



Magallanes Value Investors SGIIC SA
Calle de Lagasca, 88
28001 Madrid
SPAIN

OUR REFERENCE
22/3187

YOUR REFERENCE

DATE
28.06.2022

Decision regarding violation penalty

1. Introduction

Reference is made to the letter regarding disclosure of large shareholdings from the Financial Supervisory Authority of Norway ("Finanstilsynet") dated 6 May 2022 and Finanstilsynet's advance notification of violation penalty of 3 June 2022, and the reply received from Magallanes Value Investors SGIIC SA ("Magallanes") in their letters dated 10 May 2022 and 13 June 2022.

Based on an assessment of the facts, Finanstilsynet has concluded that Magallanes has violated the Norwegian Securities Trading Act ("NSTA") section 4-2 and has decided to impose a violation penalty in the amount of NOK 100,000.

2. Legal basis

Pursuant to the NSTA section 4-2, a shareholder shall immediately notify the regulated market of a transaction which causes the shareholder's portion of shares and/or rights to shares to reach, exceed or fall below 5 %, 10 %, 15 %, 20 %, 25 %, 1/3, 50 %, 2/3 or 90 % of the share capital or an equivalent proportion of the voting rights in a company whose shares are quoted on a regulated market. The section applies to shares admitted to trading on a regulated market of an issuer having Norway as its home state.

Equivalent to shares and/or rights to shares are certain voting rights to shares mentioned in the NSTA section 4-2 subsection 2. The notification requirement also applies to anyone who through disposal or other circumstances change their proportion of the share capital, rights to shares or voting rights so that the proportion reaches, crosses or falls below the mentioned thresholds.

Pursuant to the Securities Regulation of 29 June 2007 no 876 (the "Securities Regulation"), the notification to the Oslo Stock Exchange shall specifically provide information regarding the date on which the transaction which triggered the notification was completed cf. section 4-1, subsection 1 letter b) and the number of shares covered by the notification cf. section 4-1, subsection 1, letter d) of the Securities Regulation.

According to the NSTA section 4-2 subsection 6, the notification to the regulated market is required to be made "immediately" after an agreement on acquisition or disposal has been entered into or the party concerned becomes aware of, or should have become aware of, any other circumstance causing the party concerned to reach or fall below a threshold as provided for in the NSTA section 4-2 subsection 1.

According to the Guidelines of Finanstilsynet regarding chapter 4 of the NSTA of 19 October 2022 paragraph 3.8 ("*Veiledning til verdipapirhandelloven kapittel 4 – flaggeplikt*"), this should be understood as the time it takes to write and send the notification to the market.

Finanstilsynet may under the NSTA section 21-3 subsection 1, impose individuals and/or legal persons a violation penalty in the event of negligent or willful violation of the NSTA section 4-2.

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 practice 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 the NSTA section 21-14 be given to the following:

- 1) the gravity and length of the breach;
- 2) the degree of guilt of the perpetrator;
- 3) the financial strength of the perpetrator, in particular total turnover or annual income and assets;
- 4) profits gained or loss avoided;
- 5) any loss inflicted on a third party due to the breach;
- 6) will by the perpetrator to cooperate with public authorities;
- 7) earlier violations;
- 8) arguments as mentioned under the Public Administration Act section 46 subsection (2);
- 9) other relevant arguments.

3. Factual background

Magallanes crossed the 5 % threshold in Shelf Drilling Ltd. ("SHLF") on Tuesday 8 March 2022. A notification was published at the Oslo Stock Exchange on Thursday 10 March 2022 at 13:46 CET.

4. Statement of the discloser

Its letter of 10 May 2022, Magallanes has informed that the company:

"(...) as a regulated and supervised entity by the CNMV, we would like to make it clear that compliance with the regulations applicable to all our activities is a constant in our work. If we

should have not complied with the requirements in the NSTA regulations as expected, this was due to an unintentional omission. The fact that in our national law (Spain) the four-day deadline for notification starts two days after the trade (settlement) may have contributed to this".

Magallanes explains that the sale of 276 127 shares that triggered the notification took place on 8 March 2022 at 08:00 CET and the settlement of the sales of the same shares took place on 10 March 2022.

In its letter of 13 June 2022, as a response to Finanstilsynet's advance notification of violation penalty, Magallanes stated that:

"Norway maintains, and this is a reality, one of the most rigorous national regulations of the European Economic Area (EEA) in this matter, both in terms of triggering and in terms of the deadline for communication, adopting, together with Hungary, the criterion of immediacy".

Magallanes thereafter presents certain statistics/numbers which are meant to show the number of days which various countries within the EEA grant for the purpose of providing a timely notification.

Magallanes also ensures that the company does have procedures in place to avoid the number of errors, but such procedures cannot always prevent them. Magallanes informs that they have updated their processes and *"continue to improve them on a daily basis in order to minimize the incidents in our operations and to be able to consolidate the data of the portfolios involved in the notifications of jurisdictions such as Norway within the deadline required by each one, regardless of the settlement date of the operations"*.

Finally, Magallanes argues that *"in view of the seriousness and dimension of the breach, the absence of culpability of this party, the absence of economic motive in the sense of pursuing an increase in profit or decrease in loss associated with the possible breach, Magallanes proven cooperation with Finanstilsynet and if your preliminary opinion and proposed sanction for our late submission is confirmed, we request that the sanction be reduced to the lower range, i.e. 75,000 NOK."*

5. Finanstilsynet's assessment of whether a violation penalty shall be imposed and its size

Finanstilsynet finds that the notification published at the Oslo Stock Exchange on Thursday 10 March 2022 at 13:46 CET regarding Magallanes' crossing of the 5 % disclosure threshold in SHLF on Tuesday 8 March 2022 at 08:00 CET, was made too late. Finanstilsynet's opinion is therefore that Magallanes violated section 4-2 of the NSTA.

According to the NSTA section 4-2, the notification to the Oslo Stock Exchange should have been made "immediately" after the transaction was completed on Tuesday 8 March 2022. Pursuant to the Guidelines of Finanstilsynet regarding chapter 4 of the NSTA (cf. section 1 above), this should be understood as the time it actually takes to write and send the notification to the market. For larger

group companies which operate in different jurisdictions and time zones, Finanstilsynet has accepted that these companies shall be allowed certain time to consolidate their data.

Magallanes, as a professional company operating in the Norwegian securities market is expected to have in place appropriate procedures and/or systems that will enable it to identify and satisfy its disclosure obligations, hereunder submit their notifications, in a timely and complete manner, and in accordance with the relevant specific requirements applicable in the jurisdiction in which it operates.

Magallanes has stated in its letter of 10 May 2022 that the delayed notification was due to "*(...) unintentional omission. The fact that in our national law (Spain) the four-day deadline for notification starts two days after the trade (settlement) may have contributed to this*".

Magallanes has also argued that Norway has a notification regime which is stricter than other countries within the EEA and provided certain statistics which are meant to support such statement inter alia that "*20 of 29 countries grant 4 working days*".

Finanstilsynet takes note of Magallanes' arguments in respect of the notification deadline permitted by various countries. However, Finanstilsynet underlines that it remains within the sovereignty and prerogative of each Member State to set the deadline required to make a timely and correct notification under their respective legislation. As such, it remains under the Norwegian legislator's discretion to determine the content of the "immediately" requirement under the NSTA. Magallanes, as a professional company operating in the Norwegian securities market is therefore responsible for adhering to the legislation which applies in the relevant jurisdiction in which it operates. It is therefore considered as negligent when Magallanes fails to comply with the obligations set out in the NSTA and the Securities Regulation.

It should also be noted that the notification published at the Oslo Stock Exchange on 10 March 2022 does not contain information regarding the date of the transaction which triggered the notification nor any information of the number of shares which were sold and thereby caused Magallanes to cross the 5 % threshold under the NSTA. As such the notification is also in breach of section 4-1 letter b) and letter d) of the Securities Regulation.

Finanstilsynet's assessment is that one or more persons acting on behalf of Magallanes acted negligently, and that cumulative errors were present. Finanstilsynet therefore finds that the criterion of negligence is met in this case. Finanstilsynet finds that both the objective and subjective conditions for imposing a violation penalty are met, cf. the NSTA section 21-3 subsection 1, section 21-9, 21-14 cf PAA section 46.

When assessing whether to make use of a violation penalty, Finanstilsynet has made a concrete assessment of the case in accordance with the NSTA section 21-14. Finanstilsynet has taken into consideration that the violation of the disclosure obligation could have been prevented had Magallanes put in place appropriate procedures and/or systems.

The rules on disclosure obligations under NSTA section 4-2 are meant to assure that the issuer and the stock market receive fast 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 of ownership in a company listed on a regulated market can have a notable influence on the price of the issuer's 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 a penalty should be imposed in this case. Finanstilsynet's assessment is therefore that a violation penalty should be imposed.

Finanstilsynet refers to the NSTA section 21-14 which states that when the size of a violation penalty is assessed, importance shall be attached to the gravity and the length of the breach, as well as the degree of guilt found. In addition, also other criteria specified in the NSTA section 21-14 may be taken into consideration when assessing the size of the violation penalty.

In its overall assessment, Finanstilsynet has taken into consideration all facts and circumstances specific to this matter and which have been addressed by Magallanes in both its replies of 10 May 2022 and 13 June 2022. Finanstilsynet has in particular taken into consideration that the violation of the disclosure obligations could have been prevented had Magallanes put in place appropriate procedures and/or systems in advance which would have allowed them to notify the market in a timely and correct manner in accordance with the NSTA and the Securities Regulation.

Finanstilsynet does not find to be present any mitigating factors which may justify that the violation penalty is set to NOK 75,000, as argued by Magallanes in their letter of 13 June 2022. On the contrary, the merits of this case are similar to previous cases where similar management companies have been imposed a violation penalty in the amount of NOK 100,000. Considerations for equal treatment therefore imply that the same amount should be imposed in this matter.

An overview of violation penalties that has previously been imposed is published on Finanstilsynet's website at [Vedtak om overtredelsesgebyr - flaggeplikt - Finanstilsynet.no](#).

6. Decision regarding violation penalty

On the basis of the above, Finanstilsynet imposes a violation penalty on Magallanes Value Investors SGIIC SA, in the amount of NOK 100,000 for its violation of the NSTA sections 21-3, 21-9 and 21-14 cf the NSTA section 4-2 and the Securities Regulation section 4-1.

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 Anisa Isaksen by email anisa.isaksen@finansstilsynet.no, or phone +47 22 93 98 58.

On behalf of Finanstilsynet

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