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Decision regarding violation penalty

1. Introduction

Reference is made to The Financial Supervisory Authority of Norway's ("Finanstilsynet") letter dated 25 April 2022 and 24 June 2022 and the reply from BNP Paribas S.A. ("BNP") in email of 4 May 2022 and letter of 15 July 2022.

Based on an assessment of the facts, Finanstilsynet has concluded that BNP has violated the notification requirement under section 3-5 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 in accordance with the SSR.

Finanstilsynet has therefore decided to impose a violation penalty in the amount of NOK 10,000.

2. Legal Basis

The obligation to report net short positions of shares is set out in the NSTA section 3-5, cf. 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 3-14 cf. SSR Article 5 and Article 9, notify Finanstilsynet of certain net short positions. The notification obligation applies 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. Net short positions reported to Finanstilsynet shall be disclosed to the public if the position reaches or falls below 0,5 % of a company's issued share capital and each 0,1 % above that, cf. SSR Article 6.

The relevant time for calculation of a net short position shall be at midnight at the end of the trading day. The notification must be made to Finanstilsynet no later than at 15:30 CET on 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 wilful 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 (as it was phrased before 1 July 2022) 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 wilfully. 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 the 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.

According to the PAA section 46 subsection 2, attention may also be given to *inter alia* whether the enterprise could have prevented the offence through guidelines, instructions, training, controls or other measures.

3. Factual background

On Monday 8 November 2021, BNP's net short position in BW Offshore Ltd changed from 0,68% to 0,74%. BNP did not report the position until Wednesday 10 November 2021 at 11:54 CET.

4. Position holder's statements

BNP has in email of 4 May 2021 acknowledged the late reported position and explained that the late notification was due to a "technical issue" on 9 November 2021. BNP underlines that they "have made actions in order to avoid this kind of technical issue in the future".

In reply to the advance notification of 24 June 2022, BNP emphasizes that *"all net short position are calculated on a consolidated basis"* which *"requires everyday very significant and complex data computation, involving many data sources"*. Furthermore, that BNP on Tuesday morning (9 November 2022) detected that BNPs *"group short position in BW Offshore Ltd increased from 0,68% to 0,74%, which required a notification"*, at the same time *"inaccuracies resulted from an operational incident"*, *"required corrections to be made in BNP Paribas central risk system"*. Due to the detected inaccuracies, BNP decided to wait until new figures were available. BNP's purpose was to avoid notifying Finanstilsynet a potential inaccurate threshold crossing. BNP underlines that they made their best effort to solve the operational incident as quickly as possible. BNP also state that they are fully committed to comply with its obligations and has put in place *"a comprehensive framework composed of procedures, processes and controls"*.

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

In relation to the net short position of 8 November 2021, BNP's net short position in BW Offshore Ltd changed from 0,68% to 0,74% and was subject to notification in accordance with the SSR. For the net short position of 8 November 2021, the deadline was 9 November 2021 at 15:30 CET. The position was reported on Wednesday 10 November 2021 at 11:54 CET.

Finanstilsynet finds that BNP violated the NSTA section 3-5 by not notifying Finanstilsynet of the net short position within the time limit in accordance with the SSR Article 9 subsection (2).

Accordingly, Finanstilsynet finds that the objective conditions under NSTA section 21-2 subsection (1) for imposing a violation penalty on BNP 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 has no reason to doubt BNP's statements, hereunder that the company itself found irregularities and awaited reporting to ensure correct notification to Finanstilsynet. However, in Finanstilsynet's view, one or more persons acting on behalf of BNP, and who is/are responsible within BNP that BNP's systems are correctly implemented in compliance with Norwegian law, have/has acted negligently or that cumulative errors within BNP were present. Accordingly, Finanstilsynet finds that the subjective conditions under NSTA section 21-2 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 PAA 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. In Finanstilsynet's assessment, imposing a violation penalty in this case will not be disproportionate .

The criteria specified in NSTA section 21-14 and PAA section 46 subsection (2) may 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 this case and taken into consideration that BNP is a legal person, the length of the delay and the size of the position.

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 BNP Paribas S.A. a violation penalty in the amount of NOK 10,000 for its violation of the NSTA section 3-5.

The legal basis is the NSTA section 21-2, 21-9 and 24-14, cf. SSR Articles 5, 6 and 9.

Please be informed that the decision 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 (NNCA). If the administrative decision is not appealed, the NNCA will send a claim for payment after the deadline for an appeal has expired. If the decision is appealed, the claim will be sent after the appeal has been decided by the Ministry of Finance. The NNCA's deadline for payment is 3 weeks after the invoice has been sent.

On behalf of Finanstilsynet

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