



OUR REFERENCE
18/8956

YOUR REFERENCE

CONFIDENTIAL

DATE
25.03.2019

DECISION REGARDING VIOLATION PENALTY

1 Introduction

Reference is made to previous correspondence regarding [REDACTED] late notifications of net short positions in [REDACTED] and [REDACTED] including the advance notification from The Financial Supervisory Authority of Norway ("Finanstilsynet") dated 28.01.2019 and [REDACTED] response in e-mail of 28.02.2019.

Based on the information available, Finanstilsynet has concluded that [REDACTED] has violated the notification requirement under section 3-14 of the Norwegian Securities Trading Act ("NSTA"), cf. Regulation (EU) No 236/2012 ("SSR") Article 5, cf. Article 9, by not notifying Finanstilsynet within the time limit laid down in the Regulation. The legal basis, factual background and Finanstilsynet's assessment of the case are set out below in sections 2, 3 and 5, respectively.

2 Legal basis

In accordance with NSTA section 3-14 subsection (1) the SSR, with such modifications as set out in the applicable annex IX to the EEA-agreement, applies as law in Norway.

A 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 venue, with Finanstilsynet as competent authority, shall notify Finanstilsynet in accordance with SSR Article 9, cf. Article 5 subsection (1), where the position reaches or fall below a relevant notification threshold. A relevant notification threshold is a percentage that equals 0,2 % of the issued share capital and each 0,1% above that, cf. Article 5 subsection (3).

According to SSR Article 9, the relevant time for calculation of a net short position shall be at midnight at the end of the trading day. The notification of the net short position shall be made not later than at 15:30 CET on the following trading day.

The consolidated version of SSR is available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02012R0236-20140917&from=EN>.

The NSTA section 21-4 subsection (1) empowers Finanstilsynet to impose a violation charge for wilful or negligent violation of the obligation to notify Finanstilsynet about the net short positions in accordance with NSTA section 3-14, cf. SSR Article 5, cf. Article 9.

3 Factual background

██████████ crossed a relevant threshold on 23.02.2018, with a net short position of 0,21 % in ██████████. This position was reported on 26.02.2018 at 22:43 CET. As a result, the notification in ██████████ was a late notification of approx. 7 hours. ██████████ also crossed a relevant threshold on 30.01.2018, with a net short position of 0,27 % in ██████████ but did not report the position until 06.03.2018 at 20:54 CET. As a result, the notification in ██████████ was a late notification of 24 days.

4 ██████████ statements

██████████ has in letter of 05.09.2018 and in e-mail of 28.02.2019 acknowledged the late reported positions on 26.02.2018 22:43 CET and 06.03.2018 at 20:54 CET.

██████████ has in letter of 05.09.2018 provided further information about the late notification and the corrective measures they have instituted after discovering the errors. ██████████ approached Finanstilsynet the 05.03.2018 for a guidance on reporting historical positions after an internal review had determined that ██████████ had positions beyond the one position reported the 26.02.2018.

As for the position reported on 26.02.2018 at 22:43 CET, ██████████ has stated:

██████████ was made aware the 26.02.2018 that Norway had implemented a short reporting requirement and registered an account at Finanstilsynet in order to begin making notifications. Later that same day the position in ██████████ was reported. ██████████ also began a review of its Norwegian positions dating back to 01.01.2017 to determine if there were additional positions to be reported.

██████████ completed its positions review the 05.03.2018 and proactively approached Finanstilsynet for guidance on reporting historical positions. The 06.03.2018 the position in ██████████ was reported. ██████████ emphasized that this was a one-time event.

In e-mail of 28.02.2019 ██████████ stated that they have put substantial time and resources to the development and operation of a robust net short position monitoring and reporting process that is designed to ensure compliance with the regulation. ██████████ once again emphasized that this was a

first time breach of the reporting requirements. Furthermore, ██████ also highlighted that they promptly corrected the short reporting system and also notified Finanstilsynet to ensure they were in compliance with historical and ongoing positions.

5 Finanstilsynet's assessment

5.1 Grounds for the violation penalty

SSR requires the position holder to notify Finanstilsynet when the stated disclosure thresholds are crossed. In the present case, ██████ crossed the 0,2 threshold, thus triggering the disclosure obligation under NSTA section 3-14, cf. SSR.

██████ crossed the 0,2 threshold at 30.01.2018 and 23.02.2018. The notifications were not sent to Finanstilsynet until 06.03.2018 and 26.02.2018 respectively. ██████ has explained that the breach was due to a overlook of the implemented short reporting requirements in Norway.

Finanstilsynet has taken into account ██████ statements in letter of 05.09.2018 and in e-mail of 28.02.2019.

Finanstilsynet assumes that investors, as a participant in the financial markets, should have knowledge of the regulations in force at any time to be able to meet the obligations under the regulations. An investor is expected to have put in place appropriate procedures and/or systems in advance that will enable it to proactively identify a disclosure obligation and satisfy it in a timely and complete manner. A failure to meet this standard is considered negligent under relevant Norwegian legal principles.

Finanstilsynet's assessment is that the late reported position constitutes a clear breach of the requirement under NSTA section 3-14, cf. SSR Regulation. Finanstilsynet accordingly finds that both the objective and subjective conditions for imposing a violation penalty on ██████ are met.

5.2 The size of the violation penalty

NSTA section 21-4 (5) 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.

Finanstilsynet informed ██████ in the advance notification of 28.01.2019 that we considered a violation charge of NOK 60,000. The penalty is, after an overall evaluation, set at NOK 40,000. The amount is based on the breach, taking into account, mitigating that Finanstilsynet considers the violation negligent, and aggravating that ██████ has submitted late notifications of 7 hours and 24 days respectively. The breaches were due to the same error and discovered by ██████ during a review of historical and ongoing positions. ██████ has also corrected the short reporting system.

6 Finanstilsynet`s decision

Based on the facts described above and pursuant to NSTA section 21-4 subsection (1), cf. SSR Regulation, Finanstilsynet has made the following decision regarding a violation charge:

[REDACTED] *is ordered to pay a violation penalty of NOK 40,000 (fourty thousand Norwegian kroner) to the Norwegian Treasury.*

Pursuant to section 28 of the Norwegian Public Administration 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 The Norwegian National Collection Agency.

On behalf of Finanstilsynet

Anne Merethe Bellamy
Deputy Director General

Marte Voie Opland
Head of Section

This document is electronically approved, and does not need a signature.