acted negligent. It is the Position holder's responsibility to ensure, in advance of taking net short positions covered by the notification obligation, to have in place appropriate procedures and/or systems in order to proactively identify the notification obligation under the SSR and to make sure such procedures are satisfied in a timely and complete manner. This means inter alia that the procedures and/or systems inter alia must be prepared so that they are not dependent on one or more individuals identifying the position and/or the size of the position, and that both the design of and compliance with the procedures and/or the system, among other things takes into account that the position holder may be in one or more demanding processes at the same time as the position holder makes trades and the reporting obligation arises. Even if the regulatory changes were implemented around the dates when the obligations arose, it is Finanstilsynet's assessment that the reasons for the delays stated by the Position holder do not excuse the delays and that the Position holder had not taken the necessary precautions to ensure that the notification obligations could be met before taking making the trades. We also note that the changes in the notification threshold was decided and published on March 16 2020, including on Finanstilsynet's webpage for the short sale register, and the first of the Relevant Net Short Positions

in question was taken on [REDACTED] and reported the next day. Further, although the team reporting on behalf of the Position holder has taken actions to prevent further events, Position holder did fail to ensure such compliance in advance.

On this background Finanstilsynet finds that both the objective and subjective conditions under NSTA section 21-4 subsection (1) for imposing a violation penalty, are met.

5.2 Assessment of whether a violation penalty should be imposed

Finanstilsynet finds that the identified violations are manifest and severe and thus deems it necessary to impose a violation penalty under section 21-4 of the NSTA.

In determining whether to impose a penalty, Finanstilsynet has made an overall assessment of the individual circumstances in the case. Finanstilsynet places emphasis on the fact the case involves four late notifications, and that the Position holder who is responsible for the delayed notification is a company. Finanstilsynet considers it to be aggravating that the late reported position in [REDACTED] was above the 0,5% threshold, and thus that the infringement effectively obstructed the position to be disclosed to the market in time in accordance with NSTA section 3-14 cf. SSR Article 6. Compliance with the SSR is imperative to ensure information to the market on significant net short positions. Such information enables investors to make well-considered investment decisions, which in turn is of importance for confidence in the market.

Based on the above, it is the opinion of Finanstilsynet that a decision to impose a violation penalty in regard to the abovementioned violations of the SSR, will not be disproportionate in this case.

5.3 Assessment of the size of the violation penalty

In accordance with NSTA section 21-4 subsection (5), certain circumstances *shall* be taken into account when determining the size of the violation penalty hereby the scale and effects of the violation(s), as well as the degree of fault found. Reference is also made to the principles for sanctions under the SSR article 41, and the NPA Act section 46 which supplements the sector legislation and prescribes certain circumstances that Finanstilsynet may have regard to in addition to the circumstances prescribed in the NSTA (for further details see section 2 (*Legal basis*) above).

When assessing the size of the violation penalty, Finanstilsynet has made an overall assessment of the individual circumstances in the case and has in particular emphasized that Position holder is a company, that several of the relevant infringements are considered severe as they pertain net short positions not having been reported within the time limit and that the delay also resulted in one of the positions not being made publicly available in time. Finanstilsynet has also taken into consideration that the relevant infringements have been found to be negligent on the part of the Position holder cf. section 5. 1 above, the length of the delay and the size of the different positions. The size of the violation penalty is furthermore consistent with the level of previous penalties set by Finanstilsynet for comparable violations of the notification requirements. When considering the size of the violation penalty in this particular case, we have also taken into consideration that ESMA decided to lower the reporting threshold from 0,2% till 0,1% on Monday 16 March 2020 and that one of the positions in

question (changing from below 0,1% till [REDACTED] on [REDACTED] would not have been subject to the notification obligation prior to ESMAs decision.

6. Finanstilsynet's decision

Based on the facts described above and in accordance with the NSTA section 21-4 subsection (1) and (5) cf. SSR Articles 5, 6 and 9, Finanstilsynet has made the following decision regarding a violation penalty:

[REDACTED] *is ordered to pay a violation penalty of NOK 30 000 (thirty thousand Norwegian kroner) to the Norwegian Treasury.*

Pursuant to section 28 of the NPA Act, this administrative decision may be appealed to the Ministry of Finance. An appeal must be submitted within three weeks of the date on which notification of the administrative decision has reached the party concerned. The appeal must be sent to Finanstilsynet.

An invoice for payment of the violation penalty will be sent separately from The Norwegian National Collection Agency after the deadline for appeal has expired.

On behalf of Finanstilsynet

Knut Haugan
Head of Section

Madeleine Marie Melgård
Higher Executive Officer

This document has been electronically approved and does not require handwritten signatures.