



Fjärde AP-Fonden (AP4)
Jakobsbergsgatan 16
103 61 Stockholm
SWEDEN

OUR REFERENCE
21/4166

YOUR REFERENCE

DATE
11.02.2022

Decision regarding violation penalty

1. Introduction

Reference is made to The Financial Supervisory Authority of Norway's ("Finanstilsynet") letter dated 25 October 2021 and the reply dated 4 November 2021.

Based on the information that has been available, Finanstilsynet finds that Fjärde AP-Fonden has violated the Norwegian Securities Trading Act ("NSTA") section 4-3 in connection with the crossing of the 5 % threshold in Bergen Bio ASA ("BGBIO") in December 2020. Finanstilsynet has on this background decided to impose Fjärde AP-Fonden a violation penalty of NOK 75,000.

According to section 1 in Regulation of 24 February 2021 no. 540 regarding transitional rules on amendments to the NSTA ("the transitional regulation"), the rules that were regulated by NSTA § 21-4 are still applicable on infringements that took place before 1 March 2021 unless the current rules are more favorable for the offender. In the following Finanstilsynet will refer to the rules that were in force at the time in question.

2. Legal basis

NSTA section 4-3 subsection (1) states that where a shareholder's or other person's proportion of shares and/or rights to shares reaches, exceeds, or falls below 5 %, 10 %, 15 %, 20 %, 25 %, 1/3, 50 %, 2/3 or 90 % of the share capital or corresponding proportion of the votes as a result of acquisition, disposal or other circumstance, the party concerned shall immediately notify the issuer and Finanstilsynet or whomever Finanstilsynet designates for the purpose.

Pursuant to Regulation of 6 December 2007 no. 1359 section 1, notifications under NSTA section 4-3 subsection (1) shall be sent to the regulated market on which the share has been admitted to trading. NSTA section 4-3 applies to shares admitted to trading on a regulated market of an issuer having Norway as its home state (cf. NSTA section 4-1).

According to the NSTA section 4-3 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, or should have become aware, of any other circumstance causing the party concerned to reach or fall below a threshold in subsection (1).

Pursuant to the NSTA section 21-4 subsection (1), Finanstilsynet may impose individuals and/or legal persons a violation penalty in the event of willful or negligent violation of the NSTA section 4-3. In cases where the perpetrator is a legal person, Finanstilsynet may impose the legal person a violation penalty 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.

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.

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 the 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
- 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

Oslo Stock Exchange was on 30 March 2021 notified that Fjärde AP-Fonden as of 8 December 2020 crossed the 5 % threshold of BGBIO. The 5 % threshold was crossed following a purchase of 990 000 shares. After the purchase Fjärde AP-Fonden held 4 487 493 shares in BGBIO which equated to 5,14 % of the share capital and votes of BGBIO.

4. Statements of the discloser

In letter dated 5 July 2021 Fjärde AP-Fonden informs that due to a combination of limited access to data, wrongful evaluation of the data and the human factor, the crossing of the 5 % threshold was discovered more than three months too late.

On 8 December 2020 a portfolio manager at Fjärde AP-Fonden took the decision to purchase 990 000 shares of BGBIO. Unfortunately, the decision was taken on a wrongful evaluation of ownership data. At the time of the transaction, the portfolio manager at Fjärde AP-Fonden worked from home due to the pandemic. The portfolio manager consulted with a broker with access to the ownership situation of BGBIO, and concluded based on this consultation solely, that a purchase of 990 000 shares would not lead to a crossing of the 5 % threshold of BGBIO. However, this evaluation did not take into account that Fjärde AP-Fonden also had 701 552 shares in BGBIO on loan, i.e., were lent to another investor. According to the procedures which applied in Fjärde AP-Fonden on that time, the portfolio manager should have taken additional steps to investigate this further.

In addition, due to the human factor as described, the missed reporting of the crossing of the 5 % threshold was neither detected in the additional and continuous manual follow up routines which were mandatory at Fjärde AP-Fonden.

Fjärde AP-Fonden informs that it considers the late reporting very seriously and has taken all necessary efforts to make sure that this will not happen again. Fjärde AP-Fonden also informs that new routines and processes have been implemented during the spring. Furthermore, Fjärde AP-Fonden has held several internal training sessions to educate its personnel in order to prevent similar cases to occur in the future.

Fjärde AP-Fonden emphasizes that shareholder disclosure at Fjärde AP-Fonden shall function impeccable, and is very sorry for what has happened. It is also emphasized that it obviously not was any intention to keep any relevant information away from the financial markets regarding the ownership in BGBIO.

By email dated 4 November 2021, Fjärde AP-Fonden states that the reason for the breach of the threshold was human errors and not lack of systems and routines put in place. There were mandatory control mechanisms in place that unfortunately was not carried out correctly in due time. Such incidents have historically been extremely rare, due to the company's strong focus on operational risks and thorough routines. As Fjärde AP-Fonden relentlessly strives to improve systems, routines, and procedures to continuously reduce operational risks, routines have been updated during the spring of 2021. Fjärde AP-Fonden also finds Finanstilsynet's conclusion that the violation is considered to be negligent to be too severe.

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

Finanstilsynet finds that Fjärde AP-Fonden notified Oslo Stock Exchange too late when Fjärde AP-Fonden in December 2020 crossed the 5 % threshold of BGBIO following a purchase of 990 000 shares of BGBIO.

Shares on loan are in this respect to be considered held by Fjärde AP-Fonden when evaluating whether the 5 % threshold under NSTA 4-3 is crossed.

Fjärde AP-Fonden claims that the mistake depends on human errors solely. Finanstilsynet nevertheless finds that the incident indicates that the training of the personnel was inadequate. Furthermore, Finanstilsynet refers to the fact that it took three months to discover the mistake and to notify the market. Finanstilsynet finds that appropriate procedures and/or systems should have detected the breach at an earlier stage. Finanstilsynet further finds that appropriate procedures and/or systems, should detect mistakes whereby a transaction is done contrary to the ordinary routines. In this regard, it should be taken into consideration that Fjärde AP-Fonden also had shares of BGBIO on loan, which complicates the situation.

On this background Finanstilsynet finds that Fjärde AP-Fonden should have had in place routines which detected the mistake in this case. Finanstilsynet finds that one or several persons who acted on behalf of Fjärde AP-Fonden acted negligently.

Finanstilsynet concludes that the subjective and objective conditions for imposing a violation penalty are met in this case, cf. the NSTA section 21-4 subsection (1), cf. NSTA section 4-3.

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 section 46 subsection (2).

In its assessment has Finanstilsynet taken into consideration the length of the delay. Furthermore, Finanstilsynet considers that the violation of the disclosure obligation could have been prevented had Fjärde AP-Fonden put in place appropriate procedures and/or systems in advance of the purchase.

The rules on disclosure obligations under NSTA section 4-3 are meant to assure that the issuer and the stock market receives immediate 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 has previously imposed violation penalties in cases of similar violations. Considerations for equal treatment therefore imply that such penalty should be imposed also in this case.

Finanstilsynet concludes that a violation penalty should be imposed for this violation.

Finanstilsynet refers to the NSTA section 21-4 subsection (5) which 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 section 46 subsection (2) may also be taken into consideration when assessing the size of the violation penalty (cf. section 2 above).

The violation penalty is based on an overall evaluation of the breach, taking into account amongst other factors, the length of the delay of the notification and previous decisions in similar cases. Finanstilsynet has also taken into account that the violation is considered negligent.

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

Finanstilsynet finds that the current provisions under NSTA section 4-2, section 21-3, section 21-9 and 21-14 will not give a more favorable result for Fjærde AP-Fonden.

On the basis of the above, Finanstilsynet imposes Fjærde AP-Fonden a violation penalty in the amount of NOK 75,000 for its violation of the NSTA section 4-3.

The legal basis is the NSTA section 21-4 subsection (1), the Regulations of 24 February 2021 no. 540 on transitional rules on amendments in the NSTA and the NPA Act section 46 subsection (2).

Finanstilsynet informs that decisions on violations regarding major shareholdings will be published on its website.

This administrative decision can be appealed within 3 weeks after receipt of the decision. An appeal shall be sent to Finanstilsynet. The appellate instance is the Ministry of Finance. Section 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 inquiry, please contact Erik Landa by email [REDACTED] or phone [REDACTED]

On behalf of Finanstilsynet

Thomas Borchgrevink
Head of Section

Erik Landa
Senior Advisor

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