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OUR REFERENCE 20/4962	YOUR REFERENCE	DATE 24.02.2021
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Decision regarding violation penalty

1. Introduction

Reference is made to previous correspondence with (collectively referred to as "Position holder"), including The Financial Supervisory Authority of Norway's ("Finanstilsynet") letters of 12 November 2020 and 2 February 2021 and to Position holder's replies in the letter dated 30 November 2020 and the email dated 16 February 2021. Reference is also made to Position holder's email of 20 April 2020.

Based on the information available to Finanstilsynet, it is concluded that Position holder has violated the notification requirement under section 3-14 of the Norwegian Securities Trading Act ("NSTA"), cf. Regulation (EU) No 236/2012 ("SSR")¹ Article 5, cf. Article 9, by not notifying Finanstilsynet within the time limit laid in accordance with SSR. Finanstilsynet has concluded to issue a violation penalty to Position holder in this matter, pursuant to NSTA section 21-4 subsection (1) cf. section 3-14 (see section 6 for further details).

2. Legal basis

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 venue² and for which Finanstilsynet is the relevant competent authority ("RCA"), 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 0,1%³ of the issued share capital and each 0,1% above that. Net short positions reported

¹ Regulation no 236/2012 of 14 March 2012 of the European Parliament and of the council on short selling and certain aspects of credit default swaps.

² 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).

³ The notification threshold has been temporarily lowered from 0,2% to 0,1% as of March 16, 2020. See the latest decision of December 17, 2020 with links to previous decisions: <https://www.finanstilsynet.no/en/news->

to Finanstilsynet shall be disclosed to the public if the position *reaches, exceeds* or *falls below* 0,5 % of a company's issued share capital and each 0,1 % above that, cf. SSR Article 6.

Notification to Finanstilsynet shall be made in the manner and within the deadline in accordance with SSR Article 9 cf. Commission Delegated Regulation (EU) No 2012/826 ("2012/826") whereas the relevant time for calculation of a net short position shall be at midnight at the end of the trading day, and the notification must be submitted to Finanstilsynet no later than at 15.30 CET on the following trading day. The position holder is responsible for the notification of net short positions being correct and complete, also where the position holder has delegated/outsourced the task of reporting short positions to others.

The NSTA Section 21-4 subsection (1) empowers Finanstilsynet to impose a violation penalty for wilful or negligent violation of the obligation to notify Finanstilsynet about net short positions in accordance with NSTA section 3-14, cf. Article 5 cf. Article 9. Where the position holder is a legal person, the subjective condition of wilful or negligent violation implies a requirement that one or more natural persons acting on behalf of the legal person, have shown the necessary degree of subjective guilt.

When *assessing the size* of the violation penalty, NSTA section 21-4 subsection (5) prescribes that emphasis shall in particular be placed on the scale and effects of the violation, as well as the degree of fault that is found. Article 41 of the SSR states that penalties and administrative measures applicable to infringements of the SSR shall be effective, proportionate and dissuasive. Further, section 46 of the Norwegian Public Administration Act ("NPA Act") prescribes that Finanstilsynet may have regard to the following circumstances (among others) when deciding *whether* an administrative sanction shall be imposed on an enterprise and in the individual assessment of the size of the sanction:

- 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

The violation penalty concerns late reporting of the following net short positions (together referred to as the "Relevant Net Short Positions"):

	Issuer	Share quantity	Net short position (%)	Position date	Reported to Finanstilsynet	Delay (in trading days)
1			0.264 %			31
2			0.315 %			28
3			0.429 %			18
4			0.362 %			14
5			0.453 %			13
6			0.530 %			12
7			0.615 %			10
8			0.5971 %			8
9			0.8891 %			7
10			0.9215 %			6
11			0.8943 %			4

*Filed with correct quantity but incorrect percentage. Originally filed with net short percentage 0,101 %.

Positions 1 to 11 are considered to have been notified to Finanstilsynet by email [REDACTED] April 2020 13:29 CET.

4. Position holder's statements

Position holder's statements were provided to Finanstilsynet the letter dated 30 November 2020 and the email dated 16 February 2021. The Position holder did not contest or object to the factual basis upon which the Advance Notification was sent.

Position holder has in the letter of 30 November 2020 acknowledged that the Relevant Net Short Positions were reported to Finanstilsynet after the notification time limit in NSTA section 3-14 cf. SSR Article 9 subsection (2). Position holder stated that they in absence of a publicly available source providing issued share capital information for Norwegian-listed issuers, sources share capital information from selected reference data vendors. Due to an error in these data Position holder included certain delisted products in their calculations for [REDACTED] which caused an increased share capital number and incorrect reporting.

Furthermore, Position holder informs that they, in order to ensure accurate and complete notifications, perform detailed due diligence checks of their positions. This supplementary validation process led Position holder to identify the issue regarding [REDACTED] causing them to immediately correct the notification, analyse all potentially affected positions including earlier ones and contacting Finanstilsynet to notify us of the issue and provide the corrected information.

Followingly, Position holder has also taken steps to analyse what further actions can be taken to further enhance their reporting process to guard against any reoccurrence of such issues. This

included working extensively with their reference data vendor providers to develop and strengthen controls and solutions for such scenarios.

Finally, notwithstanding that Position holder considers there to be no complete and accurate share capital and voting right information for all in scope securities, they fully appreciate the importance of prompt and accurate reporting and underlines that they take their notification obligations very seriously. They state that compliance with regulatory obligations is an essential part of Position holder's business culture and organisation, and that they always endeavour to ensure that their procedures follow both rules on reporting requirements and guidance provided by respective regulators.

In its email dated 16 February 2020, Position holder acknowledged the violation penalty. Furthermore, Position holder underlined that they appreciate the importance of prompt and accurate reporting and wanted to take the opportunity to reassure Finanstilsynet that Position Holder is committed to complying with its notification and other regulatory obligations.

5. Finanstilsynet's assessment

5.1 Infringement of the SSR

It is Finanstilsynet's assessment that the failure to notify Finanstilsynet within the deadline constitutes clear violations of the reporting requirements under NSTA section 3-14, cf. Articles 5 and 9 of the SSR.

The Relevant Net Short Positions were subject to the notification requirement and the notifications were submitted after the deadline in SSR Article 9. On this background it is Finanstilsynet's assessment that the provided notifications did not fulfil the requirements under NSTA section 3-14, cf. Article 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 is met.

When assessing whether the subjective conditions for imposing a violation penalty are met, Finanstilsynet has taken into account Position holder's statements in the letter of 30 November 2020, hereunder that the late reports were caused by the fact that certain delisted products were included in the calculation. As regards Position holder's statement that there is no approved publicly available source providing issued share capital information for Norwegian-listed issuers, Finanstilsynet would like to point out that the Oslo Stock Exchange (Oslo Børs) keeps updated information on the issued share capital of the instruments traded on the marketplace. In any case, issuers on Oslo Børs are obligated to immediately publicly disclose changes share capital.⁴ These updates are posted at www.newsweb.no.

It is the Position holder's responsibility to ensure, in advance of taking net short positions covered by the notification obligation, to have in place appropriate procedures and/or systems in order to proactively identify the notification obligation under the SSR, hereunder what shares that are

⁴ See [Oslo Børs Rulebook II](#), 4.3.4 (1) nr. 4 and 4.9.4.4 (3).

subject to the obligation, and to make sure such procedures are satisfied in a timely and complete manner. This means inter alia that the procedures and/or systems inter alia must be prepared to at any given time identify shares which are subject to the reporting obligation, and that both the design of and compliance with the procedures and/or the system, among other things takes into account that the position holder may be in one or more demanding processes at the same time as the position holder makes trades and the reporting obligation arises.

It is Finanstilsynet's assessment that the reasons for the delays stated by Position holder do not excuse the delays and that Position holder had not taken the necessary precautions to ensure that the notification obligations could be met before making the trades. Accordingly, Finanstilsynet has the view that persons acting on behalf of the Position holder have acted negligently.

On this background, Finanstilsynet finds that both the objective and subjective conditions under NSTA section 21-4 subsection (1) for imposing a violation penalty is in place according to NSTA section 21-4.

5.2 Assessment of whether a violation penalty should be imposed

Finanstilsynet finds that the identified violations are manifest and severe and thus finds it necessary to impose a violation penalty under section 21-4 of the NSTA.

In determining *whether* to impose a penalty, Finanstilsynet has in accordance with the NSTA section 21-4 and the NPA Act section 46 subsection 2, made an overall assessment of the individual circumstances in the case. Finanstilsynet places emphasis in particular on the fact that the failure to submit timely notifications relates to a large number of net short positions, that several of the relevant short positions were of a significant size and the length of the delays. Finanstilsynet considers it aggravating that 6 of the positions were above the 0.5 % threshold, and thus that the infringements effectively have obstructed the positions to be disclosed to the market in time in accordance with the NSTA section 3-14 cf. SSR Article 6. Compliance with the SSR is imperative to ensure information to the market on significant net short positions. Such information enables the investor to make well-considered investment decisions, which in turn is of importance for confidence in the market.

Participants in the securities market must be expected to have procedures and/or systems in place at all times to ensure fulfilment of time-critical reporting obligations. Based on the above, it is the opinion of Finanstilsynet that a decision to impose a violation penalty in regard to the abovementioned violations of the SSR, would not be unproportionate in this case.

Finanstilsynet therefore finds that a violation penalty should be imposed for this violation.

5.3 Assessment of the size of the violation penalty


As described above, the reporting obligation, hereunder to report net short positions within the deadline of 15:30 CET on the following trading day, a key part of the SSR, that it is expected that

professional actors such as Position holder are familiar with and organize their business according to. In accordance with NSTA section 21-4 subsection (5), certain circumstances *shall* be taken into account when determining the size of the violation penalty hereby the scale and effects of the violation(s), as well as the degree of fault found. Reference is also made to the principles for sanctions under the SSR article 41, and the NPA Act section 46 which supplements the sector legislation and prescribes certain circumstances that Finanstilsynet may have regard to in addition to the circumstances prescribed in the NSTA (for further details see section 2 (*Legal basis*) 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 Position holder is a legal person, the length of the delays, the number of infringements, the size of the positions, hereunder that 6 of the positions were above the 0,5 % threshold, and the fact that Position holder itself reported the previously non-reported positions. Finanstilsynet has also taken into consideration that the relevant infringements have been found to be negligent on the part of the Position holder cf. section 5.1 above. 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

Based on the facts described above and in accordance with the NSTA section 21-4 subsection (1) and (5), cf. SSR Articles 5, 6 and 9, Finanstilsynet has made the following decision regarding a violation penalty:

 is required to pay a violation charge of NOK 350 000
(three hundred and fifty thousand Norwegian kroner) to the Norwegian Treasury.

Pursuant to section 28 of the NPA Act, this administrative decision may be appealed to the Ministry of Finance. An appeal must be submitted within three weeks of the date on which notification of the administrative decision has reached the party concerned. The appeal must be sent to Finanstilsynet.

An invoice for payment of the violation penalty will be sent separately from The Norwegian National Collection Agency after the deadline for appeal has expired.

If you have any questions regarding the matter, please contact Tord Steffensen Sortland by e-mail at toso@finansstilsynet.no.

On behalf of Finanstilsynet

Geir Holen
Head of Section

Tord Steffensen Sortland
Higher Executive Officer

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