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OUR REFERENCE
22/14510

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CONFIDENTIAL

DATE
23.06.2023

Decision regarding violation penalty

1. Introduction

Reference is made to the letter from the Financial Supervisory Authority of Norway ("Finanstilsynet") dated 23 February 2023 and the reply from Condire Management LP ("Condire") dated 28 March 2023. Reference is also made to Finanstilsynet's advanced notification on violation penalty dated 1 June 2023, and Condire's reply via Wikborg Rein dated 19 June 2023.

Based on an assessment of the facts in the case, Finanstilsynet has concluded that Condire has violated the Norwegian Securities Trading Act ("NSTA") section 4-2 and has decided to impose a violation penalty of NOK 200 000 on Condire.

2. Legal basis

Pursuant to the Norwegian Securities Trading Act ("NSTA") section 4-2, cf. section 4-7, a shareholder shall immediately notify the regulated market of a transaction which causes the shareholder's proportion of shares to reach, exceed or fall below 5 %, 10 %, 15 %, 20 %, 25 %, 1/3, 50 %, 2/3, or 90 % of the votes in a company whose shares are quoted on a regulated market. NSTA section 4-2 applies to shares admitted to trading on a regulated market of an issuer having Norway as its home state, cf. section 4-1.

With regard to voting rights for shares which are held by a third party, it follows from NSTA section 4-4 subparagraph 1 no. 1 that the company which has the voting rights will have an obligation to notify the market if the company has concluded an agreement with the shareholder to adopt a lasting common policy regarding the exercise of the voting rights. Finanstilsynet will in general consider management companies to have entered into such an agreement with the funds of which assets are managed by the management company, cf. Finanstilsynet's Guidelines to the Securities Trade Act (Veiledning til verdipapirhandelloven kapittel 4 flaggeplikt) page 16.

According to the NSTA section 4-7, the notification to the regulated market is required to be made "immediately" after an agreement on acquisition or disposal has been entered into, or the party concerned becomes aware of, or should have become aware of, any other circumstance causing the

party concerned to reach or fall below a threshold as provided for in the NSTA section 4-2 subsection 1. The term "immediately" should be understood as the time it takes to write and send a notification to the market, cf. Finanstilsynet's Guidelines regarding chapter 4 of the NSTA, page 27. The notification may not in any case be made later than opening of the market the second trade day.

Finanstilsynet may, under the NSTA section 21-3 subsection 1, impose individuals and/or legal persons a violation penalty in the event of negligent or wilful violation of the NSTA section 4-2.

A prerequisite for imposing a violation penalty on a legal person is that the legal person in question has acted with at least negligence, cf. the NSTA section 21-9 subsection 2, which refers to the Public Administration Act (PAA) section 46 subsection 1. This means that a violation penalty can be imposed if a person acting on behalf of the company commits the violation negligently or wilfully. However, the subjective requirements can also be met by anonymous or cumulative errors.

In deciding whether an administrative sanction is to be imposed and the size of such sanction, attention may under the NSTA section 21-14 be given to the following:

- 1) the gravity and length of the breach;
- 2) the degree of guilt of the perpetrator;
- 3) the financial strength of the perpetrator, in particular total turnover or annual income and assets;
- 4) profits gained or loss avoided;
- 5) any loss inflicted on a third party due to the breach;
- 6) will by the perpetrator to cooperate with public authorities;
- 7) earlier violations;
- 8) arguments as mentioned under the Public Administration Act section 46 subsection (2);
- 9) other relevant arguments.

3. Factual background

Condire crossed the 5 % threshold in SHLF on 26 September 2022 when funds which are managed by Condire purchased 789 464 shares in SHLF. The transaction was notified to the market on 19 December 2022.

Condire also crossed below the 10 % and 5 % threshold on 21 December 2022, when Condire sold 39 452 302 shares, and its entire holding, in MSEIS to TGS ASA. This transaction, which was an accept of a mandatory offer, was notified to the market on 27 December 2022.

4. Statement of the discloser

In a letter dated 28 March 2023, Condire accepts the factual basis as described by Finanstilsynet. However, Condire points out certain factors which they consider as mitigating.

First, Condire points to the fact that it is a relatively small firm with approximately 600 MUSD under management. Second, that Condire has lately become more active in the Norwegian market, and that it has no previous violations related to notification of large shareholdings.

Further, regarding the shareholding in SHLF, Condire states that the reason for the late submission was that Condire's third party provider of market data sent erroneous information regarding the outstanding share capital in SHLF.

Regarding the shareholding in MSEIS, Condire states that it was not aware that the acceptance of the offer from TGS ASA triggered an immediate filing obligation, until 23 December 2022. This was the day before the holiday, and the relevant person at Condire did not receive the message until after the weekend.

Condire also points to legal grounds, namely, that the breaches relating to SHLF and MSEIS were unintentional and that they did not result in any financial gain/avoidance of loss on the part of Condire.

In their response to Finanstilsynet's Advanced notification of violation penalty, sent by e-mail through Wikborg Rein 28 March 2023, Condire adds that the violation penalty is higher than they expected based on similar cases.

5. Finanstilsynet's assessment of whether a violation penalty shall be imposed and its size

Finanstilsynet finds that Condire notified the market too late and thus violated the Norwegian Securities Trading Act ("NSTA") section 4-2 when funds managed by Condire on 26 September 2022 purchased 789 464 shares in Shelf Drilling Ltd ("SHLF") and subsequently exceeded the 5 % disclosure threshold, and on 21 December 2022 sold 39 452 302 shares in Magesis Fairfield ASA ("MSEIS") and then crossed below the 10 % and 5 % threshold. The transaction in SHLF was notified to market on 19 December 2022, and the transaction in MSIES was notified to the market on 27 December 2022.

The notification should have been made "immediately" after the transactions were completed on 26 September 2022 and 21 December 2022, respectively, but not in any case later than opening of the market on the second trade day after the agreement was entered into, cf. NSTA Section 4-7. The Oslo Stock Exchange was notified almost three months after Condire's transaction in SHLF, and six days after the transaction in MSEIS. Neither notifications meet the requirement to notify the market "immediately", and in any case, both was made later than the opening of the market on the second day after the agreement was entered into.

Therefore, Finanstilsynet finds that Condire's conduct has met the objective requirements for violating section 4-2 and section 4-7 of the NSTA.

Under NSTA section 21-9, the subjective requirement for imposing an infringement penalty is negligence.

As a professional management company operating in the Norwegian securities market, Condire is expected to have in place appropriate procedures and/or systems that will enable it to identify and satisfy the disclosure obligations, hereunder submit their notifications, in a timely and complete manner, and in accordance with the relevant specific requirements applicable in the jurisdiction in

which it operates. The risk of erroneous data is always present, and the providers have a strong incentive to implement adequate measures to counteract this risk.

Finanstilsynet has noted Condire's submission that the breaches regarding SHLF were caused by an error made by their third party provider of market data, but Finanstilsynet does not consider this decisive. Condire is identified with third parties to which it has outsourced tasks related to the support of its trading activities and other business areas, see Rt. 2002 s. 1312 on page 1319. Any errors done by third parties will therefore be considered done by Condire itself.

The third party provider is a professional company which is expected to be well aware of the abovementioned risk. Therefore the company must be considered negligent when providing incorrect data. It is not necessary to point to one or more persons who acted negligent, as anonymous or cumulative errors are sufficient for corporate criminal penalty, cf. HR-2022-1271 paragraph 47.

Finanstilsynet thus finds that both the objective and subjective conditions for imposing a violation penalty are met, cf. the NSTA section 21-3 subsection 1, section 21-9, 21-14 cf. PAA section 46.

When considering whether to make use of a violation penalty, Finanstilsynet has made a discretionary assessment of the case in accordance with the NSTA section 21-14. Finanstilsynet has taken into consideration that one or several persons of the company and a third party have acted negligently.

The rules on disclosure obligations under NSTA section 4-2 are meant to assure that the issuer and the stock market receive fast knowledge of the acquisition or disposal of shares or other circumstances changing the proportion of the share capital, rights to shares or voting rights in the issuer.

Changes of ownership in a company listed on a regulated market can have a notable influence on the price of the issuer's shares in the market, as this could give an indication that someone has, or no longer has a strategic interest in the issuing company. For this reason, it is important that the market receives this information as soon as possible. Compliance with the disclosure rules is important in order to ensure that relevant information on significant changes in ownership at listed companies is disclosed to the market. This information enables the investors to make well-considered investment decisions, which in turn is important to maintain confidence in the market.

Finanstilsynet has previously imposed violation penalties in cases of similar violations. Considerations for equal treatment therefore imply that a penalty should be imposed in this case.

Finanstilsynet thus finds that a violation penalty should be imposed.

In the assessment of the size of the violation penalty, Finanstilsynet refers to the NSTA section 21-14. According to this provision, importance shall be attached to the gravity and the length of the breach, as well as the degree of guilt found. In addition, other criteria specified in the NSTA section 21-14 may be taken into consideration.

In its overall assessment, Finanstilsynet has taken into consideration all facts and circumstances specific to this matter and which have been addressed by Condire. Finanstilsynet has in particular taken into consideration that two breaches were made, and that one or several persons in Condire and a third party acted negligently. Finanstilsynet has also taken into consideration that the violation of the disclosure obligations could have been prevented had Condire put in place appropriate procedures and/or systems in advance which would have allowed them to notify the market in a timely manner in accordance with the NSTA.

Condire has stated that it should be taken into consideration that they did not act with intent. Finanstilsynet agrees that Condire has not acted with intent, but does not find this decisive when it comes to the size of the violation penalty, as negligence is enough to impose a violation penalty under NSTA 21-9 subsection 2.

Finanstilsynet has taken into consideration that the transaction regarding MSEIS was – to an extent – already known in the market, as the issuer had already made a stock exchange announcement on 21 December 2022. However, Finanstilsynet does not find that there are any other mitigating factors present.

Finanstilsynet has noted Condire's submission in their e-mail 19 June 2023 that the violation penalty in the advanced notification was higher than they would have expected based on cases they claim are comparable. However, in similar cases Finanstilsynet has imposed a violation penalty of NOK 200 000. Considerations for equal treatment therefore imply that the same amount should be imposed in this matter.

An overview of violation penalties that has previously been imposed is published on Finanstilsynet's website at <https://www.finanstilsynet.no/tilsyn/markedsatferd/vedtak-om-overtredelsesgebyr---flaggeplikt/>

6. Decision regarding violation penalty

On the basis of the above, Finanstilsynet imposes a violation penalty on Condire in the amount of NOK 200 000 for its violation of the NSTA section 4-2, cf. the NSTA sections 21-3, 21-9 and 21-14.

This administrative decision can be appealed within 3 weeks after receipt. An appeal shall be sent to Finanstilsynet. The appellate instance is the Ministry of Finance. Sections 18 and 19 of the Public Administration Act, on the parties' right to become acquainted with the case documents, apply. Violation penalties are collected by the Tax Administration at the Norwegian National Collection Agency.

If the administrative decision is not appealed, the Norwegian National Collection Agency will send a claim for payment immediately after the deadline for an appeal has expired. If the decision is appealed, provided that the violation penalty is upheld, the claim is sent after the appeal has been decided by the Ministry of Finance. The Norwegian National Collection Agency's deadline for payment is 3 weeks after the invoice has been sent.

If you have any questions regarding this matter, please contact Eva Bech at +47 22 93 96 91 or e-mail eva.bech@finanstilsynet.no

On behalf of Finanstilsynet

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