



Nordea Funds Ltd
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FINLAND

OUR REFERENCE
22/11735

YOUR REFERENCE

DATE
12.06.2023

Decision regarding violation penalty

1. Introduction

Reference is made to the letter from the Financial Supervisory Authority of Norway ("Finanstilsynet") dated 26 April 2023 and 21 March 2023 and the replies from Nordea Funds Ltd. ("Nordea Funds") dated 6 June 2023 and 3 April 2023.

Based on the information made available to Finanstilsynet, Finanstilsynet finds that Nordea Funds violated the Norwegian Securities Trading Act ("NSTA") section 4-2 as the provision was phrased before 1 September, when funds which are managed by Nordea Funds, on 15 June 2022 sold 102 200 shares in Otello Corporation ASA ("OTEC"). This sale caused Nordea Funds ownership percentage in OTEC to fall below the 5 % threshold required for notification under NSTA section 4-2 (as the provision was phrased before 1 September 2022).

On this background Finanstilsynet has decided to impose Nordea Funds a violation penalty of NOK 75,000.

2. Legal basis

Pursuant to the Norwegian Securities Trading Act ("NSTA") section 4-2 (as the provision was phrased before 1 September 2022, i.e. at the time when the transaction took place), a shareholder shall immediately notify the regulated market of a transaction which causes the shareholder's portion of shares and/or rights to shares to reach, exceed or fall below 5 %, 10 %, 15 %, 20 %, 25 %, 1/3, 50 %, 2/3, or 90 % of the share capital or an equivalent proportion of the voting rights in a company whose shares are quoted on a regulated market.

Shares held or acquired by a company closely associated to the shareholder are to be considered as equivalent to shares held by the shareholder himself, cf. NSTA section 2-5 and NSTA section 4-2 subsection 5 (as the provision was phrased before 1 September 2022). A company is to be

considered closely associated to another person or company with which it cooperates when it comes to the use of rights as an owner of a financial instrument, cf. NSTA section 2-5 no 5.

Different funds which are managed, either by the same management company, are to be considered closely associated to each other. The obligation to notify the market under NSTA section 4-2 subsection (1) rests with the management company in such cases, but may be handled by others on behalf of a management company.

NSTA section 4-2 applies to shares admitted to trading on a regulated market of an issuer having Norway as its home state. Equivalent to shares and/or rights to shares are certain voting rights to shares mentioned in the NSTA section 4-2 subsection (2) (as the provision was phrased before 1 September 2022).

The notification requirement also applies to anyone who through disposal or other circumstances changes his proportion of the share capital, rights to shares or voting rights such that the proportion reaches, crosses or falls below the mentioned thresholds.

Finanstilsynet may under the NSTA section 21-3 subsection 1, impose individuals and/or legal persons a violation penalty in the event of negligent or willful violation of the NSTA section 4-2.

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 practice the PAA section 46 (as the as the provision was phrased before 17 June 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 willfully. 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 the NSTA section 21-14 be given to the following:

- 1) the gravity and length of the breach;
- 2) the degree of guilt of the perpetrator;
- 3) the financial strength of the perpetrator, in particular total turnover or annual income and assets;
- 4) profits gained or loss avoided;
- 5) any loss inflicted on a third party due to the breach;
- 6) will by the perpetrator to cooperate with public authorities;
- 7) earlier violations;
- 8) arguments as mentioned under the Public Administration Act section 46 subsection (2);
- 9) other relevant arguments.

According to Regulation of 27 June 2022 no. 1205 Section 3 on transitional rules to the amendments to the NSTA Section 4-2 of June 2022, the rules which applied when the transaction took place shall be applied, unless the new rules adopted will lead to a more favorable result for the perpetrator. NSTA Section 2-5, as discussed above, was amended with effect from 1 September 2022. The obligation to notify the market with respect to voting rights for shares which are held by a third party, in this case the funds, now follows from NSTA Section 4-4 paragraph 1 no. 1. Under this provision Nordea Funds will have an obligation to notify the market if Nordea Funds has concluded an agreement with the funds to adopt a lasting common policy towards the management of the issuer in question regarding exercise of the voting rights, or if entities controlled by Nordea Funds have entered into such agreements, cf. NSTA Section 4-6 Section 1. Finanstilsynet will in general consider management companies to have entered into such an agreement with the funds of which assets are managed by the management company, cf. Guideline from the Finanstilsynet to the Securities Trade Act (Veiledning til verdipapirhandeloven kapittel 4 flaggeplikt) chapter 4 page 16.

3. Factual background

On 15 June 2022 funds managed by Nordea sold 102 200 shares in OTEC, and the holdings by funds under its management, fell below the 5 % threshold. Nordea Funds did not disclose this before 20 October 2022, 127 days after the threshold was crossed.

Nordea Funds exceeded the 5 % threshold after OTEC reduced its share capital. OTEC disclosed this share capital reduction 14 June 2022. In a notification sent to Oslo Børs 15 June 2022, the following day, Nordea Funds flagged this crossing.

4. Statement of the discloser

Nordea Funds agrees that the notification was not made in accordance with NSTA Section 4-2, and describes the circumstances surrounding the notification as follows:

Nordea Funds has a system to monitor transactions shareholdings and positions. On 15 June 2022 the monitoring system alerted that a disclosure threshold had been crossed which led Nordea Funds to notify the market of the crossing above the 5 % threshold.

The information on the capital reduction event had been registered in Nordea Funds' system the same day. Later that day the sale of 102 200 shares was executed and registered.

Hence, the two events were treated as intra-day events, and the intraday positions were netted, in accordance with the rules in other countries but contrary to the Norwegian rules.

Consequently, the alert from earlier that day was annulled, the system concluded that positions had been below threshold for the relevant day, and no further need for action was notified of, when in fact, pursuant to Norwegian rules, both the already executed flagging up and a consecutive notification when crossing down below the threshold again should have been carried out.

When holdings were further reduced in August this did not trigger any alert from the system

either, as the current position status on OTEC at that time was that holdings were already below the 5 % threshold.

When Nordea Funds gained knowledge of that the system was not taking Norwegian rules into consideration, mitigating actions were immediately taken. Manual controls were set up to mitigate the issue in the short run. Furthermore, Nordea Funds engaged the system provider to initiate development of the functionality needed to enable compliance with Norwegian rules.

The delay in market notification was not caused by negligence, Nordea Funds explains. Appropriate procedures were in place, and, to the best of their knowledge – the optimal system available in the market to its support.

Nordea Funds has taken mitigating actions immediately once the issue was discovered and has also been transparent about the causality and mitigating actions. A penalty will not have any preventive effect, as every relevant mitigating action has already been taken to prevent this from happening in the future.

Nordea Funds did not have any gain or avoided no loss pursuant to the delayed notification. There is no reason to believe that any third party suffered any loss as a result of the delay in question, or that the delay, as it relates to the lowest disclosure threshold, and as the reduction in size of aggregated positions equals a difference in percentage of 0.11 of the outstanding shares in the issuer, would have had any significant effect in the market what so ever.

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

Finanstilsynet finds that Nordea Funds notified the market too late when funds which are managed by Nordea Funds, on 15 June 2022 sold 102 200 shares in OTEC, and due to that the proportion of voting rights and share capital in OTEC, was reduced from 5.06 % to 4.95 %.

The transaction was notified to the market on 20 October 2022.

According to the NSTA section 4-2, the notification to the Oslo Stock Exchange should have been made "immediately" after the transaction was completed on 15 June 2022. For larger group companies which operate in different jurisdictions and time zones, Finanstilsynet has accepted that these companies shall be allowed certain time to consolidate their data, but not as long as in this case.

On this background Finanstilsynet finds that Nordea Funds, notified the market too late and thus breached NSTA Section 4-2 as the provision was phrased before 1 September 2022.

Nordea Funds is as a professional manager company operating in the Norwegian securities market expected to have in place appropriate procedures and/or systems that will enable it to identify and satisfy the disclosure obligations, hereunder submit their notifications, in a timely and complete

manner, and in accordance with the relevant specific requirements applicable in the jurisdiction in which it operates.

Nordea Funds has referred to that when taking into consideration Nordea Funds size and numerous investments across several legal entities, jurisdictions and time zones, and the fact that Nordea Funds has relied on a well-known and reputable system and service provider, the delay was not caused by Nordea Funds' negligence.

Finanstilsynet disagrees in this as well. Nordea Funds will as a professional management company be identified with any errors and weaknesses in any systems purchased from third parties. Based on this Finanstilsynet cannot find it decisive that Nordea Funds has relied on a well-known and reputable system and service provider.

Finanstilsynet's assessment after this is that one or more persons acting on behalf of Nordea Funds acted negligently, and that cumulative errors due to that, were present. Finanstilsynet therefore considers that the criterion of negligence is met in this case. Finanstilsynet finds that both the objective and subjective conditions for imposing a violation penalty are met, cf. the NSTA section 21-3 subsection 1, section 21-9, PAA section 46.

When assessing whether to make use of a violation penalty, Finanstilsynet has made a concrete assessment of the case in accordance with the PAA section 46. Finanstilsynet has taken into consideration that the violation of the disclosure obligation could have been prevented had Nordea Funds put in place more appropriate procedures and/or systems.

The rules on disclosure obligations under NSTA section 4-2 (as the provision was phrased before 1 September 2022) are meant to assure that the issuer and the stock market receive fast knowledge of the acquisition or disposal of shares or other circumstances changing the proportion of the share capital, rights to shares or voting rights in the issuer.

Changes of ownership in a company listed on a regulated market can have a notable influence on the price of the issuer's shares in the market, as this could give an indication that someone has, or no longer has a strategic interest in the issuing company. For this reason, it is important that the market receives this information as soon as possible. Compliance with the disclosure rules is important in order to ensure that relevant information on significant changes in ownership at listed companies is disclosed to the market, although there are no indications in this case that the breach influenced the price of the issuer's share. This information enables the investors to make well-considered investment decisions, which in turn is important to maintain confidence in the market.

Finanstilsynet has previously imposed violation penalties in cases of similar violations. Considerations for equal treatment therefore imply that a penalty should be imposed in this case.

Finanstilsynet's assessment is therefore that a violation penalty should be imposed.

Finanstilsynet refers to the NSTA section 21-14 which states that when the size of a violation penalty is assessed, importance shall be attached to the gravity and the length of the breach, as well as the degree of guilt found. In addition, also other criteria specified in the NSTA section 21-14 may be taken into consideration when assessing the size of the violation penalty.

In its overall assessment, Finanstilsynet has taken into consideration all facts and circumstances specific to this matter and which have been addressed by Nordea Funds. Finanstilsynet has in particular taken into consideration that the violation of the disclosure obligations could have been prevented had Nordea Funds put in place more appropriate procedures and/or systems in advance which would have allowed them to notify the market in a timely and correct manner in accordance with the NSTA.

It is mitigating that Nordea Funds unprompted informed Finanstilsynet that the notification had been published too late. This was done in a letter sent 20 October 2022.

Finanstilsynet has also taken into consideration that Finanstilsynet in its case 21/1074 imposed a warning to Nordea Funds. This was done after Nordea Funds published a notification in January 2021 which did not meet the mandatory information requirements as set out in Section 4-1 of the Regulations to the NSTA.

An overview of violation penalties that has previously been imposed is published on Finanstilsynet's website at <https://www.finanstilsynet.no/tilsyn/markedsatferd/vedtak-om-overtredelsesgebyr---flaggeplikt/>.

6. Decision on violation penalty

Finanstilsynet finds that the current provisions under NSTA section 4-4 will not give a more favorable result for Nordea Funds.

Based on the facts listed above and with the legal basis under the NSTA sections 21-3, 21-9 and PAA Section 46 cf. the NSTA section 4-2, Finanstilsynet has decided to make the following decision regarding a violation penalty:

" Nordea Funds Ltd. is required to pay a violation penalty of NOK 75,000 (seventy-five thousand Norwegian kroner) to the Norwegian Treasury."

Finanstilsynet would like to inform that the decision regarding violation penalty 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. 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, provided that the violation penalty is upheld, 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.

On behalf of Finanstilsynet

Thomas Borchgrevink
Head of Section

Geir Harald Aase
Senior Advisor

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