



Consensus Asset Management AB (publ)  
Krokslåtts parkgata 4  
43168  
SWEDEN

**OUR REFERENCE**  
21/6641

**YOUR REFERENCE**

**DATE**  
08.11.2021

Dear Sir/Madam

## Decision regarding violation penalty

### 1. Introduction

Reference is made to the letter regarding advance notification of violation penalty from the Financial Supervisory Authority of Norway ("Finanstilsynet") dated 11 October 2021, the letter regarding disclosure of large shareholdings from Finanstilsynet dated 18 August 2021, and the replies received from Consensus Asset Management AB (publ) ("Consensus") each dated 2 September 2021 and 5 November 2021.

Based on an assessment of the facts, Finanstilsynet has concluded that Consensus has violated the Norwegian Securities Trading Act ("NSTA") section 4-2, and has decided to impose a violation penalty of NOK 50,000.

### 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 section 4-1 ("Regulation"), the notification to the Oslo Stock Exchange shall specifically include *inter alia* information relating to

the number of shares covered by the event which triggered the notification, and the background which triggered the transaction (i.e. acquisition, sale of shares or voting rights etc.).

According to the NSTA section 4-2 subsection 6, the notification to the regulated market is required "*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.

Pursuant to the Guidelines of Finanstilsynet regarding chapter 4 of the NSTA of 22 February 2021 paragraph 3.8 ("*Veiledning til verdipapirhandelloven kapittel 4 – flaggeplikt*"), this should be understood as the time it takes to write and send the notification to the market. Where a shareholder does not actively participate in the capital increase in an issuer, but their proportion of shares in that same issuer changes due to a completed capital increase, Finanstilsynet has stated under paragraph 3.8 of the Guidelines mentioned above, that such notification must be submitted at the latest when the new share capital has been registered. However, if a shareholder is aware of the capital increase taking place, such shareholder must notify immediately cf. section 4-2 of the NSTA.

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 practise 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 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

On Monday 31 May 2021 at 08:35 CET, Consensus notified the market that Consensus crossed the 5 % threshold in Carasent ASA ("CARA") on Wednesday 26 May 2021. The notification published at the Oslo Stock Exchange on Monday 31 May 2021 was therefore made too late and in breach of section 4-2 of the NSTA.

The notification was also insufficient as it lacked information relating to the background which triggered the transaction and the number of shares covered by the transaction triggering the notification requirement cf. section 4-1 of the Regulation.

### 4. Statement of the discloser

In its letter of 2 September 2021 Consensus informed that:

*"(...) Carasent announced on May 25 the acquisition as well as a private placement. On May 26 Carasent announced that it successfully filled the private placement with settlement date on May 28. Consensus did not take part in the private placement, but the placement was so large in size that Consensus' ownership was diluted to from 5,09%, 2 800 189 shares to 4,24% (...) Due to very unlucky circumstances with critical staff being sick Consensus reported the trigger event to the Oslo Stock Exchange first on May 30<sup>th</sup> with lack of some of the required information as stated in your letter".*

Finanstilsynet reached out to Consensus in an e-mail of 5 November 2021 and Consensus confirmed the same day that they had no further comments.

### 5. Assessment of whether a violation penalty shall be imposed and its size

Finanstilsynet finds that the notification made on 31 May 2021 to the Oslo Stock Exchange regarding the crossing of the 5 % disclosure threshold in CARA on 26 May 2021, was made too late. Finanstilsynet's opinion is therefore that Consensus violated section 4-2 of the NSTA.

On 15 April 2021 Consensus received an advance notification of violation penalty from Finanstilsynet for a previous violation from October 2020 of the notification requirements under the NSTA section 4-2. Finanstilsynet urged Consensus to present their view and on 25 May 2021 Consensus replied the following:

*"Thanks for the opportunity to comment further. However we have no additional comments to make other than we have made corrective actions to ensure it will not happen again. We will await and accept the decision from the NSFA."*

On 31 May 2021, Finanstilsynet reached its decision and imposed Consensus a violation penalty in the amount of NOK 100 000 for a late notification of the crossing of the 5 % threshold set out in the NSTA section 4-2.

As Finanstilsynet recently stated in its decision of 31 May 2021, Consensus, as a professional asset management firm 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 in a timely and complete manner. Such procedures/systems must catch up both active trading conducted by Consensus, but also any changes to Consensus' shareholdings in various companies when such changes are a result of e.g. private placements or other circumstances which Consensus is not necessarily involved in. The notification requirements under the NSTA section 4-2 apply equally to anyone who through 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.

Finanstilsynet cannot see that there are any mitigating circumstances which excuse the late notification. On the contrary, Consensus had a specific encouragement to observe and correct its systems and/or procedures. Consensus had already on 15 April 2021 – one month before the late notification of 31 May 2021 was made – received an advance notification of violation penalty from Finanstilsynet. The day before the notification obligation arose, on the 25 May 2021, Consensus confirmed in its email to Finanstilsynet that they had implemented corrective actions.

Finanstilsynet's assessment is therefore 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.

In Finanstilsynet's opinion a delayed notification to the market that exceeds more than one working day is a significant violation of the NSTA section 4-2. Furthermore, in its assessment Finanstilsynet has also taken into consideration that the violation of the disclosure obligation could have been prevented had Consensus put in place appropriate procedures and/or systems in advance.

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 in ownership in a company listed on a regulated market can have a notable influence on the price of the issuers 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's preliminary 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 this particular matter, Finanstilsynet finds it to be an aggravating circumstance that the new violation of the NSTA is made while Consensus is in discussions with Finantilsynet regarding a similar recent violation of the same provision in the NSTA. It should also be noted that the notification of 31 May 2021 is not in compliance with the requirements set in section 4-1 of the Regulation.

On the other hand, Finanstilsynet considers it as a specifically mitigating circumstance that the crossing of the 5 % threshold was due to a dilution / completed private placement in CARA which was made without any actual involvement from Consensus.

An overview of violation penalties that has previously been imposed is published on Finanstilsynet's website in the second bullet point under the tab "Flaggeplikt" at <https://www.finanstilsynet.no/tilsyn/markedsatferd>.

## **6. Finanstilsynet's decision**

On the basis of the above, Finanstilsynet imposes a violation penalty on Consensus Asset Management AB (publ), in the amount of NOK 50,000 for its violation of the NSTA section 4-2. The legal basis is the NSTA section 21-3, section 21-9 and section 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, 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 Anisa Isaksen by email [anisa.isaksen@finansstilsynet.no](mailto:anisa.isaksen@finansstilsynet.no), or phone +47 22 93 98 58.

On behalf of Finanstilsynet

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