



OUR REFERENCE
18/9074

YOUR REFERENCE

CONFIDENTIAL

DATE
20.02.2019

DECISION REGARDING VIOLATION PENALTY

1 Introduction

Reference is made to previous correspondence regarding [REDACTED] late notifications of net short positions in [REDACTED], including the advance notification from The Financial Supervisory Authority of Norway ("Finanstilsynet") dated 21 January 2019 and [REDACTED] response in e-mail of 31 January 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 January 2018, from 0.42 % to 0.26 % in █. This position was reported on 24 January 2018 at 21:21 CET, more than five hours too late.

█ crossed a relevant threshold on 8 August 2018, from 0.00 % to 0.27 % in █. This position was reported on 9 August 2018 at 19:08 CET, more than three too hours late.

Because of █ position crossed a relevant threshold on 23 March 2018, from 0.42 % to 0.39 % in █. This position was reported on 3 April 2018 at 10:39 CET, more than three working days too late.

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█ has in letter dated 23 September 2018 acknowledged the late reported position in █ on 24 January 2018 and in █ on 9 August 2018. █ has also provided further information about the late notification in █ reported on 3 April 2018.

█ has in e-mail sent 31 January 2019 no objections to Finanstilsynet's letter dated 21 January 2019.

5 Finanstilsynet's assessment

5.1 Grounds for the violation penalty

Finantilsynet has taken into account █ response in letter of 23 September 2018 and in e-mail of 31 January 2019.

SSR requires the position holder to notify Finanstilsynet when the stated disclosure thresholds are crossed. In the present cases, █ crossed a relevant threshold above 0.2 % in █, █ and █ - thus triggering the disclosure obligation under NSTA section 3-14, cf. SSR.

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.

Finanstilsynets` 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 [REDACTED] 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.

The penalty is set at NOK 30,000. The amount is based on an overall evaluation of the breaches, taking into account, mitigating that Finanstilsynet considers the violation negligent, aggravating that [REDACTED] has submitted a notification more than three working days too late.

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 30,000 (thirty 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
Director

Marte Voie Opland
Head of Section

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