



Think Investments LP
1 Letterman Drive Building C Ste CM-420
San Francisco, 94128 CA
USA

OUR REFERENCE
21/9510

YOUR REFERENCE

DATE
20.04.2022

Decision regarding violation penalty

1. Introduction

Reference is made to the letter from the Financial Supervisory Authority of Norway ("Finanstilsynet") dated 10 March 2022 and the reply from Think Investments LP ("Think") dated 30 March 2022.

Based on the information available to Finanstilsynet, Finanstilsynet has concluded that Think violated the notification requirement under section 3-5 of the Norwegian Securities Trading Act ("NSTA"), cf. Regulation (EU) No 236/2012 ("SSR") Article 9 subsection (2) and Article 5, by not notifying Finanstilsynet within the time limit under the SSR of the net short positions as set out in section 3 below.

On this background Finanstilsynet has decided to impose Think a violation penalty of NOK 20 000.

2. Legal basis

The obligation to report net short positions of shares is set out in the Norwegian Securities Trading act (NSTA) section 3-5, cf. Regulation (EU) No 236/2012 (SSR).

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 venue and for which Finanstilsynet is the relevant competent authority, shall in accordance with the NSTA section 3-5 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 or falls below a percentage that equals 0,2% of the issued share capital and each 0,1% above that. A natural or legal person who has a net short position which reaches or falls below 0,5 % of a company's issued share capital, and each 0,1 % above that, shall disclose details of that position to the public, cf. SSR Article 6.

The notification or disclosure shall be made no later than at 15.30 (3.30 PM) the following trading day, cf. SSR Article 9 subsection (2).

Finanstilsynet may under the NSTA section 21-2 subsection (1) impose individuals and/or legal persons a violation penalty in the event of negligent or willful violation of the NSTA section 3-5.

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 NSTA section 21-14 be given to the following:

- a) the gravity and length of the breach,
- b) the degree of guilt of the perpetrator,
- c) the financial strength of the perpetrator, in particular total turnover or annual income and assets,
- d) profits gained or loss avoided,
- e) any loss inflicted on a third party due to breach,
- f) will by the perpetrator to cooperate with public authorities,
- g) earlier breaches,
- h) arguments as mentioned under the public administration act section 46 subsection (2),
- i) other relevant arguments.

3. Factual background

On Monday 12 July 2021 Think's net short position in Quantafuel ASA ("QFUEL") changed from 0,21 % to 0,32 %. The position thus crossed the 0,3 % reporting threshold in QFUEL. Think reported the position on Tuesday 13 July 2021 at 6:50 PM CET.

Further, on Friday 8 October 2021, Think's net short position in QFUEL changed from 0,49 % to 0,57 %. The position thus crossed the 0,5 % reporting threshold of QFUEL. Think reported the position on Tuesday 12 October 2021 at 01:35 AM CET.

These two positions are in the following referred to as the "Net Short Positions."

4. Think's statements

In e-mails dated 19 and 21 October 2021, Think apologizes for the late notifications of the Net Short Positions. The late reporting of the position on 8 October was due to Monday 11 October

2021 being a holiday in the USA. The late reporting of the position of 12 July 2021 was due to the fact that Think's systems, trades on US hours. In its e-mail of 30 March 2022 Think has no further comments to the violation penalty.

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

Finanstilsynet finds that Think violated the NSTA section 3-5 by not notifying Finanstilsynet of the Net Short Positions within the time limit in accordance with the 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 3-5, cf. Articles 5 and 9 of the SSR.

Accordingly, Finanstilsynet finds that the objective conditions under NSTA section 21-2 subsection (1) for imposing a violation penalty on Think 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 a position holder in advance establishes 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.

Finanstilsynet finds that one or more persons acting on behalf of Think acted negligently in respect of the late notifications of the Net Short Positions, or that cumulative errors were present. Accordingly, Finanstilsynet finds that the subjective conditions under PAA section 46 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 21-9 subsection (2) and NPA Act section 46 subsection (2). 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.

Based on the above, it is the opinion of Finanstilsynet that a decision to impose a violation penalty will not be disproportionate in this case.

The NSTA section 21-14 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 late notifications of the Net Short Positions have been found to be negligent, and could have been prevented if Think had appropriate routines in place. The size of the violation penalty is furthermore consistent with

the level of previous penalties set by Finanstilsynet for similar violations of the notification requirements.

6. Finanstilsynet's decision

On the basis of the above, Finanstilsynet has decided to impose Think Investments LP a violation penalty in the amount of NOK 20 000 for its violation of the NSTA section 3-5.

The legal basis is the NSTA section 21-2, 21-9 and 21-14, cf. SSR Articles 5, 6 and 9 subsection (2).

Please be informed that a decision whereby Finanstilsynet imposes a violation penalty for breaches of SSR will be published on Finanstilsynet's website.

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 Erik Landa by email post@finansstilsynet.no or phone +47 22 93 96 71.

On behalf of Finanstilsynet

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