



FINANSTILSYNET
THE FINANCIAL SUPERVISORY
AUTHORITY OF NORWAY

WORLDQUANT LLC
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USA

OUR REFERENCE
20/10945

YOUR REFERENCE

DATE
29.10.2021

Decision regarding violation penalty

1. Introduction

Reference is made to previous correspondence, including the advance notification from The Financial Supervisory Authority of Norway ("Finanstilsynet") dated 14 January 2021, the reply by Millennium Capital Partners LLP on behalf of WorldQuant, LLC ("Position holder"), in the letter of 15 March 2021 and email of 11 June 2021. In addition to the information provided in meeting of 18 August 2021 and email dated 1 September 2021.

Based on the information available to Finanstilsynet, it is our preliminary opinion that the Position holder has violated the notification requirement under section 3-14 of the Norwegian Securities Trading Act ("NSTA") (as it was phrased before 1 March 2021), cf. Regulation (EU) No 236/2012 ("SSR") Article 5 cf. Article 9, by not notifying Finanstilsynet about the relevant net short positions (see section 3) within the time limit in accordance with the SSR. On this background Finanstilsynet has decided to impose a violation penalty of NOK 40,000.

According to section 1 in Regulation of 24 February 2021 no. 540 regarding transitional rules on amendments to the NSTA, the rules that were regulated by the NSTA section 21-4 are still applicable on infringements that took place before 1 March 2021 unless the current rules are more favourable for the offender. In the following, Finanstilsynet will refer to the rules that were in force at the time in question. References to the NSTA section 3-14 and 21-4 refer to these provisions as they were phrased before 1 March 2021.

2. Legal Basis

The obligation to report net short positions of shares was set out in the Norwegian Securities Trading act (NSTA) section 3-14, cf. Regulation (EU) No 236/2012 (SSR).

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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 0,2%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.

Pursuant to the NSTA section 21-4 subsection 1, Finanstilsynet may impose a violation penalty on natural and/or legal persons in the event of wilful or negligent violation of the NSTA section 3-14, cf. SSR Article 5 and cf. Article 9. Where the position holder is a legal entity, Finanstilsynet may impose a violation penalty where the violation has been committed by one or more natural persons acting on behalf of the legal entity. The requirement for subjective guilt may be fulfilled through someone acting on behalf of the legal entity having shown the necessary guilt. However, the subjective requirements can also be met by anonymous or cumulative errors.

Section 21-4 subsection 5 of the NSTA states that when the size of the violation penalty is assessed, importance shall in particular be attached to the scale and effects of the violation as well as the degree of guilt found. Article 41 of the SSR states that penalties and administrative measures applicable to infringements of the SSR shall be effective, proportionate and dissuasive.

As a supplement, the Norwegian Public Administration Act ("NPA Act") section 46 subsection 2, states that when deciding whether an administrative sanction shall be imposed on an enterprise and in the individual assessment of that sanction, attention may also be given to:

- 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

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 was temporarily lowered to 0,1% from March 16, 2020 to March 19, 2021. 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/>

- 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

This advance notification concerns late reporting of the following net short positions (together referred to as the "Relevant Net Short Positions"):

Issuer	Position	Position date	Reported*
NEL	0,16 %	16.03.2020	17.03.2020, 20:56 CET
Aker Solutions	0,29 %	17.03.2020	18.03.2020, 15:48 CET
FLEX LNG	0,46 %	17.03.2020	18.03.2020, 15:54 CET
Photocure	0,7 %	17.03.2020	18.03.2020, 16:00 CET
NRC Group	0,24 %	17.03.2020	18.03.2020, 15:57 CET
PGS	0,79 %	17.03.2020	18.03.2020, 15:59 CET
Nordic Nanovector	1 %	17.03.2020	18.03.2020, 15:56 CET
Hexagon Composites	0,19 %	17.03.2020	18.03.2020, 15:55 CET
Avance Gas Holding	0,99 %	17.03.2020	18.03.2020, 15:53 CET
Vow	0,26 %	17.03.2020	18.03.2020, 16:02 CET
DNO	0,1 %	18.03.2020	20.03.2020, 12:23 CET
Golden Ocean Group	0,27 %	03.07.2020	06.07.2020, 16:53 CET
Europris	0,41 %	04.08.2020	05.08.2020, 17:22 CET
Golden Ocean Group	0,42 %	04.08.2020	05.08.2020, 21:27 CET
PCI Biotech Holding	0,22 %	04.08.2020	05.08.2020, 17:23 CET

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

4. Position holder's statements

Millennium Capital Partners LLP ("MCP") has in the letter dated 6 November 2020, acknowledged that the Relevant Net Short Positions, exempt the position in DNO, were reported to Finanstilsynet after the notification time limit in NSTA section 3-14 cf. SSR article 9 subsection (2).

Net short positions in NEL, Aker Solutions, FLEX LNG, Photocure, NRC Group, PGS, Nordic Nanovector, HexagonComposites, Avance Gas Holding and Vow:

MCP has however stated inter alia that the late reporting of the Net short positions in *NEL, Aker Solutions, FLEX LNG, Photocure, NRC Group, PGS, Nordic Nanovector, HexagonComposites, Avance Gas Holding and Vow* with position dates 16 and 17 March 2020 were all reported on the correct date but after 15:30 CET. Regarding the positions, MCP refers to the decisions by the EFTA Surveillance Authority and 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 MCP, due to this

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

change the number of filings to be made increased significantly and required modification of systems, internal procedures and routines.

Net short position in DNO:

From MCP's reply of 6 November 2020, Finanstilsynet understands that Position holder has submitted several net short positions in DNO on 19 and 20 March 2020.

Position holder states in the letter of that they reported two correct net short positions in DNO on the 18 and 19 March 2020. MCP refers to the two following positions in its letter:

Issuer	Position	Position date	Reported
DNO	0,07 %	18.03.2020	19.03.2020, 10:48 CET
DNO	0,1 %	19.03.2020	20.03.2020, 12:23 CET

However, in addition to these two reported positions in DNO, Position holder also reported the following position, which is referred to in Finanstilsynets letter of 30 September 2020:

Issuer	Position	Position date	Reported
DNO	0,1 %	18.03.2020	20.03.2020, 12:23 CET

According to the reported position above, the Position holder reached the 0.1 % threshold on the 18 March 2020 and reported it on the 20 March 2020 at 12:23 CET, 21 hours after the deadline.

Net short position in Golden Ocean Group (03.07.2020):

MCP has in the reply stated that the late reporting in *Golden Ocean Group* was caused by "an error in our third party provider's system, which prevented it from correctly ingesting the data we supplied" and the mistake was recognized by an internal team when preparing the filings. However, MCP further states that the reporting was 1 hour and 23 minutes delayed as the delay in receiving correct data from the third party provider delayed the submission process.

Net short positions in Europris, Golden Ocean Group (04.08.2020) and PCI Biotech Holding:

MCP has in the reply stated that the late reporting in *Europris, Golden Ocean Group (04.08.2020)* and *PCI Biotech Holding*, was caused by "an error in our third party provider's system, which caused it to use an incorrect exempt list for Norway" for trades submitted on 5 August 2020. MCP further states that the mistake was recognized by its submission team and the positions were submitted as soon they were available.

MCP has in the email dated 11 June 2021 further stress that the short positions were reported after the deadline because of factors beyond MCP's control. The net short positions in NEL, Aker Solutions, FLEX LNG, Photocure, NRC Group, PGS, Nordic Nanovector, HexagonComposites, Avance Gas Holding and Vow "were affected by the change in the reporting threshold as MCP: i) was required to immediately plan and implement measures in its internal procedures and routines to comply with the new filing requirements; and ii) had a high number of short positions between

0,1% and 0,2% to file on the same dates as those filings. This particularly affected the disclosure of positions during the first couple of days after the lowering of the threshold as MCP was still adjusting to the change. The situation and the filings should therefore be seen as a whole, and based on this, MCP finds a violation charge for these filings neither productive, nor fair." The net short positions in Europris, Golden Ocean Group and PCI Biotech Holding "were submitted after the deadline due to a service provider's errors and were quickly identified by MCP when preparing the filings. However, the submissions were delayed due to the time it took to correct the errors."

Furthermore, MCP outlines that they were surprised that the four net short positions above the 0,5% threshold not was disclosed to the market after the day after, when the delays were within 30 minutes.

In meeting of 18 August 2021, MCP stated that penalizing the Position holder would violate the principle of proportionality under the EU law.

In email of 1 September 2021, MCP outlines that "MCP submitted in total 37 public notifications after the submission deadline for position dates 16 and 17 March 2020 in other jurisdictions: the UK (13); France (11); Germany (10); Ireland (2); and Denmark (1). These were all submitted on the correct day, but after the submission deadline. Attached to this e-mail is a table listing these submissions. In connection with these delayed submissions, the relevant NCAs have not, in any of these cases, reached out to MCP, nor has MCP received any information or notification suggesting that the relevant NCAs intend to pursue these cases. These cases demonstrate that the relevant NCAs have approached delayed public notifications related to the immediate threshold change with discretion and leniency." Further, MCP states with examples that other National Competent Authorities in Europe take a lenient approach to delayed SSR public notifications.

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

Finanstilsynet finds that Position holder violated the NSTA section 3-14, as it was phrased before 1 March 2021, by not notifying Finanstilsynet about the Relevant Net Short Positions within the time limit in accordance with 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 considering whether the subjective conditions for imposing a violation penalty are met, the starting point would be that a participant in the Norwegian securities market is expected to comply with the regulatory rules of that market. It will typically be expected that the Position holder establishes in advance appropriate procedures and/or systems in order to proactively identify the

notification obligation under SSR and ensures that these procedures and/or systems are applied. Position holder is responsible for ensuring that the notification is complete, correct and accurate, also where Position holder has delegated / outsourced the task of reporting short positions to others.

Finanstilsynet has considered the provided statements. Finanstilsynet has put particular emphasis on the positions that required reporting before ESMA lowered the threshold, communicated in its press release on the 16 March 2020. This includes four positions above 0,5% and multiple positions above 0,2% but under 0,5%. These positions were obliged to be reported regardless of the lowered threshold. Net short positions reported to Finanstilsynet after 15:30 CET on the following trading day and that are larger than or equal to 0,5% will not be made public two trading days after the transaction. Even though the four positions were reported within 30 minutes after the deadline, they were not made public before the next trading day at 15:30 CET. Further, although the reporting system has been improved to prevent further events, Position holder did fail to ensure such compliance in advance.

It is Finanstilsynet's assessment that the Position holder had not taken the necessary precautions to ensure that the notification obligations could be met before making the trades.

Finanstilsynet has concluded that one or more persons acting on behalf of the Position holder acted negligently, or that cumulative errors were present. Accordingly, Finanstilsynet finds that the subjective conditions under NSTA section 21-4 subsection (1) for imposing a violation penalty are met.

When assessing whether to make use of a violation penalty in this particular case, Finanstilsynet has made a concrete assessment of the individual matters of the case in accordance with the NSTA section 21-4 subsection (1) and NPA Act section 46 subsection (2). In its assessment, Finanstilsynet has not placed emphasis on Position holder's statement concerning the approaches of the supervisory authorities in other EEA States with regard to sanctioning of late reported SSR positions, as this would be a matter of discretion for each supervisory authority.

As mentioned, participants in the Norwegian securities market are expected to have established appropriate procedures and/or systems in order to proactively identify the notification obligation under SSR. Finanstilsynet has placed particular emphasize on the short positions that required reporting before ESMA lowered the threshold.

Furthermore, Finanstilsynet has also placed emphasis on the fact the case involves fifteen late notifications, and that the Position holder who is responsible for the delayed notifications is a legal person. Finanstilsynet considers it to be aggravating that the late reported positions in Nordic Nanovector, Photocure, PGS and Avance Gas Holding 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. In Finanstilsynet's assessment, imposing a violation penalty in this case will not be disproportionate.

Finanstilsynet finds that a violation penalty should be imposed.

The NSTA section 21-4 subsection (5) states that when the size of a violation penalty is assessed, importance shall in particular be attached to the scale and effects of the violation as well as the degree of guilt found. In addition, the criteria specified in NPA Act section 46 subsection (2) may also be taken into consideration when assessing the size of the violation penalty, (cf. section 2 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 the relevant infringements have been found to be negligent on the part of the Position holder, the length of the delays and the size of the different positions. Finanstilsynet has also taken into consideration that the delay of the notifications in Nordic Nanovector, Photocure, PGS and Avance Gas Holding also resulted in the positions not being made publicly available in time. 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, Finanstilsynet has as a mitigating circumstance taken into consideration that ESMA/ESA decided to lower the reporting threshold from 0,2% till 0,1% on Monday 16 March 2020 and that some of the positions in question would not have been subject to the notification obligation under SSR article 5 prior to the decision.

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

Finanstilsynet finds that the current provisions under the NSTA section 21-3, section 21-9 and 21-14 will not give a more favourable result for WorldQuant LLC.

On the basis of the above, Finanstilsynet will impose a violation penalty on WorldQuant LLC of the amount of NOK 40,000 for its violation of the NSTA section 21-4 subsection (1) and (5) (as it read before 1 March 2021) cf. SSR Articles 5, 6 and 9, and section 1 of Regulations of 24 February 2021 no. 540 on transitional rules on amendments in the NSTA. The legal basis is the NSTA section 21-4 subsection (1) (as it read before 1 March 2021).

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 Madeleine M. Melgård by email mame@finanstilsynet.no, or phone +47 22 93 98 18.

On behalf of Finanstilsynet

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