

Maple Rock Capital Partners Inc

**OUR REFERENCE**  
21/9511

**YOUR REFERENCE**

**DATE**  
29.11.2021

Dear Sir/Madam

## Decision regarding violation penalty

### 1. Introduction

Reference is made to the letter from the Financial Supervisory Authority of Norway ("Finanstilsynet") dated 16 September 2021 and 12 November 2021 and the reply from Maple Rock Capital Partners Inc ("Maple Rock") dated 20 September 2021 and 16 November 2021.

Based on an assessment of the facts, Finanstilsynet has concluded that Maple Rock has violated the notification requirement under section 3-5 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 set out in the SSR of the relevant net short positions (as set out in section 3 below).

Finanstilsynet has therefore decided to impose a violation penalty of NOK 10,000.

### 2. Legal basis

The obligation to report net short positions of shares is set out in the Norwegian Securities Trading act (NSTA) section 3-5, cf. Regulation (EU) No 236/2012 (SSR).

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 venue and for which Finanstilsynet is the relevant competent authority, shall in accordance with the NSTA section 3-5 cf. SSR Article 5 and Article 9, notify Finanstilsynet of certain net short positions. The notification obligation will apply if a net short position reaches or falls below a percentage that equals 0,2% 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.

Finanstilsynet may under the NSTA section 21-2 subsection (1) impose individuals and/or legal persons a violation penalty in the event of negligent or willful violation of the NSTA section 3-5.

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 practise the 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 such sanction, attention may under NSTA section 21-14 be given to the following:

- a) the gravity and length of the breach,
- b) the degree of guilt of the perpetrator,
- c) the financial strength of the perpetrator, in particular total turnover or annual income and assets,
- d) profits gained or loss avoided,
- e) any loss inflicted on a third party due to breach,
- f) will by the perpetrator to cooperate with public authorities,
- g) earlier breaches,
- h) arguments as mentioned under the public administration act section 46 subsection (2),
- i) other relevant arguments.

### **3. Factual background**

On Friday 20 August 2021, Maple Rock reached the 0,2 % notification threshold in Yara International ASA ("YAR"). Maple Rock did not report the position until Tuesday 24 August 2021 at 16:40 CET.

On Monday 6 September 2021, Maple Rock's net short position in YAR changed from 0,2 % to 0,32 %. The change was reported to Finanstilsynet on Tuesday 7 September 2021 at 17:40 CET.

These two positions are in the following collectively referred to as the "Net Short Positions."

### **4. Maple Rock's statements**

In its e-mail dated 20 September 2021, Maple Rock apologized for the late notifications of the Net Short Positions.

In relation to the net short position of 20 August 2021, Maple Rock informs that the company was working with Finanstilsynet to replace a user account of an old employee registered in the Norwegian Short Sale Register with a new user. The process of creating, approving and activating the new user account took a couple of days.

As regards the net short position of 6 September 2021, Maple Rock was of the understanding that the company could report its net short positions no later than 15:30 CET on the following day. Maple Rock notified Finanstilsynet at 17:40 CET on the following day.

Following Finanstilsynet's letter of 12 November 2021 regarding advance notification of violation penalty, Maple Rock responded in its letter of 16 November 2021 that Maple Rock proactively communicated the account login issues with Finanstilsynet, and worked diligently to resolve the technical account changes as quickly as possible. As regards the violations stemming from Maple Rock's trades from 6 September 2021, Maple Rock underlines that the filing was made over two hours late, and Maple Rock has since then bolstered its operations by implementing additional supervisory and checklist controls to ensure timely and accurate filings.

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

Finanstilsynet finds that Maple Rock violated the NSTA section 3-5 by not notifying Finanstilsynet of the Net Short Positions within the time limits in accordance with the SSR.

In relation to the net short position of 20 August 2021, the deadline was 23 August 2021 at 15:30 CET. The position was reported on 24 August 2021 at 16:40 CET. For the net short position of 6 September 2021, the deadline was 15:30 CET on the following trading day. The notification was however made at 17:40 CET on the following trading day.

The Net Short Positions were subject to notifications in accordance with the SSR and were therefore submitted after the deadline under SSR Article 9 subsection (2). On this background, it is Finanstilsynet's assessment that the notifications of the Net Short Positions did not fulfil the requirements under NSTA section 3-5, cf. Articles 5 and 9 of the SSR.

Accordingly, Finanstilsynet finds that the objective conditions under NSTA section 21-2 subsection (1) for imposing a violation penalty on Maple Rock are met.

When considering whether the subjective conditions for imposing a violation penalty are met, the starting point is 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 clearly in advance establishes appropriate procedures and/or systems in order to proactively identify the notification obligation under the SSR and ensures that such procedures and/or systems are applied correctly.

In respect of the late filings of the net short positions of 20 August 2021, Maple Rock has stated that the company was working with Finanstilsynet to replace a user account registered with the Norwegian Short Sale Register belonging to an old employee with a new user as reporting person on behalf of Maple Rock.

Finanstilsynet recalls that Maple Rock filed the application for registration of a new reporting person/new user on Friday, 20 August 2021 at 17:03 CET, i.e., after close of business in Norway. On Monday, 23 August at 12:22 CET, Finanstilsynet sent an e-mail to Maple Rock and explained

that if Maple Rock was registered with multiple accounts/reporting persons, there would be no consolidation between such accounts. Finanstilsynet asked Maple Rock to confirm that they were aware of this issue.

On 23 August 2021 at 18:10 CET, Maple Rock replied that they would then keep the initial account, but they were not able to reset the password. In its e-mail of 24 August 2021 at 09:57 CET, Finanstilsynet informed Maple Rock that Finanstilsynet would resolve this issue by transferring the historic positions to a new account and then delete the initial account. An operative account was established immediately after this.

Finanstilsynet finds that Maple Rock started the process of transferring the initial account (which they could not access and report short net positions on behalf of Maple Rock) to the new reporting person (who would report short positions going forward) too late. Maple Rock did not take into consideration that Norway and Canada are in different time zones when the registration process was initiated. Maple Rock did therefore not take the necessary precautions to ensure that the notification obligations could be met in a timely manner and in accordance with the SSR.

As regards the notification of 7 September 2021, Finanstilsynet underlines that the net short positions were reported too late i.e. after the deadline for reporting net short positions had expired.

Finanstilsynet finds that one or more persons acting on behalf of Maple Rock acted negligently in respect of the late notifications of the Net Short Positions or that cumulative errors were present. Accordingly, Finanstilsynet finds that the subjective conditions under NSTA section 21-2 subsection (1) for imposing a violation penalty are met.

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 21-9 subsection (2) and 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 SSR. In Finanstilsynet's assessment, imposing a violation penalty in this case will not be disproportionate.

Finanstilsynet finds that a violation penalty should be imposed.

The NSTA section 21-14 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. 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 the case and has in particular emphasized that the late notifications of the Net Short Positions have been found to be negligent on the part of Maple Rock, and could have been prevented if Maple Rock had started the transferring process/registration process earlier.

The size of the violation penalty is furthermore consistent with the level of previous penalties set by Finanstilsynet for similar violations of the notification requirements.

## 6. Finanstilsynet's decision

On the basis of the above, Finanstilsynet has decided to impose Maple Rock Capital Partners Inc. a violation penalty in the amount of NOK 10,000 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](mailto:anisa.isaksen@finansstilsynet.no), or phone +47 22 93 98 58.

On behalf of Finanstilsynet

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