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London SW1Y 4UR

This letter is only sent by email to: [REDACTED]

OUR REFERENCE
22/5364

YOUR REFERENCE

DATE
30.08.2022

Decision regarding violation penalty

1. Introduction

Reference is made to the letters regarding disclosure of large shareholdings from the Financial Supervisory Authority of Norway ("Finanstilsynet") dated 8 June 2022 and 4 July 2022, and Finanstilsynet's advance notification of violation penalty of 11 July 2022, and the replies received from Mirabella Financial Services LLP ("Mirabella") dated 22 June 2022, 5 July 2022 and 12 August 2022.

Based on an assessment of the facts, Finanstilsynet has concluded that Mirabella has violated the Norwegian Securities Trading Act ("NSTA") section 4-2 and has decided to impose a violation penalty in the amount of NOK 150,000.

2. Legal basis

Pursuant to the NSTA section 4-2, a shareholder shall immediately notify the regulated market of a transaction which causes the shareholder's portion of shares and/or rights to shares to reach, exceed or fall below 5 %, 10 %, 15 %, 20 %, 25 %, 1/3, 50 %, 2/3 or 90 % of the share capital or an equivalent proportion of the voting rights in a company whose shares are quoted on a regulated market. The section applies to shares admitted to trading on a regulated market of an issuer having Norway as its home state.

Equivalent to shares and/or rights to shares are certain voting rights to shares mentioned in the NSTA section 4-2 subsection 2. The notification requirement also applies to anyone who through disposal or other circumstances change their proportion of the share capital, rights to shares or voting rights so that the proportion reaches, crosses or falls below the mentioned thresholds.

Pursuant to the Securities Regulation of 29 June 2007 no 876 (the "Securities Regulation") section 4-1, subsection 1, the notification to the Oslo Stock Exchange shall contain information concerning:

- a) the name of the issuer of the shares,

- b) the date on which the proportion of shares held reached, exceeded or fell below the thresholds set in section 4-3 subsection (1) of the Securities Trading Act,
- c) the name of the entity subject to the mandatory disclosure obligation, including the name of the shareholder,
- d) the number of shares encompassed by the notification,
- e) the subsequent situation with regard to voting rights, including the percentage of the votes and shares of the company held by the entity concerned,
- f) what percentage of the votes and shares of the company the entity concerned holds in the form of rights to shares,
- g) the circumstance that triggered the mandatory disclosure obligation and whether such circumstance applied to the entity concerned itself or to any related party as mentioned in section 2-5 of the Securities Trading Act,
- h) the chain of controlled undertakings through which the shares or rights are owned,
- i) where the notification concerns rights to shares as mentioned in section 4-3 subsection (4) of the Securities Trading Act the notification shall also contain a description of the rights, including information on the date and time that the rights will or can be exercised and the date and time of their expiry.

According to the NSTA section 4-2 subsection 6, 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.

According to the Guidelines of Finanstilsynet regarding chapter 4 of the NSTA of 19 October 2022 paragraph 3.8 ("*Veiledning til verdipapirhandeloven kapittel 4 – flaggeplikt*"), this should be understood as the time it takes to write and send the notification to the market.

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 willful violation of the NSTA section 4-2.

In order to impose a violation penalty on a legal person, the NSTA section 21-9 subsection 2 refers to the Public Administration Act (PAA) section 46 subsection 1. Finanstilsynet will practice the PAA section 46 in a manner that requires the legal person in question to have acted with at least negligence. This means that a violation penalty can be imposed if a person acting on behalf of the company commits the violation negligently or willfully. However, the subjective requirements can also be met by anonymous or cumulative errors.

When 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

Mirabella crossed the 10 % threshold in Awilco LNG ASA ("ALNG") on Friday 6 May 2022. A notification was published at the Oslo Stock Exchange on Wednesday 11 May 2022 at 13:29 CET.

The notification did not fulfil the requirements with regard to the content of the notification, by not containing information about what threshold that was passed and the transaction that caused the passing.

4. Statement of the discloser

In its email of 5 July 2022, Mirabella has informed that they crossed the 10% threshold in ALNG on Friday 6 May 2022. Prior to the mentioned transaction, Mirabella held 13 126 657 shares in ALNG, with ALNG having an issued number of shares being 132 548 611, Mirabella's shareholding were equivalent to 9,91%. Following a purchase of 1 500 000 shares on Friday 6 May 2022, Mirabella held in total 14 636 657 shares, equivalent to 11,00%.

Mirabella has in its email of 22 June 2022 stated that Mirabella Financial Services LLP acts as an Investment Manager and/or Sub-Investment Manager to various funds and/or managed accounts. Furthermore they state that *"we have taken note of the information requested by FINANSTILSYNET and ensure to include such information going forward."*

In its letter of 12 August 2022, as a response to Finanstilsynet's advance notification of violation penalty, Mirabella stated that they receive trading data on T-1 from its portfolio managers and *".. undertakes a reconciliation exercise to ensure the integrity of any consequential reporting requirements. On this occasion a discrepancy was identified and the intervening weekend caused a temporary delay in reconciling the data and ensuring the subsequent report was accurate."* Furthermore, they have now updated its reporting template so that future crossings will be reported with the correct information. Lastly, Mirabella highlights that *"MFS' position is that it does have in place appropriate procedures and/or systems in advance to facilitate the market in a timely and correct manner. Furthermore the imperfections in the reporting are immaterial such that they would not influence market movements."*

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

Finanstilsynet finds that the notification published at the Oslo Stock Exchange on Wednesday 11 May 2022 at 13:29 CET regarding Mirabellas' crossing of the 10 % disclosure threshold in ALNG

on Friday 6 May 2022, was made too late. Finanstilsynet's opinion is therefore that Mirabella violated section 4-2 of the NSTA.

According to the NSTA section 4-2, the notification to the Oslo Stock Exchange should have been made "immediately" after the transaction was completed on Friday 6 May 2022. Pursuant to the Guidelines of Finanstilsynet regarding chapter 4 of the NSTA (cf. section 1 above), this should be understood as the time it actually takes to write and send the notification to the market. For larger group companies which operate in different jurisdictions and time zones, Finanstilsynet has accepted that these companies shall be allowed certain time to consolidate their data.

Mirabella, as a professional company operating in the Norwegian securities market 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.

It should also be noted that the notification published at the Oslo Stock Exchange on 6 May 2022 does not contain information regarding the threshold that was crossed nor any information of the number of shares which were purchased and thereby caused Mirabella to cross the 10 % threshold under the NSTA. As such the notification is also in breach of section 4-1 of the Securities Regulation.

Mirabella has stated in its letter of 12 August 2022 that they have re-created its template reporting form to ensure that future threshold notifications contain all required information. Although this has been improved to prevent further events, Mirabella did fail to ensure such compliance in advance.

Finanstilsynet's assessment is that one or more persons acting on behalf of Mirabella acted negligently, and that cumulative errors were present. Finanstilsynet therefore considers that the criterion of negligence is met in this case. Finanstilsynet 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 assessing whether to make use of a violation penalty, Finanstilsynet has made a concrete assessment of the case in accordance with the NSTA section 21-14. Finanstilsynet has taken into consideration that the violation of the disclosure obligation could have been prevented had Mirabella put in place appropriate procedures and/or systems.

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 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's assessment is therefore that a violation penalty should be imposed.

Finanstilsynet refers to the NSTA section 21-14 which states that when the size of a violation penalty is assessed, importance shall be attached to the gravity and the length of the breach, as well as the degree of guilt found. In addition, also other criteria specified in the NSTA section 21-14 may be taken into consideration when assessing the size of the violation penalty.

In its overall assessment, Finanstilsynet has taken into consideration all facts and circumstances specific to this matter and which have been addressed by Mirabella. Finanstilsynet has in particular taken into consideration that the violation of the disclosure obligations could have been prevented had Mirabella put in place appropriate procedures and/or systems in advance which would have allowed them to notify the market in a timely and correct manner in accordance with the NSTA and the Securities Regulation.

Fund managers are subject to the disclosure obligation of the NSTA with regard to the shares that the manager acquires on the clients' behalf. Accordingly, Finanstilsynet has not taken into consideration the fact that the shares are spread across different underlying clients/owners.

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 Mirabella Financial Services LLP, in the amount of NOK 150,000 for its violation of the NSTA sections 21-3, 21-9 and 21-14 cf the NSTA section 4-2 and the Securities Regulation section 4-1.

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.

On behalf of Finanstilsynet

Thomas Borchgrevink
Head of section

Madeleine Marie Melgård
Higher Executive Officer

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