

LUMINUS MANAGEMENT, LLC
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OUR REFERENCE
18/9129

YOUR REFERENCE

DATE
10.07.2019

DECISION REGARDING VIOLATION PENALTY

1. INTRODUCTION

Reference is made to previous correspondence regarding Luminus Management LLC's ("Luminus") late notifications of net short positions in Subsea 7 S.A ("Subsea 7"), including the advance notification from The Financial Supervisory Authority of Norway ("Finanstilsynet") dated 21 January 2019 (the "Advance Notification") and Luminus' response in letter of 13 February 2019.

Finanstilsynet finds that Luminus has violated the notification requirement under section 3-14 of the Norwegian Securities Trading Act ("NSTA"), which incorporates Regulation (EU) No 236/2012 ("SSR"), as adapted in the EEA agreement, into Norwegian law, cf. inter alia articles 5 and 9, by not notifying the positions to Finanstilsynet within the time limit laid down in the SSR.

Finanstilsynet has decided, in accordance with the Advance Notification, to impose a violation penalty of NOK 70 000 (*seventy thousand Norwegian kroner*) on Luminis. The legal basis, factual background and Finanstilsynet's assessment for its decision is set out below in sections 2, 3 and 5, respectively.

2. LEGAL BASIS

A natural or legal person who has a net short position in relation to issued share capital of a company, which has shares admitted to trading on a trading venue where Finanstilsynet is the competent authority, shall notify Finanstilsynet in accordance NSTA section 3-14 cf. SSR article 5 and 9. Notification should be made if the relevant net short position equals, exceeds or falls below the threshold of 0.2 per cent of the issued share capital of the company concerned and each 0.1 per cent above that, cf. SSR article 5(2). Net short positions in shares reported to Finanstilsynet shall also be disclosed publicly if they equal or exceed 0.5 per cent of the company's issued share capital and each 0.1 per cent above that, cf. SSR article 6. According to SSR article 9, the relevant time for calculation of a net short position is midnight at the end of the trading day. The notification to

Finanstilsynet of the net short position shall be made not later than at 15:30 CET on the following trading day. When positions are held by entities within a group or in funds managed by a fund manager, article 12 and 13 of the Commission delegated regulation (EU) No 918/2012 ("DR")¹ specifies who shall make the notification(s). The DR also specifies that the notification shall include both the size of the position in percentage and the equivalent amount of shares cf. DR articles 2 and 3 and table 1 in annex I.

Section 21-4 (1)² cf. section 3-14 of the NSTA empowers Finanstilsynet to impose a violation penalty for wilful or negligent violation of the notification obligation. When assessing the size of the violation penalty, NSTA section 21-4 (5) prescribes that emphasis in particular shall be put on the scale and effect of the violation, as well as the degree of the fault that is found. SSR article 41 states that penalties and administrative measures applicable to infringements of the SSR shall be effective, proportionate and dissuasive.

Section 46 of the Norwegian Public Administration Act ("NPAA") further prescribes that Finanstilsynet may have regard to (among others) the following circumstances when deciding whether an administrative sanction shall be imposed on a legal person and in the individual assessment of the sanction:

- a) the preventive effect of the sanction
- b) the gravity of the breach, and whether any person acting on behalf of the legal person is at fault
- c) whether the legal person could have prevented the offence through guidelines, instructions, training, controls or other measures
- d) whether the breach was committed in order to promote the interests of the legal person
- e) whether the legal person has or could have obtained any advantage by the offence
- f) whether there is any repetition
- g) the economic capacity of the legal person.

3. FACTUAL BACKGROUND

On Friday 22 June 2018, Luminus' short position in Subsea 7 changed from 0.82 per cent to 0.92 per cent and thereby crossed a relevant notification threshold, cf. section 2 above. The position was notified to Finanstilsynet on 22 June at 21:39 CET ("The First Notification"). According to the First Notification the net short position was set to 0.92 per cent of the shares in Subsea 7 and equal to 327 367 100 shares in Subsea 7. However according to Finanstilsynet's assessment, which has not been contested by Luminus, that was not the correct number of shares. On Monday 25 June 2018, Finanstilsynet asked Luminus to correct the position (regarding the incorrect amount of shares) as soon as possible and before 15:30 CET the same day. Luminus did however not correct the position until 28 June 2018 at 16:19 CET and position was therefore not published to the market before on 29 June 2018 at 15:30 CET.

On Thursday 26 July 2018 Luminus net short position in Subsea 7 increased from 0.92 per cent to 1.02 per cent. This new position was notified on Friday 27 July 2018 at 16:18 CET, which equals to

¹ The DR is incorporated into Norwegian law in the regulation to the NSTA (verdipapirforskriften) section 3-16

² Section 21-4 is a continuation of section 17-4 (1) of the NSTA applicable until 1 January 2019.

49 minutes after the time limit ("the Second Notification"). As a result of the late Second Notification, the new position was not published to the market before on Monday 30 July 2018 at 15:30 CET.

4. LUMINUS`S STATEMENT

Luminus has in its letter of 20 September 2018 acknowledged that the positions was not reported correctly and/or within the notification time limit.

Luminus has not contested that there has in fact been violations of the notification obligation regarding the net short positions, but has in its letter of 13 February 2019 requested that Finanstilsynet reconsider its conclusion that Luminus acted negligent in connection with the late notifications. Luminus has, among other things, stated the following:

- The late notifications was caused by human errors.
- The notification for the position held by 22 June 2018 was reported in a timely manner with the correct percentage of ownership. The notification only contained an incorrect number of shares.
- Due to the wrong contact person being listed in the SSR-contact information, Luminus corrected the notification that was made on the 22 June 2018, as quickly as possible.
- The notification made on 27 July 2018 was submitted 49 minutes late, and did therefore not represent a significant delay.
- Following the late notifications, Luminus has implemented corrective measures at their own initiative. The measures were made effective shortly after the late notifications were discovered and corrected.
- Except for the late notifications of the positions held by Luminus by the 22 June 2018 and the 26 July 2018, Luminus has reported its net short positions in a timely and correct manner.

Luminus has in its letter emphasized that both the late notifications were caused by human error, and have pointed out that they have implemented training of employees and added additional member of the team responsible for submitting notifications of its net short positions.

5. FINANSTILSYNET`S ASSESSMENT

Violation of the SSR

Finanstilsynet's assessment is that failure to notify the correct number of shares and thereby not submitting a correct notification within the time limit (the First Notification) and not to send the Second Notification within the time limit, constitutes clear breaches of the requirements under NSTA section 3-14, cf. SSR articles 5 and 9 and the DR articles 2 and 3 and table 1 in annex I.

Investors, as participants in the financial markets, are expected to have knowledge of the regulations their business is subject to and thus to have put in place appropriate procedures and/or systems in advance in order to proactively identify the notification obligation under SSR and satisfy it in a timely and complete manner. A failure to meet this standard is considered negligent under relevant

Norwegian legal principles. Accordingly, Finanstilsynet finds that both the objective and subjective conditions for imposing a violation penalty on Luminus are met.

Finanstilsynets consideration of whether to impose a violation penalty

Finanstilsynet do not question the reason Luminus has given for the late notification and the incorrect number of shares. However, Finanstilsynet do not agree with Luminus that the First Notification was corrected as quickly as possible. Finanstilsynet asked for the correction before 15:30 CET on 25 June 2018, but Luminus did not report back in a timely matter. The notification was first corrected after Finanstilsynet sent a reminder by e-mail on 28 June 2018. Finanstilsynet finds that Luminus failed to correct the number of shares for several days.

Luminus argues that the Second Notification was submitted only 49 minutes late, and therefore did not represent a significant delay. Finanstilsynet disagree in this matter. Notification to Finanstilsynet of positions that are to be published, meaning any position above the 0.5 per cent threshold, after the time limit at 15.30 CET, will have the consequence that the position will not be published to the market until 15.30 CET the next market day.

Luminus has further provided information of the corrective measures the company has instituted as a result of discovering the late notifications. Although Finanstilsynet finds it mitigating that Luminus has made corrective measures, it is Finanstilsynets assessment that an investor must have put in place appropriate procedures and/or systems in advance.

Finanstilsynet finds that the identified violations are severe and thus deems it necessary to impose a violation penalty in accordance with article 21-4 (1) of the NSTA. In determining whether to impose a penalty, Finanstilsynet has placed emphasis on the fact that the failure to notify correctly and within the time limit relates to positions above the 0.5 per cent threshold, and thus that the violations effectively have obstructed the positions to be disclosed to the market. Finanstilsynet also emphasize that Luminus did not correct the amount of shares before after several days, and not until after a second reminder by Finanstilsynet. Compliance with the SSR is imperative to ensure information to the market on significant net short positions. Such information enables the investor to make well-considered investment decisions, which in turn is of importance for confidence in the market

Assessment of the size of the violation penalty

Based on an overall evaluation of the violation, Finanstilsynet finds reason to impose a violation penalty of NOK 70 000.

When assessing the size of the penalty, in accordance with the NSTA section 21-4, the SSR article 41 and the NPPA section 46, Finanstilsynet has in particular taken into consideration that Finanstilsynet finds the violations negligent, but that it is considered aggravating that Luminus has submitted both one position too late and failed to correct the notification of another position in a timely manner. Finanstilsynet also finds it aggravating that the late notifications relates to positions over the 0,5 per cent threshold, and by that obstructed the positions to be publicly disclosed to the

market to provide useful information to other market participants about significant short positions in the shares. The size of the penalty is consistent with the level of penalties set by Finanstilsynet for comparable violations of the notification requirements.

6. FINANSTILSYNET`S DECISION

Based on the facts described above and pursuant to NSTA section 21-4 (1) and 3-14 and SSR article 5 and 9, Finanstilsynet has made the following decision regarding a violation penalty:

Luminus Management LLC is ordered to pay a violation penalty of NOK 70 000 (seventy thousand Norwegian kroner) to the Norwegian Treasury.

Pursuant to section 28 of the NPPA, this administrative decision may be appealed to the Ministry of Finance. An appeal must be submitted *within three weeks* of the date on which the notification of the administrative decision, 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 Norwegian National Collection Agency.

On behalf of Finanstilsynet

Geir Holen
Senior Supervisory Advisor

Anne Simonine Egeland
Senior Adviser

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