



Nova Austral S.A
Alberto Fuentes 299, Porvenir
Porvenir
CHILE

OUR REFERENCE
23/6739

YOUR REFERENCE

DATE
29.06.2023

Dear Sir/Madam

Decision on a violation penalty

1. Introduction

Reference is made to Finanstilsynet's (the Financial Supervisory Authority of Norway) advance notification of a violation penalty to Nova Austral S.A (Nova, the company) of 7 June 2023, cf the Public Administration Act of 10 February 1967 (PAA) section 16. Finanstilsynet has not received any reply from the company.

Based on an assessment of the facts in the case, Finanstilsynet has concluded that Nova has violated the Norwegian Securities Trading Act ("NSTA") section 5-5 subsection (1) and has decided to impose a violation penalty of NOK 62 300.

2. Legal basis

As stated in the notice, the deadline for publication of the annual report is according to STA section 5-5 subsection (1) at the latest four months after the end of each financial year, i.e., 30 April 2023. Publication must be in conformity with STA section 5-12 subsection (1).

Pursuant to the Norwegian Securities Trading Act of 29 June 2007 no 75 (STA) section 21-3 subsection (2) Finanstilsynet may impose a violation penalty on a listed company whose financial reporting "is not in conformity with law or regulation". In order to impose a violation penalty on a legal person, the STA section 21-9 subsection 2 refers to the Public Administration Act of 10 February 1967 (PAA) section 46 subsection 1. According to the latter when it is laid down in law that an administrative sanction can be imposed on a 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.

The STA section 21-14 and PAA section 46 subsection 2 states factors that may be taken into regard when deciding whether an administrative sanction shall be imposed on an enterprise and to determine the size of the sanction. Finanstilsynet may take regard to, among others, the gravity and length of the breach, the degree of fault, the financial strength of the company and whether the company could have prevented the offence through guidelines, instructions, training, controls, or other measures.

3. Factual background

According to stock exchange announcement from Nova Austral S.A the report in PDF format was published 13 May 2023. The report in ESEF-format was not published until 29 May 2023.

Finanstilsynet has not received any explanation for the delay. However, according to stock exchange announcement 30 April 2023 the company "announces that the publication of its annual accounts for the financial year 2022 will be delayed as the audit of the accounts by its auditors has not been concluded in time."

4. Finanstilsynet`s assessment

4.1 Basis for violation penalty

According to Finanstilsynet`s information, the annual report for 2022 was published in pdf format 13 May 2023. Finanstilsynet emphasizes that an annual report in pdf format does not meet the requirements of the Securities Trading Act § 5-5. The report in ESEF-format was not published until 29 May 2023 and thus too late. This constitutes a clear violation of the requirements of the reporting requirements under STA section 5-5 subsection (1). Finanstilsynet finds that the objective conditions under STA section 21-3 subsection (2) for imposing a violation penalty on delayed financial reporting are met.

When assessing whether the subjective conditions are met, Finanstilsynet has assessed the information from Nova in the stock announcement as mentioned in section 3. Finanstilsynet emphasizes that listed companies are expected to exercise a high level of due care in fulfilling their obligations to the market in a timely manner. Finanstilsynet cannot see any relevant grounds for the delay. The management of the company must take all necessary measures to plan and ensure that the annual report can be published within the time limit. Finanstilsynet' s decision is that one or more persons acting on behalf of Nova acted negligently, or that cumulative errors were present. On this background Finanstilsynet finds that both the objective and subjective conditions under STA section 21-3 subsection (2) for imposing a violation penalty, are met.

4.2 Assessment of whether a violation penalty should be imposed

Accurate and timely financial information is one of the fundamental duties listed companies are required to comply with. This information is crucial for market participants and investors' decisions. Publication of periodic financial information belongs to these duties.

Nova, as a company listed on the Norwegian securities market, is expected to have in place appropriate procedures and/or systems that will enable it to identify and satisfy the disclosure obligations in a timely and complete manner. In this case, Nova failed to reach its reporting requirements. In the interest of a well-functioning market, Finanstilsynet finds it necessary to impose a violation penalty.

4.3 Assessment of the size of the violation penalty

As described above, correct and timely financial reporting belongs to the important and essential obligations of listed companies, which issuers are expected to be familiar with and align their activities with. According to Finanstilsynet's practice, the size of the violation penalty is linked to the market value of the company's listed instruments as of 1 January the year the financial report is to be publicly disclosed. However, Finanstilsynet will make an assessment on a case-by-case basis. Circumstances that Finanstilsynet may take regard to are addressed in section 2 (legal basis).

The size of the violation penalty is measured on the basis of an overall assessment of the individual circumstances in the case and previous practice. As far as previous practice is concerned, reference is made to:

<https://www.finanstilsynet.no/rapportering/finansiell-rapportering/offentlige-brev---rapportering/>

5. Finanstilsynet's decision

Based on the facts described above, Finanstilsynet has decided to impose an administrative violation penalty of NOK 62 300 on Nova Austral S.A for non-compliance with STA section 5-5 subsection (1). The legal basis for the decision is STA section 21-3 subsection (2).

This decision may be appealed within three weeks of its receipt. In the event of an appeal the appeal is to be sent to Finanstilsynet. The appeal authority is the Ministry of Finance. The Public Administration Act, Sections 18 and 19 gives the concerned parties' the right to become acquainted with the documents of the case.

Violation penalties are collected by the Norwegian National Collection Agency on behalf of the Norwegian Tax Administration. Where the decision is not appealed, the Norwegian National Collection Agency will submit a payment request immediately after the deadline for appeal has expired. Where the decision is appealed, – provided that the violation penalty is upheld - the payment request will be sent after the appeal is final. The Norwegian National Collection Agency's deadline for payment is three weeks after the invoice has been sent.

On behalf of Finanstilsynet

Anne Merethe Bellamy
Deputy Director General

Lars Jacob Braarud
Head of section

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

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