



FINANSTILSYNET

THE FINANCIAL SUPERVISORY
AUTHORITY OF NORWAY

Apollo Management Holdings L.P
9 West 57th Street, 43rd Floor
New York
USA

OUR REFERENCE
22/5739

YOUR REFERENCE

DATE
16.03.2023

Decision on violation penalty

1. Introduction

Reference is made to the letter from the Financial Supervisory Authority of Norway ("Finanstilsynet") dated 26 January 2023 and the reply from Apollo Management Holdings L.P ("Apollo") dated 2 February 2023.

Based on the information made available to Finanstilsynet, Finanstilsynet finds that Apollo violated the Norwegian Securities Trading Act ("NSTA") section 4-2 as the provision was phrased in April 2022, when four funds which are managed by management companies which all are subsidiaries to Apollo, on 29 April 2022 sold 250 000 shares in Philly Shipyards ASA ("PHLY"), and due to that crossed the 10 % notification threshold under NSTA section 4-2.

On this background Finanstilsynet has decided to impose Apollo a violation penalty of NOK 150,000.

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.

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Different funds and/or invest companies which are managed, either by the same management company, or different management companies which are closely associated to each other, 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 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 Apollo will have an obligation to notify the market if Apollo 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 Apollo 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 verdipapirhandelloven kapittel 4 flaggeplikt) chapter 4 page 16.

3. Factual background

Apollo crossed the 10 % threshold in PHLY on 29 April 2022 when four funds which are managed by separate management companies, which all are subsidiaries to Apollo Management Holding L.P, on 29 April 2022 sold 250 000 shares in PHLY. Due to the sale, the voting rights exercised in PHLY by the group, was reduced from 11.075 % to 9.086 % of the total number of shares/voting rights in PHLY. After the sale the funds held 1 142 598 shares and a similar number of voting rights in PHLY.

Due to the sale, voting rights exercised by the group of management companies crossed the 10 % notification threshold under NSTA Section 4-2. The transaction was notified to the market on 19 May 2022, by the parent company on behalf of the group of management companies.

4. Statement of the discloser

In email of 30 November 2022 Apollo agrees that the notification was not made in accordance with NSTA Section 4-2. Apollo describes the circumstances surrounding the notification as follows:

Apollo's major shareholder monitoring and notification process is administered by Apollo's Compliance function across a number of international offices. The process typically relies on the manual review of transaction data which is available, at the earliest, on a T+1 basis (although the Compliance team may on occasion be made aware of threshold crossings "live" by Apollo's trading desks).

In this instance, the relevant transaction data was not made available to the Compliance team until 2 May 2022, several days after the transactions were executed. Given the nature of Apollo's business, Apollo rarely crosses substantial shareholder thresholds in Europe. Apollo has limited experience of making filings with the Oslo Stock Exchange and there was some ambiguity as to the precise scope of Norwegian requirements.

Having determined that a notification was required per section 4-2 of the NSTA, the Compliance team took steps to determine the current holdings of Apollo-managed Funds in PHLY and prepare the notification. This process took until 18 May 2022, significantly longer than expected.

The Notification was submitted on the evening of 18 May 2022 (London time), but, as we understand it, was not received until 19 May 2022.

In relation to the disclosure of the percentage of shares held by Apollo PPF Credit Strategies, LLC (“APCS LLC”), the percentage of total shares/votes held by APCS LLC as disclosed in the Notification was incorrectly stated – it should have read 0.232% (and not 9.086%). However, the total quantity of APCS LLC’s PHL Y shares detailed in the notification was correctly stated.

Apollo emphasizes that it takes shareholder notification requirements extremely seriously. Apollo carefully monitors its (aggregated) shareholdings in European issuers. Following the submission of the notification, the following measures have been implemented to ensure that future notifications will be submitted in a timely manner:

- The European Compliance team has assumed exclusive responsibility for the monitoring of shareholdings in European issuers and conducts daily checks of the firm’s positions.
- Training for Compliance and Trading professionals on pan-European notification obligations has been refreshed.
- Improvements have been made to the manual monitoring process, particularly in relation to the calculation of aggregate holdings.
- The internal approval process for major shareholding notifications has been improved.

In its reply of dated 2 February 2023 Apollo considers that a violation penalty of NOK 150 000 to be excessive in the circumstances of the case. Apollo refers to that the notification was made as soon as possible after Apollo became aware of the obligation, that there was no "guilt" as the delay was a result of inadvertent oversight and human error, and that Apollo did not have any gain nor avoided no loss due to the late notification. In Apollo's opinion it is also hard to claim that any third party conceived any loss. Apollo has also been transparent and responsive to the letters of Finanstilsynet and has no earlier violations. In Apollo's opinion a violation penalty is believed to have limited preventive effect, and Apollo emphasizes that it has taken steps to avoid that this will happen in the future.

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

Finanstilsynet finds that Apollo notified the market too late when four funds which are managed by separate management companies, which all are subsidiaries to Apollo Management Holding L.P, on 29 April 2022 sold 250 000 shares in PHL Y, and due to that the voting rights exercised in PHL Y by the group, was reduced from 11.075 % to 9.086 % of the total number of shares/voting rights in PHL Y.

The transaction was notified to the market on 19 May 2022, by the parent company on behalf of the group of management companies.

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 29 April 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.

Apollo, as a professional company operating in the Norwegian securities market is 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.

Finanstilsynet's assessment is that one or several persons acting on behalf of Apollo acted negligently, and that cumulative errors were present. Finanstilsynet refers to that in this instance the relevant transaction data was made available to the compliance team on 2 May 2022, but the market was not notified before 19 May 2022. Finanstilsynet finds that this delay is due to one or several errors done by one or several employees of Apollo. Finanstilsynet therefore finds 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 21-2 subsection 1, section 21-9, 21-14 cf. 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 NSTA section 21-14. Finanstilsynet has taken into consideration that the violation of the disclosure obligation could have been prevented had Apollo put in place appropriate procedures and/or systems.

The rules on disclosure obligations under NSTA section 4-2 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. 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 therefore 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 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 Apollo. Finanstilsynet has in particular taken into consideration that the violation of the disclosure obligations could have been prevented had Apollo put in place 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.

Apollo has referred to that the violation penalty is high considered the factors under NSTA section 21-14. Based on the fact that the consolidated group of the funds crossed the 10 % notification threshold, and that the group companies act as an asset managers, Finanstilsynet finds that the violation penalty should be upheld at NOK 150 000.

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 Apollo.

Based on the facts listed above and with the legal basis under the NSTA sections 21-3, 21-9 and 21-14 cf. the NSTA section 4-2, Finanstilsynet has made the following decision regarding a violation penalty:

" Apollo Management Holdings L.P is required to pay a violation penalty of NOK 150,000 (onehundred and fifty 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, 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 Erik Landa by email post@finanstilsynet.no or phone +47 22 93 96 71.

On behalf of Finanstilsynet

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