



Anavio Capital Partners LLP
11a Regent Street
London SW1Y 4LR
UNITED KINGDOM

OUR REFERENCE
22/13035

YOUR REFERENCE

DATE
08.05.2023

Dear Sir,

Decision on violation penalty

Reference is made to the Advance notification of violation penalty dated 8 March 2023 from The Financial Supervisory Authority of Norway ("Finanstilsynet"), email from Anavio Capital Partners LLP ("Anavio") on 22 March 2023 and other correspondence.

The case concerns Anavio's sale of shares in Flyr AS ("Flyr") (ISIN NO0010931900) on 16 November 2022.

Based on the information available, Finanstilsynet finds that Anavio violated the Regulation (EU) No 236/2012 on short selling and certain aspects of credit default swaps ("SSR"), cf. Section 3-5 of the Norwegian Securities Trading Act ("NSTA").

Against this background Finanstilsynet has decided to impose a violation penalty of NOK 1 500 000, cf. Sections 21-2 and 21-9 of NSTA.

1. Legal basis

SSR applies to financial instruments admitted to trading on a multilateral trading facility ("MTF") where Finanstilsynet is the "relevant competent authority", cf. SSR Article 2 no 1 j). At the time Anavio's sale of shares in Flyr took place, the shares in Flyr were admitted to trading on Euronext Growth (Oslo). SSR is thus applicable.

Article 2 paragraph 1 (b) of SSR defines "short sale" in relation to a share as *"any sale of the share which the seller does not own at the time of entering into the agreement to sell including such a sale where at the time of entering into the agreement to sell the seller has borrowed or agreed to borrow the share [...] for delivery at settlement, not including:*

- (i) *a sale by either party under a repurchase agreement where one party has agreed to sell the other a security at a specified price with a commitment from the other party to sell the security back at a later date at another specified price;*
- (ii) *a transfer of securities under a securities lending agreement; or*
- (iii) *entry into a futures contract or other derivative contract where it is agreed to sell securities at a specified price at a future date."*

According to Article 5 of SSR, any natural or legal person who has a net short position in relation to issued share capital of a company that has shares admitted to trading on a trading venue and for which Finanstilsynet is the relevant competent authority, shall in accordance with Article 9, notify Finanstilsynet of certain net short positions. The notification obligation will apply if the position holder has a relevant net short position that reaches, exceeds or falls below a percentage that equals 0,2% of the issued share capital and each 0,1% above that. The notification shall be made by filing the positions in the Norwegian Short Sale register. According to Article 9 of the SSR, the relevant time for calculation of a net short position is midnight at the end of the trading day that the position was established or changed. The notification of the net short position shall be made not later than at 15:30 CET on the following trading day.

Article 12 of SSR sets out restrictions on the uncovered short sale of shares. Article 12 no 1 reads as follows:

"A natural or legal person may enter into a short sale of a share admitted to trading on a trading venue only where one of the following conditions is fulfilled:

- a) the natural or legal person has borrowed the share or has made alternative provisions resulting in a similar legal effect;*
- b) the natural or legal person has entered into an agreement to borrow the share or has another absolutely enforceable claim under contract or property law to be transferred ownership of a corresponding number of securities of the same class so that settlement can be effected when it is due;*
- c) the natural or legal person has an arrangement with a third party under which that third party has confirmed that the share has been located and has taken measures vis-à-vis third parties necessary for the natural or legal person to have a reasonable expectation that settlement can be effected when it is due".*

Pursuant to Section 21-2, cf. Section 21-5 third to fifth paragraphs of NSTA, Finanstilsynet may, in the event of a violation of rules in the SSR on reporting and uncovered short sales, impose a violation penalty on legal entities of up to NOK 43 million, or up to 10 per cent of the total annual turnover according to the last approved annual accounts. The violation penalty can be set at twice the profit achieved or loss avoided, if this results in a higher penalty.

The conditions for imposing a violation penalty are set out in Section 21-9 of NSTA. For legal entities, reference is made to the second paragraph of Section 46, first paragraph of the Public

Administration Act. It appears in that provision that when it is laid down in law that an administrative sanction can be imposed on an legal entity, the culpability requirement is negligence unless otherwise determined. This means that a violation penalty may be imposed if a person acting on behalf of the legal entity commits the violation negligently. The culpability requirement can also be met through anonymous or cumulative fault.

It follows from Section 21-14 of NSTA that when deciding whether an administrative sanction is to be imposed and in the assessment of the penalty, a number of factors may be taken into account:

1. the gravity and duration of the violation,
2. the degree of culpability of the violator,
3. the violator's financial capability, in particular overall turnover or annual income and assets,
4. profit gained or losses avoided,
5. loss inflicted on any third party as a result of the violation,
6. willingness to cooperate with the authorities,
7. previous violations,
8. conditions as mentioned in the Public Administration Act section 46 second subsection
9. other relevant factors

The factors in section 21-14 are supplemented by partly overlapping factors in section 46 second subsection of the Public Administration Act, which apply to sanctions against legal entities. A factor that appears in section 46, second paragraph, is whether the legal entity could have prevented the violation by means of guidelines, instructions, training, control or other measures.

2. Background

2.1 The private placement in Flyr

After a period of significant financial challenges, Flyr carried out a capital raise in the autumn of 2022. The company received new share capital through a private placement where selected investors were given the opportunity to subscribe for new shares in the company.

In a stock exchange announcement published on 10 November 2022 at 8:44 PM (CET) the company informed that through the private placement it had raised NOK 250 million by issuing 25 billion shares with a subscription price of NOK 0.01. The private placement was subject to approval by an extraordinary general meeting, which was to be held on 16 November 2022.

The stock exchange announcement stated, *inter alia*, the following:

"First day of trading of the New Shares is expected to be on or about 17 November 2022, but not before the capital increase pertaining to the New Shares has been registered with the Norwegian Register of Business Enterprises ("the NRBE").

Settlement of the New Shares is expected to take place on a delivery versus payment (DVP) basis on or about 21 November 2022. DVP settlement of the New Shares is expected to be facilitated by a

prepayment agreement between the Company and the Managers, however, the allocated New Shares will not be delivered to the relevant applicant before the registration of the capital increase pertaining to the New Shares with the NRBE has taken place. The New Shares allocated to investors will be tradeable on Euronext Growth Oslo following a stock exchange announcement by the Company announcing the registration of the share capital increase pertaining to the New Shares in the NRBE”.

In a stock exchange announcement of 16 November 2022 at 12:17:16 PM (CET), Flyr disclosed that the company's extraordinary general meeting had approved the capital increase. In a stock exchange announcement of 17 November 2022 at 10:01:27 AM (CET), Flyr informed that the new share capital had been registered in the Register of Business Enterprises.

Finanstilsynet's investigations show that, prior to the registration of the increased share capital on 17 November, 1,2 billion shares in Flyr were sold. At this time, the share capital in the company amounted to 633,019,667 shares, in other words only about half of the number of shares traded that day.

2.2 Anavio's sale of shares

According to information available to Finanstilsynet, Anavio was allocated with 750,000,000 shares in the private placement.

On 16 November 2022, Anavio placed a sell order for 25 million shares. From 09:32 AM to 3:45 PM (CET) on 16 November 2022, Anavio sold a total of 22 708 085 shares in Flyr. The sales order was executed by [REDACTED]

After the publication of the stock exchange announcement on 17 November about the registration of the capital increase, the price of the share fell significantly. Anavio made a profit compared to those investors who waited to sell the shares until the capital increase had been registered.

Finanstilsynet has calculated Anavio's profit by taking as a starting point the price observed in the market after the stock exchange announcement about the capital increase was published (November 17 at 10:01), which is compared with the sale price achieved by Anavio. The volume-weighted average price (VWAP) has been used to calculate a price estimate for the trade after the announcement of the capital increase was made public. The VWAP is calculated at 0.0094. VWAP has also been calculated on the short sales that Anavio carried out. The difference between these is multiplied by the number of shares sold to calculate the profit.

Based on the calculation method mentioned above, Finanstilsynet estimates that Anavio obtained the following profit by selling the shares before they were registered in the Register of Business Enterprises (in NOK):

Entity	Number of shares	VWAP before announcement	VWAP after announcement	Estimated profit
Anavio	22 708 085	0.03801	0.00940	649 750

3. Anavio's comments

In an e-mail to Finanstilsynet 17 January 2023 Anavio stated that they had no comments to Finanstilsynet's letter of 20 December 2022.

In an e-mail of 22 March 2023 Anavio provided comments to Finanstilsynet's Advance notification of violation penalty dated 8 March 2023. In the e-mail, it is confirmed that on 16 November 2022 Anavio placed a pre-sell order for 25 million shares and sold a total 22 708 085 shares, executed at a price of NOK 0,038. Anavio confirms that they had not borrowed any shares.

Anavio confirms the allocation of 750 000 000 shares in the private placement on 17 November 2022. Throughout November and December Anavio continued to support Flyr and buy shares in the company. At the time of Flyr's suspension of trading following Flyr's file for bankruptcy on 1 February 2023, Anavio held 700 000 000 shares with a total loss of 2 607 000. In aggregate, Anavio's fund (and its shareholders) suffered a net loss of NOK 2 780 000 since Q2 2022 in connection with its holdings in Flyr.

Anavio acknowledges the error in selling shares on 16 November. Anavio states that they have since enhanced their internal processes to prevent this recurring. Furthermore, Anavio took immediate corrective action to close out the short position. As soon as they realised they had made the pre-sale error, they bought back shares on 17 November.

In an e-mail of 30 March 2023, Anavio provided further information and documentation regarding the shares bought back on 17 November:

- 10 million shares bought by [REDACTED] on Anavio's behalf – in the "Contract note" provided, the "deal time" is set as 15:02:09 CET
- 5 million shares bought by [REDACTED] on Anavio's behalf - in the "Confirmation" provided, the "Trading Time" is set as 15:25:01 GMT (which corresponds to 16:25:01 CET)
- 5 million shares bought by [REDACTED] – the picture of the filled order with [REDACTED] refers to 17 November as the "Trade Date", however no documentation of the actual trading time of the purchase transaction has been provided

4. Finanstilsynet's assessment

4.1 The conditions for imposing a violation penalty

The objective conditions

Uncovered short selling

According to SSR Article 12 no 1, a natural or legal person may carry out a short sale of a share that is listed on a trading venue if the conditions in points a) to c) is fulfilled. If any of the conditions are not met, the short sale is prohibited.

Initially, a decision must be made as to whether there was a short sale.

As mentioned above, in Article 2 no. 1 b of SSR "short sale" is defined as any sale of a share which the seller does not "own" at the time the sale agreement is entered into.

When assessing whether there is a short sale, it is necessary to identify the point in time when the seller "owns" the shares. Sales made prior to this stage are considered short sales.

The time when the investor becomes the "owner" of the shares is not regulated in the SSR. It follows from Commission Delegated Regulation (EU) No. 918/2012, cf. the Norwegian Securities Trading Regulations Section 3-7, that this would be subject to national law.

Finanstilsynet considers that the term "owner" must be interpreted on the basis of the purpose of the provision. The assessment in connection with new issues will be that the shares "exist", i.e. that they are registered in the Register of Business Enterprises, and that there is sufficient evidence that the share ownership is such that rights can be exercised and that timely delivery can take place.

Various circumstances may indicate that an investor becomes "owner" of the shares at a later time than the time of registration. Finanstilsynet cannot see that there are any such circumstances in this case.

Finanstilsynet therefore considers that Anavio became "owner" of the new shares when the capital increase was registered in the Register of Business Enterprises, i.e. immediately before the publication of the stock exchange announcement on 17 November at 10:01 am.

Sales of new shares in Flyr made before this point in time must therefore be regarded as short selling.

Anavio has not made reference to any agreements or any other measures which, at the time of entering into the sales agreement, could provide sufficient evidence for the shares to be delivered on time. Based on the information available to Finanstilsynet, it seems clear that Anavio intended to fulfill its delivery obligations with the "new" shares.

It is Finanstilsynet's understanding of the comments provided that Anavio acknowledges that the sale of shares on 16 November imply a breach of the prohibition on uncovered short selling in SSR.

Finanstilsynet therefore assumes that the conditions in SSR article 12 a) to c) were not met. Consequently, the sales must be considered uncovered short sales in violation of Article 12.

The objective description in SSR Article 12 is thus fulfilled.

Violation of the reporting obligation

According to SSR Article 5, a natural or legal person who has a net short position must send a notification to Finanstilsynet in accordance with SSR Article 9 when the position reaches or falls below a relevant threshold. The time for calculating a net short position is at midnight at the end of the trading day when the natural or legal person obtains the position in question. Notification to Finanstilsynet must be given by 15:30 on the following trading day. The threshold for notification is 0.2% of the company's issued share capital, and each step of 0.1% above this.

Finanstilsynet assumes that Anavio had a net short position of 22 708 085 shares in Flyr as of 16 November 2022. This amounted to approximately 3,587 % of the issued share capital in Flyr, based on the fact that the share capital at the time was NOK 1 266 039,33 distributed on 633 019 667 shares. This position should have been reported to Finanstilsynet by 15:30 on 17 November. Furthermore, Finanstilsynet assumes that the position fell below 0.2% on 17 November 2022. This should have been reported to Finanstilsynet on 18 November. It is clear that the positions were not reported in accordance with SSR Articles 5 and 9, cf. NSTA Section 3-5.

The subjective conditions

The question is whether the subjective conditions for a violation penalty has been met.

As mentioned in section 1 above, when imposing a violation penalty on a legal entity, the requirement is that the person or persons who have acted on behalf of the entity have shown negligence, cf. Section 46 first paragraph of the Public Administration Act. The culpability requirement may be met regardless of whether there is negligence or a qualified degree of culpability (gross negligence or intent). The degree of guilt may, however, be taken into consideration when assessing the size of the violation penalty, cfr. Section 4.2 below.

As mentioned, Finanstilsynet assumes that Anavio had no cover in the form of borrowed shares or through any other measures, cf. SSR Article 12.

Finanstilsynet considers that it was clearly communicated to the market in a stock exchange announcement from the issuer that the shares would only be tradeable if registered in the Register of Business Enterprises. Such information was also communicated to the investors by the bookrunners in the private placement. This information implied that Anavio had to make sure that the shares were registered before placing orders for the sale of the shares.

The starting point of Finanstilsynet's culpability assessment is that Anavio is a professional operator in the securities market. It must be expected from such an investor, when subscribing shares in a private placement, to obtain knowledge about factual circumstances concerning the tradability of the shares. Professional investors must, as a minimum, familiarize themselves with information from the issuer communicated to the market and to the investor.

In addition to this general starting point, Finanstilsynet considers that account must be taken of specific circumstances in the case. The fact that 25 billion shares were issued in the private placement suggests that investors had to understand that there would be significant selling pressure – with potentially considerable price decrease – when the new shares were tradable. This meant that investors who wanted to sell the new shares had to ensure that the shares were actually tradable when placing a sales order.

In Finanstilsynet's assessment, Anavio's conduct deviates significantly from the normal prudent course of action for a professional investor in the securities market. In Finanstilsynet's opinion, the behaviour constitutes gross negligence.

Finanstilsynet's conclusion is that one or more persons acting on behalf of Anavio acted with gross negligence. Finanstilsynet therefore considers that the subjective conditions for a violation penalty for a breach of SSR Article 12 has been met.

As regards the breach of the reporting requirement in SSR Articles 5 and 9, Finanstilsynet considers that professional operators in the securities market must be expected to have routines for identifying net short positions in a correct manner, so that time-critical reporting obligations are met. Against this background, Finanstilsynet assumes that one or more persons acting on Anavio's behalf have acted negligently. Finanstilsynet therefore considers that the subjective condition for violation penalties for breaches of SSR Articles 5 and 9 has been met.

Finanstilsynet's assessment is that both the objective and subjective conditions for violation penalties have been met.

4.2 Assessment of whether a violation penalty shall be imposed and the size of the penalty

NSTA Section 21-14 and the Public Administration Act section 46 second subsection provide a number of various factors that may be taken into consideration when assessing whether a violation penalty shall be imposed and the size of the penalty. The overview of factors is non-exhaustive. Under any circumstances, the assessment must be made based on an overall evaluation in the specific case.

When assessing whether a violation penalty should be imposed, cf. NSTA Section 21-14, Finanstilsynet believes that the size of the trade and the degree of negligence indicate that a violation penalty is a proportionate and adequate response. Emphasis has also been placed on the fact that Anavio carried out an illegal act at the same time as the vast majority of other investors loyally aligned themselves so that the newly issued shares could not be traded until they were registered in the Register of Business Enterprises. The behaviour may also have caused losses to the other investors. Such behaviour is likely to undermine confidence in the integrity of the securities

markets. In this context, Finanstilsynet refers to the purpose of the Act to facilitate safe, orderly and efficient trading in financial instruments and investor protection, cf. NSTA section 1-1.

It cannot be considered disproportionate that a violation penalty is imposed in this case. Finanstilsynet's assessment is therefore that a violation penalty should be imposed for the breaches.

With regard to the assessment criteria in NSTA section 21-14, Finanstilsynet assumes that Anavio obtained a profit through the uncovered short selling, cf. the calculation above. It should be noted that Finanstilsynet in this regard has not taken into consideration that Anavio suffered an overall loss in connection with its holdings in Flyr in 2022/2023. When assessing the size of a violation penalty for breaches of provisions in SSR, the relevant issue would be to which extent the violator has obtained a profit by committing the illegal acts. Hence, the profit to be taken into account has been calculated as set out in section 2.2 above.

In its assessment, Finanstilsynet has also emphasized the size of the transaction. In addition, Anavio carried out illegal actions at the same time as the vast majority of investors were loyal to the regulations. Such behaviour may undermine confidence in the securities market.

Furthermore, Finanstilsynet has taken into consideration that gross negligence was shown in connection with the uncovered short sales. It is also emphasized that Anavio, as a professional operator, must be expected to prevent such violations through internal routines, guidelines or other relevant measures.

It is also emphasized that the uncovered short sales were already made on 16 November. Uncovered short sales made at this time entailed a higher risk that settlement could not take place. This is illustrated by the fact that the "new" shares could not be delivered until 21 November 2022. Furthermore, the fact that the company has failed to fulfill the reporting obligation in SSR Articles 5 and 9 is a factor.

Finally, Finanstilsynet has taken into consideration Anavio's financial strength. Finanstilsynet does not have a detailed overview of Anavio's financial situation. However, taking into consideration that Anavio was approached in the private placement as well as the number of allocated shares, it is assumed that Anavio has considerable financial strength.

In the assessment of whether a violation penalty shall be imposed and the size of the penalty, Finanstilsynet has not taken into consideration Anavio's purchase of shares on 17 November. The transaction documentation Anavio has provided, show that the trading times for the orders executed by [REDACTED] and [REDACTED] were 15:02 CET and 16:25 CET respectively, i.e. after the new shares had been issued (immediately before 10:01 CET). The transaction reports Finanstilsynet has received from investment firms (pursuant to MiFID Article 26) also seem to indicate that the purchase transactions were indeed carried out after 10:01. The fact that the shares allocated to Anavio in the private placement had been issued at this point in time

implies that the sales carried out on 16 November no longer entailed short selling. Thus, the purchase transactions of 17 November have not been taken into consideration in the assessment.

Finanstilsynet's assessment, based on the above and an overall evaluation of all relevant factors, is that the violation penalty should be set at NOK 1 500 000.

5. Decision on violation penalty

Based on the circumstances above, Finanstilsynet has decided to impose a violation penalty of NOK 1 500 000 on Anavio Capital Partners LLP for breaching the prohibition against uncovered short sales in SSR Article 12 and the reporting obligation in SSR Article 5 and 9, cf. NSTA section 3-5.

The basis for imposing a violation penalty is NSTA section 21-2 first paragraph.

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.

On behalf of Finanstilsynet

Anne Merethe Bellamy
Director

Thomas Borchgrevink
Head of Section

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