



Canada Pension Plan Investment Board
One Queen Street East, Suite 2500 Toronto
ONM5C2W5
CANADA

OUR REFERENCE
21/9512

YOUR REFERENCE

DATE
01.12.2021

Dear Sir/Madam

Decision regarding violation penalty

1. Introduction

Reference is made to the Financial Supervisory Authority of Norway's ("Finanstilsynet") letters each dated 13 September 2021 and 8 November 2021 and to the replies received from Canada Pension Plan Investment Board ("CPPIB") in their letter of 1 October 2021 and e-mail of 23 November 2021.

Based on an assessment of the facts, Finanstilsynet has concluded that CPPIB has violated the notification requirement under section 3-5 of the Norwegian Securities Trading Act ("NSTA"), and section 3-14 (as it was phrased before 1 March 2021) cf. Regulation (EU) No 236/2012 ("SSR") Article 5 cf. Article 9, by not notifying Finanstilsynet within the time limit set out in the SSR of the relevant net short positions listed in section 3 below.

Finanstilsynet has therefore decided to impose a violation penalty in the amount of NOK 200 000.

2. Legal basis

According to section 1 in Regulation of 24 February 2021 no. 540 regarding transitional rules on amendments to the NSTA, the rules that were regulated by the NSTA section 21-4 are still applicable on infringements that took place before 1 March 2021 unless the current rules are more favourable for the offender. In the following, Finanstilsynet will refer to the rules that were in force at the time in question. References to the NSTA section 3-14 and 21-4 refer to these provisions as they were phrased before 1 March 2021.

In respect of the late notifications relating to Static Data Issues (as defined below under clause 3) the current applicable section 3-5 of the NSTA shall apply. Section 3-5 and the relevant assessments which are made thereunder are in all material respect the same as for the previous section 3-14 of

the NSTA. Furthermore, with regard to the late notifications relating to the Static Data Issues, sections 21-2, 21-9 and 21-14 of the NSTA (which entered into force on 1 March 2021) will apply. 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 venue¹ 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 %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.

According to the SSR Article 9, the relevant time for calculation of a net short position shall be at midnight at the end of the trading day, and the notification must be made to Finanstilsynet no later than at 15:30 CET on the following trading day, cf. Article 9 subsection (2). The position holder is responsible for the notification of net short positions being correct and complete. A notification will not be considered to have been made before it is completed and/or any errors are corrected.

Pursuant to the NSTA section 21-4 subsection 1, Finanstilsynet may impose a violation penalty on natural and/or legal persons in the event of wilful or negligent violation of the NSTA section 3-14, cf. SSR Article 5 and cf. Article 9. Where the position holder is a legal entity, Finanstilsynet may impose a violation penalty where the violation has been committed by one or more natural persons acting on behalf of the legal entity. The requirement for subjective guilt may be fulfilled through someone acting on behalf of the legal entity having shown the necessary guilt. However, the subjective requirements can also be met by anonymous or cumulative errors.

With regard to infringements that took place after 1 March 2021, the NSTA section 21-2 cf. section 21-9 of the NSTA provide that Finanstilsynet may impose a violation penalty in the event of the violation of NSTA section 3-5. In respect of infringements that took place after 1 March 2021 Finanstilsynet will, in accordance with applicable case law, practise the Norwegian Public Administration Act ("NPA Act") section 46 in a manner that requires the legal person in question to have acted with at least negligence. The subjective requirement can also be met by anonymous or cumulative errors.

Section 21-4 subsection 5 of the NSTA states that when the size of the 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. Article 41 of the SSR states that penalties and administrative measures applicable to infringements of the SSR shall be effective, proportionate and dissuasive. With regard to infringements that took place after 1 March 2021, the NSTA section 21-14 subsection (1)

¹ A "trading venue" means a regulated market or a multilateral trading facility within the meaning of point (14) and (15) of Article 4(1) of Directive 2004/39/EC, cf. SSR article 2 (1) litra (l)

² The notification threshold was temporarily lowered to 0,1% from March 16, 2020 to March 19, 2021. See the latest decision of December 17, 2020 with links to previous decisions: <https://www.finanstilsynet.no/en/news-archive/news/2020/short-sale-decision-by-the-efta-surveillance-authority-esa-and-the-european-securities-and-markets/>

provides that when deciding whether an administrative sanction shall be imposed and the size of the violation penalty is assessed, attention may be given to several factors, *inter alia* the scale and effects of the violation as well as the degree of guilt found.

As a supplement, the NPA Act section 46 subsection 2, states that when deciding whether an administrative sanction shall be imposed on an enterprise and in the individual assessment of that sanction, attention may also be given to:

- a) the preventive effect of the sanction
- b) the gravity of the breach, and whether any person acting on behalf of the enterprise is at fault
- c) whether the enterprise 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 enterprise
- e) whether the enterprise has or could have obtained any advantage by the offence
- f) whether there is any repetition
- g) the economic capacity of the enterprise
- h) whether other sanctions have been imposed on the enterprise or any person acting on behalf of the enterprise as a consequence of the breach, including whether an administrative sanction or criminal penalty has been imposed on any natural person
- i) whether any treaty with a foreign state or international organisation presumes the use of administrative corporate sanctions or corporate criminal penalties.

3. Factual background

Finanstilsynet has registered that CPPIB has filed the following net short positions (together the "Net Short Positions") too late /incorrect:

No.	Issuer	Position	Position date	Reported
1.	Yara International	0,43%	04.05.2021	16.06.2021, 12:46 CET
2.	Scatec	0,24	19.03.2021	16.06.2021, 12:45 CET
3.	Gjensidige Forsikring	0,31%	23.12.2020	12.02.2021, 23:20 CET
4.	Nordic Semiconductor	0,41%	07.10.2020	12.02.2021, 22:59 CET
5.	Scatec	0,3%	01.10.2020	12.02.2021, 23:22 CET
6.	Yara International	0,31%	21.09.2020	12.02.2021, 23:17 CET
7.	Telenor	0,31	30.07.2020	12.02.2021, 23:13 CET
8.	Tomra Systems	0,11%	16.03.2020	12.02.2021, 23:10 CET

The Net Short Positions under item 1 and 2 listed above are hereafter referred to as the "Static Data Issues".

4. CPPIB's statements

CPPIB has in a letter dated 1 October 2021 explained that the late notifications stem from two separate operational related issues; 1) the disclosures reported on February 12, 2021 relate to the inadvertent misapplication of the Exempt List on the ESMA website ("Misapplication of the Exempt List Issue"), and 2) the notifications relating to the Static Data Issues reported 16 June 2021, relate to an error in the spreadsheet used in the process of calculating the net short positions.

CPPIB has informed that in the process of replacing their current systems with an external vendor supported system and the testing which was made while implementing the new systems, the abovementioned late notifications were identified.

The previous internal systems of CPPIB reduced the universe of applicable names utilizing the Exempted Shares under Short Selling Legal Framework source from the ESMA website. The system had however erroneously excluded the issuers listed above (number 3-8) from their internal position calculations. Once this was discovered, all positions relating to the issuers listed in no 3-8 in the list under section 3 were reported simultaneously on 12 February 2021.

CPPIB also states that in relation to the notification of net short positions in Telenor (no. 7 in the list under section 3), there was a typo in the box representing the short positions as a percentage. The correct percentage should be 0,11% instead of 0,31% as CPPIB's net short position at the time was 1,570,522 shares.

The late notifications relating to the Static Data Issues are the result of an inadvertent override of dynamic formular with static data in the spreadsheet used to calculate CPPIB's net short positions. CPPIB underlines however that they *"take regulatory compliance matters very seriously and very much regret the oversight that resulted in these late filings"*.

Following Finanstilsynet's advance notification of violation penalty of 8 November 2021, CPPIB has confirmed in their e-mail of 23 November 2021 that they have no further comments in relation to this matter and the late notifications of the Net Short Positions.

5. Finanstilsynet's assessment

5.1 Violation of the SSR

It is Finanstilsynet's assessment that failure to notify Finanstilsynet within the time limit constitutes a clear violation of the reporting requirements under the NSTA section 3-5 and section 3-14, cf. Articles 5 and 9 of the SSR.

The relevant net short positions were subject to the notification requirement in the SSR Article 5 and Article 9 subsection (2). Finanstilsynet's assessment is therefore that the notifications listed in section 3 do not fulfil the requirements under the NSTA section 3-5 and section 3-14, cf. Articles 5 and 9 of the SSR. Accordingly, Finanstilsynet finds that the objective conditions under the NSTA

section 21-2 cf. section 21-9 and section 21-4 subsection (1) for imposing a violation penalty on CPPIB 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 establishes in advance appropriate procedures and/or systems in order to proactively identify the notification obligation under the SSR and ensures that these procedures and/or systems are applied correctly and in accordance with the relevant local legislation.

Finanstilsynet has no reason to doubt CPPIB's statements, hereunder that the late notifications listed under section 3 are the result of Misapplication of the Exempt List and Static Data Issues (as explained under section 3). However, in Finanstilsynet's view, one or more persons acting on behalf of CPPIB, and who is/are responsible within CPPIB that CPPIB's systems are correctly implemented in compliance with Norwegian law, have/has acted negligently, or that cumulative errors within CPPIB were present. Accordingly, Finanstilsynet finds that the subjective conditions under the NSTA section 21-2 cf. section 21-9 and section 21-4 subsection (1) for imposing a violation penalty are met.

As regards the statement from CPPIB relating to the notification for short net position in Telenor, Finanstilsynet would like to recall that in the period from 16 March 2020 to 19 March 2021, ESMA had lowered the threshold for reporting net short positions from 0,2% to 0,1%. As such, CPPIB was obliged to notify the net short positions in Telenor in a timely manner in accordance with SSR regardless of whether the net short position was 0,11% or 0,31%.

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 21-2 cf. section 21-9, section 21-14 and section 21-4 subsection (1) and the NPA Act 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 the SSR. Finanstilsynet places, in particular, emphasis on the fact that this matter involves a total of 8 late reported notifications and the fact that systemic errors occurred twice.

Based on the above, Finanstilsynet is of the opinion that a decision to impose a violation penalty in respect of the abovementioned violations of the SSR, will not be disproportionate in this case.

The NSTA section 21-2 cf. section 21-9, section 21-14 and section 21-4 subsection (5) state 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. In addition, the criteria specified in NPA Act section 46 subsection (2) may also 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 has in particular taken into consideration that CPPIB is a legal person, the length of the delays and the size of the positions. Finanstilsynet has also taken into consideration that the violations have been found to be negligent by CPPIB cf. assessment under section 5. 1 above.

In its assessment of the size of the penalty, Finanstilsynet has also found it as a mitigating circumstance that CPPIB has unsolicited reported previously non-reported positions. The size of the violation penalty is also consistent with the level of previous penalties given by Finanstilsynet for similar violations of the SSR.

6. Finanstilsynet's decision

With regard to the infringements that took place before 1 March 2021, Finanstilsynet finds that the current provisions under the NSTA section 3-5, section 21-2, section 21-9 and 21-14 will not give a more favourable result for CPPIB.

On the basis of the above, Finanstilsynet has decided to impose CPPIB a violation penalty in the amount of NOK 200,000 for its violation of the NSTA section 3-5. The legal basis is the NSTA section 21-2, 21-9 and 21-14, cf. SSR Articles 5, 6 and 9.

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 e-mail anisa.isaksen@finansstilsynet.no, or phone +47 22 93 98 58.

On behalf of Finanstilsynet

Thomas Borchgrevink
Head of Section

Anisa Isaksen
Senior adviser

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

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