



This letter is only sent by email to:

OUR REFERENCE 20/11168	YOUR REFERENCE	DATE 17.02.2021
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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 25 November 2020 ("Advance Notification") and to the reply by ("Position holder") in the letter of 14 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 ("RCA"), shall in accordance with NSTA section 3-14 cf. SSR Article 5 and Article 9, notify Finanstilsynet of the net short position. The notification obligation will apply if a net short position *reaches, exceeds or falls below* a percentage that equals 0,1%² (0,2% for positions taken before 16 March 2020) 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

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).

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/>

position reaches or falls below 0,5 % of a company's issued share capital and each 0,1 % above that, cf. SSR Article 6.

Notification to Finanstilsynet shall be made in the manner and within the deadline in accordance with SSR Article 9 cf. commission delegated regulation 826/2012 ("2012/826") whereas 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 submitted 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 of a net short position is not regarded as submitted before it is complete and/or error(s) 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 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 on 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.

3. Factual background

The violation penalty concerns late reporting of the following net short positions (together referred to as the "Relevant Net Short Positions"):

Issuer	Position	Position date	Reported*
	0.3 %		
	0.91 %		
	1.1 %		
	0.15 %		

* Date and time of the filing in Finanstilsynet's Short Sale Register.

4. Position holder's statements

Position holder's statements were provided to Finanstilsynet in letters dated 16 October 2020 and 14 December 2020. Position holder has in the letter dated 16 October 2020, acknowledged that all of the Relevant Net Short Positions were reported to Finanstilsynet after the notification deadline 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.

Position holder has in the letter of 16 October 2020 stated that the late notifications were caused by a failure (in its systems) to distinguish between Norwegian and UK market "trading days". The Relevant Net Short Positions were reported on the following UK "trading day", as on all four occasions there was a bank holiday in UK on the following trading day:

Position holder crossed two relevant notification thresholds on [REDACTED]. Firstly, its net short position in [REDACTED] changed from below 0,2% to 0,30%. Secondly, Position holder's net short position in [REDACTED] changed from 0,88% to 0,91%. The deadline for notifying Finanstilsynet was no later than at 15:30 CET on [REDACTED] however this was a bank holiday in UK and reporting was not completed until operations staff returned to the office on the next UK working day [REDACTED].

Position holder crossed a relevant notification threshold on [REDACTED] when its net short position in [REDACTED] changed from 1,03% to 1,10%. The deadline for notifying Finanstilsynet was no later than at 15:30 CET on [REDACTED] however this was a bank holiday in UK and reporting was not completed until operations staff returned to the office on the next UK working day [REDACTED].

Position holder crossed a relevant notification threshold on [REDACTED] when its net short position in [REDACTED] changed from 0,21% to 0,15%. The deadline for notifying Finanstilsynet was no later than at 15:30 CET on Friday [REDACTED] however this was a bank holiday in UK and reporting was not completed until operations staff returned to the office on the next UK working day [REDACTED].

In its letter of 16 October 2020 Position holder has asked that Finanstilsynet, in its consideration of whether to impose an administrative sanction, take into consideration that it was not the intention of

Position holder to hide or delay information, nor to promote the interest of anyone through the delays. Further Position holder refers to its' *"a clean record of regulatory compliance"*, that it has never been subject to a regulatory fine and that the company has taken measures to prevent reoccurrence of similar incidents. The Position holder apologises for the failure to distinguish between Norwegian and UK market "trading days" and states that *"we have now taken appropriate steps to ensure that operational cover will be provided on UK Bank holidays to address this."*

In its letter of 14 December 2020 Position holder has asked that Finanstilsynet reconsiders the use of a penalty in this situation, taking into consideration the circumstances mentioned in section 46 of the NPA Act. To this end, Position holder has made the following observations:

- A penalty should have no specific preventive effect in this situation, as Position holder since its date of inception in 1988 has a strict focus on maintaining a clear record of regulatory compliance
- Only two of the net short positions were above the 0,5% threshold
- The notifications were made promptly after the UK public holidays and the oversight in the procedures has since been addressed. Position holder has implemented appropriate guidelines and controls to prevent delayed notifications to Finanstilsynet in the future
- The breach was not committed in order to promote the interest of the enterprise, as the timing of the incidents is in clear correlation with UK public holidays and only an oversight by Position holder
- The enterprise has not obtained any advantage by the offence
- There is no repetition of the offence, as Position holder has a clear record of regulatory compliance and has taken measures to ensure that the incident cannot be repeated.

Position holder has asked that Finanstilsynet reconsiders the use of a penalty in this situation and that a "warning" will have the same effect as a penalty.

5. Finanstilsynet's assessment

5.1 Infringement of the SSR

It is Finanstilsynet's assessment that Position holder's failures to notify Finanstilsynet within the deadline, constitutes clear violations 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 requirement in SSR Article 5 and 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 letters of 16 October 2020 and 14 December 2020, hereby the statement that the delays in the reporting of the Relevant Net Short Positions inter alia occurred because of a failure to distinguish between Norwegian and UK market "trading days".

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 submitted to Finanstilsynet no later than at 15:30 CET on the following trading day *in the relevant market*, cf. Article 9 subsection (2).

Finanstilsynet has no reason to doubt the Position holder's statement, hereunder inter alia that it was not the intention of Position holder to hide or delay information nor to promote the interest of anyone however it is our view that persons acting on behalf of Position holder has acted negligent. Furthermore, even though position holder has implemented appropriate guidelines and controls to prevent recurrence of not reporting net short positions on UK public holidays, 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, hereunder to make sure such procedures are satisfied in a timely and complete. This means inter alia that the procedures and/or systems must be prepared not only to identify shares which are subject to the reporting obligation, but also take into account the variations of bank holidays in different jurisdictions.

As stated in the letter of 14 December 2020, that Position holder has a strict focus on maintain a clear record of regulatory compliance and has never received a regulatory sanction since its inception in 1988. Position holder has stated that it was following UK "trading days" for reporting net short positions to Finanstilsynet, and it is Finanstilsynet's assessment that the reasons for the delays stated by the Position holder do not excuse the delays. Although Position holder has stated that it 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 several of 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 in particular emphasis on the fact the case involves four late reported notifications, and that the Position holder who is responsible for the delayed notifications is a legal person. Finanstilsynet has taken into consideration that Position holder has taken measures to prevent further similar incidents, however it is Position holder's obligation to ensure such compliance in advance. Finanstilsynet considers it to be aggravating that the late reported positions in [REDACTED] were above the 0,5% threshold, and thus that the infringement effectively obstructed the positions 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 legal person, the length of the delays, the size of the positions and that two of the relevant infringements are considered severe as they pertain net short positions not having been reported within the deadline which also resulted in the positions not being made publicly available in time cf. SSR Article 6. 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 size of the violation penalty is furthermore consistent with the level of previous penalties set by Finanstilsynet for comparable violations of the notification requirements.

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:

 is ordered to pay a violation penalty of NOK 70 000 (seventy 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

Geir Holen
Head of Section

Madeleine Marie Melgård
Higher Executive Officer

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