



Cobas Asset Management SGIIC S.A.  
Calle de José Abascal 45, Tercera Planta  
28003 Madrid  
SPAIN

**OUR REFERENCE**  
21/4168

**YOUR REFERENCE**

**DATE**  
05.10.2021

## Decision regarding violation penalty

### 1. Introduction

Reference is made to the advanced notification of violation penalty from The Financial Supervisory Authority of Norway ("Finanstilsynet") dated 1 July 2021 and to the company's reply of 5 July 2021.

Based on an assessment of the facts in the case, Finanstilsynet has concluded that Cobas Asset Management SGIIC S.A. ("Cobas") notified Oslo Stock Exchange too late when Cobas in April 2021 crossed the 15 % disclosure threshold in Hoegh LNG Holdings Ltd ("HLNG"). Cobas has thus violated the Norwegian Securities Trading Act ("NSTA") section 4-2 and is to be held liable. Finanstilsynet has on this background decided to impose Cobas a violation penalty of NOK 200 000.

### 2. Legal basis

NSTA section 4-2 subsection (1) states that where a shareholder's or other person's proportion of shares and/or rights to shares reaches, exceeds, or falls below 5 %, 10 %, 15 %, 20 %, 25 % 1/3, 50%, 2/3 or 90 % of the share capital or corresponding proportion of the votes as a result of acquisition, disposal or other circumstance, the party concerned shall immediately notify the issuer and Finanstilsynet or whomever Finanstilsynet designates for the purpose.

Voting rights to shares which under a proxy may be exercised without any instructions from the shareholder, are to be treated the same way as ownership to shares or rights to shares, cf. NSTA section 4-2 subsection (2) no. 2.

Pursuant to Regulation of 6 December 2007 no. 1359 section 1, notifications under NSTA section 4-2 subsection (1) shall be sent to the regulated market on which the share has been admitted to trading. NSTA section 4-2 applies to shares admitted to trading on a regulated market of an issuer having Norway as its home state (cf. NSTA section 4-1).

According to the NSTA section 4-2 subsection (6), the notification to the regulated market is required "*immediately*" after an agreement on acquisition or disposal has been entered into, or the party concerned becomes aware, or should have become aware, of any other circumstance causing the party concerned to reach or fall below a threshold in subsection (1). According to the Guidelines of Finanstilsynet regarding chapter 4 of the NSTA of 22 February 2021 paragraph 3.8 ("Veiledning til verdipapirhandelloven kapittel 4 – flaggeplikt"), this should be understood as the time it takes to write and send the notification to the market.

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, NSTA section 21-9 subsection (2) refers to the Public Administration Act (PAA) section 46 subsection (1).

Finanstilsynet will practise PAA section 46 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 the sanction, attention may under 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 breach,
6. will by the perpetrator to cooperate with public authorities,
7. earlier breaches,
8. arguments as mentioned under the public administration act section 46 subsection (2),
9. other relevant arguments.

### **3. Factual background**

Cobas acts as an investment manager which is authorized to exercise voting rights attached to the shares under management by Cobas on a discretionary basis. Cobas is among other acting as investment manager on behalf of several management companies for funds which have outsourced the portfolio management to Cobas.

Cobas notified the Oslo Stock Exchange on 8 April 2021 that Cobas, following a sale of 222 451 shares in HLNG on 6 April 2021, will exercise 14,79 % of the voting rights of HLNG. The sale consequently led to a downward passing of the 15 % threshold set up in NSTA section 4-2 subsection (1) and (2).

#### **4. Statements of the discloser**

In the e-mail of 22 June 2021 and the letter of 5 July 2021 Cobas informs that the sale of the shares was done at the closing of the regulated market on 6 April 2021. Oslo Stock Exchange received the notification on 8 April 2021 at 11:51.

Cobas informs that they carried out some internal checks like reconciliations between its registers and the registers of the management companies of the funds previous to aggregate positions. The disclosure was made immediately after Cobas received the necessary information.

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

Based on the description of the voting rights delegated to Cobas, Finanstilsynet concludes that the voting rights may be exercised by Cobas with no instructions from the shareholders. The voting rights are thus to be treated the same way as ownership to the shares, cf. NSTA section 4-2 subsection (2) no. 2.

The voting rights did, as consequence of the sale of 222 451 shares in the portfolios managed by Cobas, cross the 15 % threshold of HLNG under NSTA section 4-2 subsection (1). The crossing was subject to a disclosure obligation by Cobas.

The reduction of the voting rights took place on 6 April 2021. Oslo Stock Exchange should have been notified at the latest the following day of the transaction. However, Oslo Stock Exchange did not receive the notification before 8 April 2021 at 11.51.

Consequently, Finanstilsynet finds that Cobas notified Oslo Stock Exchange too late when the notification of the reduction in voting rights was done on 8 April 2021.

It should also be mentioned that the notification of 8 April 2021 from Cobas to Oslo Stock Exchange did not identify the funds which held the shares. Under Regulations to the NSTA of 29 June 2007 no 876 section 4-1 letter c, this information is to follow from the notification.

As a participant in the Norwegian securities market Cobas is expected to comply with the regulatory rules of that market. It will typically be expected to establish appropriate procedures and/or systems in order to proactively identify the disclosure obligation under NSTA.

Finanstilsynet does not see any basis for excusing the late notification and finds that Cobas has acted negligently.

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 and PAA section 46 (1).

When assessing whether to make use of a violation penalty in this particular case, Finanstilsynet has made a concrete assessment of the case in accordance with the NSTA section 21-14.

In Finanstilsynet's opinion a delayed notification to the market that exceeds more than one working day is a significant violation of the NSTA section 4-2. Furthermore, in its assessment Finanstilsynet has also taken into consideration that the violation of the disclosure obligation could have been prevented had Cobas put in place appropriate procedures and/or systems in advance of the reduction of the voting rights.

The rules on disclosure obligations under NSTA section 4-2 are meant to assure that the issuer and the stock market receives 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 in ownership in a company listed on a regulated market can have a notable influence on the price of the issuers 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 to ensure that relevant information on significant changes in ownership at listed companies is disclosed to the market. 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 such penalty should be imposed also in this case.

Finanstilsynet finds 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 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.

The violation penalty is based on an overall evaluation of the breach, taking into account amongst other factors, the disclosure threshold which was crossed and previous decisions in similar cases. Finanstilsynet has also taken into account that the violation is considered negligent.

An overview of violation penalties that has previously been imposed is published on Finanstilsynet's website in the second bullet point under the tab "Flaggeplikt" at <https://www.finanstilsynet.no/tilsyn/markedsatferd>.

## **6. Finanstilsynet's decision**

On the basis of the above, Finanstilsynet imposes Cobas Asset Management SGIIC S.A. a violation penalty in the amount of NOK 200 000 for its violation of the NSTA section 4-2.

The legal basis is the NSTA section 21-3 subsection (1), cf. section 21-9, section 21-14 and PAA section 46 (1).

This administrative decision can be appealed within 3 weeks after receipt of the decision. An appeal shall be sent to Finanstilsynet. The appellate instance is the Ministry of Finance. Section 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 inquiry, please contact Erik Landa on [erla@finansstilsynet.no](mailto:erla@finansstilsynet.no)

On behalf of Finanstilsynet

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